POLICY NOTE

THE UPPER TRIBUNAL FOR SCOTLAND BUS REGISTRATION APPEALS (COMPOSITION) REGULATIONS 2024

SSI 2024/336

The above instrument was made in exercise of the powers conferred by sections 10(2) and (3), and 40(1), (3) and (4) of the Tribunals (Scotland) Act ("the 2014 Act"). The instrument is subject to affirmative procedure.

Summary Box

The purpose of the instrument is to make provision in respect of the composition of the Upper Tribunal for Scotland ("the Upper Tribunal") when hearing certain appeals. The appeals in question are those under section 39(5A) of the Transport (Scotland) Act 2001 ("the 2001 Act") (subsection (5A) to be inserted by the Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024) and those under the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.

Policy Objectives

1. The Upper Tribunal was established by the 2014 Act. This Act allows the Scottish Ministers to make provision by regulations for determining the composition of the Upper Tribunal when convened to hear any case before it.

2. These regulations make provision for the composition of the Upper Tribunal when deciding appeals against the imposition of certain penalties under section 39 of the 2001 Act and service standard decisions made by the Traffic Commissioner in connection with bus services improvement partnerships under the 2001 Act.

3. The appeal functions relating to penalties under section 39 of the 2001 Act are to transfer to the Upper Tribunal from the Transport Tribunal by way of regulations which are being laid concurrently with these regulations, namely, the Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024. Moreover, the right to raise an appeal in the Upper Tribunal against service standards decisions is to be created by regulations also being laid concurrently with these regulations, namely, the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.

4. Members of the Upper Tribunal can be ordinary, legal, or judicial members, according to criteria set out in the 2014 Act and regulations made thereunder. When deciding the appeals referred to above, these regulations provide that the Upper Tribunal may comprise:

   - A legal or judicial member of the Upper Tribunal acting alone;
   - Two or three legal or judicial members of the Upper Tribunal, or
   - The President of the Scottish Tribunals, acting alone or with no more than two legal or judicial members of the Upper Tribunal.

5. The authority to choose between the alternative compositions is delegated to the President of the Scottish Tribunals, including whether a member is to be a legal member or judicial member.

6. 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

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

8. 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 Bus Registration Appeals (Composition) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

8. 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/

9. 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 these appeals. 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

10. 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

11. 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.
- Tribunals distinctiveness will be protected.
- Tribunal members will not be adversely affected and their independence will be enhanced.

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

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

Financial Effects

13. A Business and Regulatory Impact Assessment ("BRIA") has been completed for this suite of instruments which highlighted no impact to business.

Scottish Government
Justice Directorate
September 2024