POLICY NOTE

THE UPPER TRIBUNAL FOR SCOTLAND (BUS REGISTRATION APPEALS RULES OF PROCEDURE) REGULATIONS 2024

SSI 2024/249

The above instrument was made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 ("the 2014 Act"). The instrument is subject to negative procedure.

Summary Box

The purpose of the instrument is to set rules governing the practice and procedure to be followed in the Upper Tribunal for Scotland ("the Upper Tribunal") in relation to certain appeals. The appeals in question are those under section 39(5A) of the Transport (Scotland) Act 2001 (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. Paragraph 4 of schedule 9 of the 2014 Act allows the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions of that Act conferring responsibility on the Scottish Civil Justice Council and the Court of Session for the making of Tribunal Rules are commenced.

2. These regulations make provision regulating the practice and procedure to be followed in the Upper Tribunal when deciding appeals against the imposition of penalties under section 39(5A) of the Transport (Scotland) Act 2001 ("the 2001 Act") and appeals against 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. The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 provide rules of procedure for the Upper Tribunal, but these relate to appeals from the First-tier Tribunal

only. It is therefore necessary to constitute new rules for the Upper Tribunal when it sits as an initial appellate tribunal in these cases.

5. 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 Rules of Procedure) 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. One of the respondents sought clarity on the powers of disposal available to the Upper Tribunal in respect of the 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 onto 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

12. 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