Draft Regulations laid before the Scottish Parliament under section 79(2)(b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

TRIBUNALS AND INQUIRIES

The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024

Made - - - -	*2024*
Coming into force - -	*2nd December 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28(2), (6) and (7) and 79(1) of the Tribunals (Scotland) Act 2014(**a**) and all other powers enabling them to do so.

In accordance with section 79(2)(b) of that Act, a draft of this instrument has been laid before and approved by a resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 and come into force on 2 December 2024.

(2) In these Regulations—

"relevant appeal" means an appeal made under section 39(6) of the Transport (Scotland) Act 2001(**b**) in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d)(**c**),

"relevant functions of the Transport Tribunal" means the functions exercisable by the Transport Tribunal in relation to a relevant appeal, and

"Upper Tribunal" means the Upper Tribunal for Scotland.

Transfer of the relevant functions of the Transport Tribunal to the Upper Tribunal

2. The relevant functions of the Transport Tribunal are transferred to the Upper Tribunal.

Transitional and saving provisions

3. Schedule 1 which contains transitional and saving provisions has effect.

(**a**) 2014 asp 10.
(**b**) 2001 asp 2.
(**c**) Section 39(1) was amended by section 17(6)(a) and (b) of the Bus Services Act 2017 (c. 21) and section 39(2) and paragraph 3(4) of the schedule of the Transport (Scotland) Act 2019 (asp 17).

Consequential amendments

4. Schedule 2 which contains consequential amendments has effect.

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Regulation 3

Transitional and saving provisions

Relevant appeals in progress before the Transport Tribunal immediately before 2 December 2024 to transfer to the Upper Tribunal

1. The following are transferred to, and must be completed by, the Upper Tribunal as if they were an appeal or application to the Upper Tribunal, or proceedings in the Upper Tribunal, as the case may be—

(a) a relevant appeal to the Transport Tribunal in progress immediately before 2 December 2024 but not yet determined,

(b) any application related to a relevant appeal received by the Transport Tribunal before 2 December 2024 but not yet determined, and

(c) any proceedings of the Transport Tribunal in relation to a relevant appeal in progress immediately before 2 December 2024.

Decisions, directions and orders of the Transport Tribunal to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in relevant appeals and applications related to relevant appeals to, and proceedings related to relevant appeals before, the Transport Tribunal which is in force immediately before 2 December 2024 remains in force on and after that date as if it were a decision, direction or order of the Upper Tribunal.

Time limits in respect of relevant appeals to the Transport Tribunal to carry over to the Upper Tribunal

3. Any time limit which has started to run before 2 December 2024, and which has not expired, in respect of relevant appeals and applications related to relevant appeals to, and proceedings related to relevant appeals before, the Transport Tribunal continues to apply where relevant appeals, applications related to relevant appeals, and proceedings related to relevant appeals are transferred to the Upper Tribunal.

Unexercised right of appeal to the Court of Session, if exercised, remains as an appeal to the Court of Session

4. Where in respect of a decision of the Transport Tribunal before 2 December 2024 in relation to a relevant appeal there lies a right of appeal to the Court of Session which has not been exercised before that date but is still exercisable, any appeal on or after 2 December 2024 continues to be to the Court of Session as if the decision had been made by the Upper Tribunal and the appeal is an appeal from the Upper Tribunal for the purposes of section 48(1) of the Tribunals (Scotland) Act 2014.

Rules applicable to transferred appeals

5. Appeals, applications and proceedings transferred to the Upper Tribunal under paragraph 1 are, for the purposes of the Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024(**a**) and the Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) Regulations 2024(**b**), to be treated as if they were appeals, applications and proceedings under section 39(5A) of the Transport (Scotland) Act 2001(**c**).

(**a**) S.S.I. 2024/XXX.
(**b**) S.S.I. 2024/249.
(**c**) Section 39(5A) is inserted by paragraph 1(2) of schedule 2 of these Regulations.

SCHEDULE 2

Regulation 4

Consequential amendments

Transport (Scotland) Act 2001

1.—(1) The Transport (Scotland) Act 2001 is amended in accordance with sub-paragraph (2).

(2) In section 39 (penalties)—

(a) after subsection (5) insert—

"(5A) Any operator on whom a penalty has been imposed under any paragraph of subsection (1) above except paragraph (d) may appeal to the Upper Tribunal for Scotland against the imposition of the penalty.

(5B) On an appeal under subsection (5A), the Upper Tribunal may—

(a) dismiss the appeal, or

(b) allow the appeal and quash the imposition of the penalty.

(5C) If the Upper Tribunal quashes the imposition of the penalty, it must—

(a) reconsider the matter itself and may impose a penalty on the operator if satisfied that the operator has, without reasonable excuse, behaved as mentioned in the paragraph of subsection (1) under which the traffic commissioner imposed the penalty on the operator, or

(b) remit the matter to the traffic commissioner to make a new decision as to whether to impose a penalty under subsection (1).

(5D) The Upper Tribunal may make such other order on an appeal under subsection (5A) as it considers appropriate.

(5E) When considering an appeal under subsection (5A), including any reconsideration of the matter under subsection (5C)(a), the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the decision to impose the penalty which is the subject of the appeal.

(5F) Subsections (3) and (4) apply to the imposition of a penalty by the Upper Tribunal under subsection (5C)(a) as they apply to the imposition of a penalty by the traffic commissioner under subsection (1).

(5G) The traffic commissioner must give notice in writing to the Scottish Ministers where a penalty has been quashed or imposed by—

(a) the Upper Tribunal under—

(i) subsection (5B) or (5C)(a), or

(ii) section 44 of the Tribunals (Scotland) Act 2014 ("the 2014 Act") in a review of a decision under subsection (5B) or (5C), or

(b) the Court of Session under section 49 of the 2014 Act on an appeal against a decision under—

(i) subsection (5B) or (5C), or

(ii) section 44 of the 2014 Act in a review of a decision under subsection (5B) or (5C).", and

(b) in subsection (6), for "(1)" substitute "(1)(d)".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer of certain functions of the Transport Tribunal to the Upper Tribunal for Scotland.

Regulation 2 provides that the relevant functions of the Transport Tribunal are transferred to the Upper Tribunal for Scotland. The relevant functions of the Transport Tribunal are defined by regulation 1 as the functions exercisable by the Transport Tribunal in relation to a relevant appeal, and a relevant appeal is defined by the same regulation as an appeal made under section 39(6) of the Transport (Scotland) Act 2001 in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d) (failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010).

Regulation 3 and schedule 1 make transitional and saving provisions in relation to on-going casework.

Regulation 4 and schedule 2 make consequential amendments to the Transport (Scotland) Act 2001 to reflect that certain functions of the Transport Tribunal are transferred to the Upper Tribunal for Scotland.

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