

Delegated Powers and Law Reform Committee  
Tuesday, 8<sup>th</sup> October 2024  
28<sup>th</sup> Meeting, 2024 (Session 6)

## Instrument Responses

### Funeral Expense Assistance (Scotland) Amendment Regulations 2024 (SSI 2024/Draft)

**NB: the original instrument to which these questions relate was withdrawn by the Scottish Government on Wednesday 25 September 2024. The instrument considered by the Committee at this meeting was re-laid on Tuesday 1 October 2024.**

**On Thursday 19<sup>th</sup> September 2024, the Committee asked the Scottish Government:**

1. In regulation 2(4)(b), substituting regulation 9(3) of the principal regulations, is the reference in new paragraph (3)(a)(iii) to sub-paragraph (a) correct? It appears to extend the paragraph 9(2)(b) entitlement to expense assistance with a funeral in the EU/EEA to family members of those who qualify under heads (i), (ii), (iii) itself or (iv), whereas under the principal regulations as they stand, this extends only to family members of those qualifying under the provisions equivalent to heads (i) and (ii) (that is, regulations 9(3)(a) and (b) of the principal regulations as they stand).
2. New regulation 9(3)(a)(iii) extends the entitlement to “a person who is a family member of a person referred to in sub-paragraph (a) **or** within the meaning of regulation 7(1) of the EEA Regulations” (emphasis added). Is the inclusion of “or” intentional (to broaden the category of family member) or should it have been omitted?
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

**On Tuesday 24<sup>th</sup> September 2024, the Scottish Government responded:**

1. This is incorrect and is an error in the drafting. Regulation 2(4)(b) of the amendment regulations substitutes regulation 9(3) of the principal regulations. Regulation 9(3)(a)(iii), as amended, should only extend entitlement to assistance for a funeral in the EU/EEA to family members of those who qualify under heads (i) and (ii). This provision should not extend to persons referred to in head (iii) or (iv). Accordingly, reference to sub-paragraph (a) in regulation 9(3)(a)(iii) is an error.
2. This is incorrect and is an error in the drafting, which follows on from the error above. As stated in the response to question 1, paragraph (3)(a)(iii) as amended, should only extend entitlement to assistance for a funeral in the EU/EEA to family members of those who qualify under heads (i) and (ii). Therefore, it should read “persons referred to in head (i) or (ii)”, and this would

be the equivalent to regulations 9(3)(a) and 9(3)(b) of the principal regulations as they stand.

3. Corrective action is proposed to address this error and we will be seeking to withdraw the instrument and lay a corrected version as a matter of urgency.

## **Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) Regulations 2024 (SSI 2024/249)**

**On Friday 27<sup>th</sup> September 2024, the Committee asked the Scottish Government:**

Should rule 27(1) (public and private hearings) specify that hearings are to be held in public unless the Upper Tribunal decides that holding the hearing in private is justified?

Please confirm whether any corrective action is proposed, and if so, what action and when.

**On Wednesday 2<sup>nd</sup> October 2024, the Scottish Government responded:**

Rule 27(1) makes the general rule that hearings of the Upper Tribunal, when considering bus registration appeals, must take place in public. It also provides that this general rule may be disapplied where justified by reference to the factors set out in sub-paragraphs (a) to (e) of that rule (i.e. the general rule applies “unless” justified by reference to those factors). While the rule does not expressly set out what the Upper Tribunal may do where disapplication of the general rule is justified, it is considered that the only alternative to holding a hearing in public is to hold the hearing in private. Further, the remaining paragraphs of the rule make provision about what should happen as regards attendance at, and publication of decisions following, hearings which have taken place in private and so it is obvious from the context that private hearings are anticipated to be the alternative to public hearings. The Scottish Government accordingly considers that rule 27(1) is sufficiently clear and no corrective action is proposed.