POLICY NOTE

THE UPPER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE TRANSPORT TRIBUNAL) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 28(2), (6) and (7), and 79(1) of the Tribunals (Scotland) Act 2014. The instrument is subject to the affirmative procedure.

Summary Box

The purpose of the instrument is to make provision for the transfer of the devolved functions of the Transport Tribunal under section 39 of the Transport (Scotland) Act 2001 ("the 2001 Act") to the Upper Tribunal for Scotland ("the Upper Tribunal").

The functions to be transferred relate to appeals against penalties imposed by the Traffic Commissioner on bus operators under section 39(1) of the 2001 Act. This instrument transfers the appeal functions under section 39(6) of the 2001 Act in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d) (which relates to a reserved matter, namely, a failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010).

The instrument also sets out transitional provisions to manage the transfer of ongoing casework, and makes consequential amendments to the 2001 Act.

Policy Objectives

1. The Upper Tribunal was established by the Tribunals (Scotland) Act 2014 ("the 2014 Act"). This Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of that Act into the Scottish Tribunals.

2. The Transport Tribunal was added to the list of tribunals in schedule 1 of the 2014 Act by the Scottish Tribunals (Listed Tribunals) Regulations 2024, which came into force on 10 June 2024.

3. These regulations make provision for the transfer of the devolved functions of the Transport Tribunal into the Upper Tribunal. The functions to be transferred are the appeal functions exercisable by the Transport Tribunal by virtue of section 39(6) of the 2001 Act 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, which is a reserved matter).

4. The appeal functions to be transferred relate to financial penalties imposed by the Traffic Commissioner on bus operators for failures to comply with certain statutory requirements set out in section 39(1)(a) to (c) of the 2001 Act. These are:

- (a) failing to operate a local service registered under section 6 of the Transport Act 1985;
- (b) operating a local service in contravention of that section or section 3F(1) or 13B(1)(b) or (3) of the 2001 Act;
- (ba) failing to comply with a requirement under section 6ZA of the Transport Act 1985;
- (bb) failing to comply with a requirement to provide information (including a requirement to provide it within a specified time or in a specified form) under section 3K(2) or 13R(2) of the 2001 Act;
- (c) failing to comply with section 32(1) or 34(3) of the 2001 Act.

5. Upon transfer, these appeals will be heard in the Upper Tribunal, subject to requirements of the 2014 Act.

6. These regulations also set out transitional provisions to manage the transfer of on-going casework and make necessary consequential amendments to legislation. Cases being dealt with by the Transport Tribunal on the date of transfer will be completed by the Upper Tribunal.

7. Further details of the policy objectives relating to the 2014 Act are set out in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum: https://www.parliament.scot/bills-and-laws/bills/s4/tribunals-scotland-bill

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

8. The Scottish Ministers have made the following statement regarding children's rights.

9. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

10. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

11. A public consultation took place from 7 August 2023 to 27 October 2023. There were five responses to this consultation. Three respondents gave permission to publish their responses, which are available on the Scottish Government website: https://consult.gov.scot/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations/

12. The responses which were within scope were generally in favour of the regulations. One respondent commented there was no clear powers for the Upper Tribunal to dispose of the appeals which resulted in amendments being made to the regulations. As a result of this comment, the specific powers available to the Upper Tribunal when dealing with these appeals were set out in the regulations to be laid concurrently with this instrument, namely, the Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 and the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.

Impact Assessments

13. An Equality Impact Assessment ("EQIA") has already been completed for the Tribunals (Scotland) Bill – see link below: https://webarchive.nrscotland.gov.uk/20200120085425/https:/www2.gov.scot/Resource/0042/00421637.pdf

14. The Bill EQIA made a number of key findings:

    - The operation of the tribunal jurisdictions transferring into the new structure will not be affected.

    - Tribunal users will not be affected directly by the Bill provisions.

    - Tribunal distinctiveness will be protected.

    Tribunal members will not be adversely affected and their independence will be enhanced.

15. Given the conclusions set out in the Bill EQIA, a separate Equality Impact Assessment is not considered necessary for these regulations.

16. An impact assessment regarding Child Rights and Wellbeing has been completed.

Financial Effects

14. A Business and Regulatory Impact Assessment ("BRIA") has been completed for this suite of instruments which highlighted no impact to business. The published BRIA can be found the Scottish Government website.

Scottish Government
Justice Directorate
September 2024