

# **Tribunals (Scotland) Act 2014**

## **Consultation on draft regulations**

**August 2023**

# **Tribunals (Scotland) Act 2014 – draft regulations: consultation**

A consultation on draft regulations transferring certain appeal functions of the Transport Tribunal under section 39 of the Transport (Scotland) Act 2001 to the Upper Tribunal for Scotland, and allocating new appeal functions to the Upper Tribunal relating to bus services improvement partnerships, along with new rules governing the composition and procedure of the Upper Tribunal when hearing those appeals.

## **Consultation on draft regulations regarding:**

- (1) Adding the Transport Tribunal to Part 1 of schedule 1 of the Tribunals (Scotland) Act 2014;
- (2) The transfer of certain appeal functions under section 39 of the Transport (Scotland) Act 2001 to the Upper Tribunal for Scotland;
- (3) The allocation of functions relating to appeals in connection with bus services improvement partnerships to the Upper Tribunal for Scotland;
- (4) Rules of procedure for the Upper Tribunal for Scotland when dealing with those appeals under section 39 of the Transport (Scotland) Act 2001 and those relating to bus services improvement partnerships;
- (5) Rules governing the composition of the Upper Tribunal for Scotland when dealing with those appeals under section 39 of the Transport (Scotland) Act 2001 and those relating to bus services improvement partnerships.

## Contents

### **Part 1: Policy background**

### **Part 2: Draft regulations adding the Transport Tribunal to Part 1 of schedule 1 of the Tribunals (Scotland) Act 2014**

Questions on draft regulations

### **Part 3: Draft regulations transferring certain appeal functions under section 39 of the Transport (Scotland) Act 2001 to the Upper Tribunal for Scotland**

Questions on draft regulations

### **Part 4: Draft regulations providing for appeals relating to bus services improvement partnerships to be heard in the Upper Tribunal for Scotland**

Questions on draft regulations

### **Part 5: Draft regulations providing rules of procedure to be followed in the Upper Tribunal for Scotland when dealing with those appeals under section 39 of the Transport (Scotland) Act 2001 and those relating to bus services improvement partnerships**

Questions on draft regulations

### **Part 6: Draft regulations providing for the composition of the Upper Tribunal for Scotland when dealing with those appeals under section 39 of the Transport (Scotland) Act 2001 and those relating to bus services improvement partnerships**

Questions on draft regulations

### **Part 7: Responding to this consultation** – Please see the supporting documents

### **Annex A: Draft regulations relating to Part 2: The Scottish Tribunals (Listed Tribunals) Regulations 2024**

**Annex B:** Draft regulations relating to Part 3: The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024

**Annex C:** Draft regulations relating to Part 4: The Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024

**Annex D:** Draft regulations relating to Part 5: The Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) Regulations 2024

**Annex E:** Draft regulations relating to Part 6: The Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024

**Annex F:** Respondent Information Form

# Part 1: Policy Background

## Policy background to the Scottish Tribunals

1. The Tribunals (Scotland) Act 2014 (“the 2014 Act”) created a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act created two new tribunals, the First-tier Tribunal for Scotland (“First-tier Tribunal”) and the Upper Tribunal for Scotland (“Upper Tribunal”), known collectively as the Scottish Tribunals.
2. The 2014 Act also provides for the functions of existing tribunals and their membership to be transferred to the First-tier Tribunal and/or the Upper Tribunal. These tribunals are listed in schedule 1 of the 2014 Act. Alternatively, functions may be directly conferred on the First-tier Tribunal and/or the Upper Tribunal for newly created jurisdictions or extensions of jurisdiction.
3. The 2014 Act also provides for the First-tier Tribunal to be organised into a number of chambers, according to subject-matter and other relevant factors, to which the functions transferred to or conferred upon the First-tier Tribunal can be allocated.
4. The 2014 Act also provides for the Upper Tribunal to be organised into a number of divisions, according to subject-matter and other relevant factors, to which the functions transferred to or conferred upon the Upper Tribunal can be allocated.
5. The rationale for the 2014 Act was to create a new structure for devolved tribunals in Scotland. Over the years, these tribunals were established in an ad hoc fashion, with no common system of leadership, appointments, practice and procedure for reviews and appeals. This can lead to a narrowness of outlook and allowed for a variation of standards and performances across the tribunals landscape.
6. The 2014 Act seeks to address these issues by creating a structure that reduces overlap, eliminates duplication, ensures better deployment and allows for the wider sharing of available resources. The structure under the 2014 Act also provides users with the reassurance that tribunal hearings are being heard by people with no links to the body whose decision they are challenging, by providing for greater independence for new tribunals. By establishing a more coherent

framework for tribunals, opportunities are created for improvement in the quality of services that cannot be achieved by tribunals operating separately.

7. The 2014 Act establishes a coherent structure within which to bring the functions and members of devolved tribunals. It contains a list of devolved tribunals in schedule 1 from which the functions and members may be transferred into the new structure.

8. The 2014 Act allows the list of tribunals set out in schedule 1 to be added to or modified. Over time, the intention is that the new structure will acquire the functions of new or other jurisdictions which are not currently listed. The functions and members of a listed tribunal are transferred into the new structure by regulations. Regulations may also modify the underlying legislation in relation to the tribunals listed in schedule 1 of the 2014 Act.

9. The Scottish Tribunals are composed of members who are either transferred in or appointed by the Scottish Ministers. If appropriate, existing eligible members of the listed tribunals transfer in at the same time as the functions of their tribunal are transferred along with their current caseloads.

### **Background to the current functioning of section 39 of the Transport (Scotland) Act 2001**

10. Under section 39(1) of the Transport (Scotland) Act 2001 (“the 2001 Act”), the Traffic Commissioner may impose financial penalties on bus operators who fail to comply with certain statutory requirements<sup>a</sup>. A penalty may be imposed where an operator of a local service has without reasonable excuse:

- (a) failed to operate a local service registered under section 6 of the Transport Act 1985 (“the 1985 Act”);
- (b) operated a local service in contravention of that section or section 8(4) or 22(1)(b) or (2) of the 2001 Act;
- (c) failed to comply with a requirement under section 6ZA of the 1985 Act;
- (d) failed to comply with section 32(1) or 34(3) of the 2001 Act; or

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<sup>a</sup> Section 39(1) of the Transport (Scotland) Act 2001 sets out the various circumstances in which the Traffic Commissioner may impose a penalty. Sections 35 and 38 of the Transport (Scotland) Act 2019 (yet to be commenced) replace “Quality Partnerships” and “Quality Contracts” referenced in section 39(1) of the 2001 Act with “bus services improvement partnerships” and “local services franchises”.

- (e) failed to comply with a requirement of regulations made under section 181A of the Equality Act 2010.

11. Under section 39(6) of the 2001 Act, an operator may appeal to the Transport Tribunal against the imposition of such a penalty.

12. Schedule 4 of the 1985 Act makes provision in relation to the Transport Tribunal, and paragraph 14 of that schedule permits decisions of the Transport Tribunal to be appealed to the Court of Session on a point of law only.

### **Background to bus services improvement partnerships**

13. The Transport (Scotland) Act 2019 (“the 2019 Act”) provides a new type of statutory partnership model in the form of bus services improvement partnerships (“BSIPs”). BSIPs involve local transport authorities formulating a plan with bus operators in their area with the aim of improving bus services in the area. A key part of this model is the setting of a range of service standards with which all qualifying local operators within the area of the BSIP must comply. If qualifying operators in the area do not provide a service which meets the operational service standards, they risk losing the right to operate the service through deregistration. The Traffic Commissioner can refuse an application for registration by an operator who, in the Commissioner’s opinion, is unable to comply with the operational service standards that are applicable in that area. The Traffic Commissioner can also cancel the registration of a service where it is considered that the service is not being provided in accordance with the service standard.

14. An appeals process must be put in place which allows operators and local transport authorities to appeal against the service standards decisions of the Traffic Commissioner, to ensure a fair determination of their civil rights. Section 37 of the 2019 Act (yet to be commenced) inserts a new section 6M into the 1985 Act. Section 6M provides the Scottish Ministers the power to make regulations for or about appeals relating to the service standards decisions of the Traffic Commissioner.

### **Proposed new regulations**

15. The intention is to transfer the appeal functions under section 39 of the 2001 Act that relate to devolved matters, and are currently exercised by the UK Transport Tribunal, to the Upper Tribunal. This would include appeals relating to penalties imposed for any of the reasons listed in

section 39(1) except paragraph (d) of that section; appeals of penalties imposed for a failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010 will remain in the Transport Tribunal, as they relate to a reserved matter.

16. Also, the intention is to create rights of appeal in relation to BSIP service standards decisions, via regulations, using the power under section 6M of the 1985 Act. The intention is for these appeals to be allocated to the Upper Tribunal.

17. The Upper Tribunal currently considers appeals on points of law, or on referral from the Chambers of the First-tier Tribunal. The draft regulations provide for appeals under section 39 of the 2001 Act, and the new BSIP service standards decisions appeals, to be heard by the Upper Tribunal in the first instance on both points of fact and law. Onward appeals from the Upper Tribunal will be permitted on a point of law only to the Court of Session.

18. Currently, appeals in the Transport Tribunal under section 39 of the 2001 Act can be raised on points of fact and law. Transferring the appeal functions under section 39 to the Upper Tribunal, and allowing appeals on both points of fact and law, will therefore avoid diminishing the rights of appellants under section 39. Also, allowing the new appeals in relation to BSIP service standards decisions to be raised on points of fact and law in the Upper Tribunal will serve to maintain comparable levels of rights with English counterparts in respect of Enhanced Partnerships, a partnership model similar to BSIPs.

19. It is proposed that the appeal functions relating to both section 39 of the 2001 Act and BSIP service standards decisions will be allocated to the Upper Tribunal before the end of 2024. The draft regulations are attached at **Annexes A, B, C, D and E**.

## **Part 2: Draft regulations adding the Transport Tribunal to Part 1 of schedule 1 of the Tribunals (Scotland) Act 2014**

20. The draft regulations in Annex A add the Transport Tribunal to the list of bodies in Part 1 of schedule 1 of the 2014 Act. By adding the Transport Tribunal to the list of bodies in Part 1 of schedule 1, the



functions of the Transport Tribunal may be transferred into the Scottish Tribunals.

21. The draft regulations also provide further specification in Part 2 of schedule 1 regarding the functions of the Transport Tribunal that may be subject to transfer. The specified functions are those appeal functions exercised by the Transport Tribunal under section 39 of the 2001 Act in relation to a penalty imposed under any paragraph of section 39(1) except paragraph (d) (i.e. excluding appeals of penalties imposed for a failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010).

### **Questions on the draft regulations adding the Transport Tribunal to Part 1 of schedule 1 of the Tribunals (Scotland) Act 2014**

Q1: Do you have any comments on the draft regulations (**Annex A**) which propose to add the Transport Tribunal to the list of tribunals in schedule 1 of the 2014 Act?

## **Part 3: Draft regulations transferring certain functions of the Transport Tribunal to the Upper Tribunal**

22. Section 28(2) of the 2014 Act provides the Scottish Ministers a power to make regulations to transfer some or all of the functions of the listed tribunals in schedule 1 of the 2014 Act to the First-tier Tribunal only; the Upper Tribunal only; or the First-tier Tribunal and the Upper Tribunal.

23. The draft regulations in **Annex B** provide for the specified functions of the Transport Tribunal to be transferred to the Upper Tribunal. The draft regulations specify those functions are the appeal functions exercised by the Transport Tribunal under section 39 of the 2001 Act in relation to penalties imposed under any paragraph of section 39(1) except for paragraph (d) (i.e. excluding appeals of penalties imposed for a failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010). The draft regulations also make transitional and saving provisions in relation to the ongoing casework of the Transport Tribunal, and make consequential amendments to the 2001 Act.

## **Questions on the draft regulations transferring certain functions of the Transport Tribunal to the Upper Tribunal**

Q2: Do you have any comments on the draft regulations (Annex B) relating to the transfer of certain appeal functions under section 39 of the 2001 Act to the Upper Tribunal?

Q3: Do you have any further comments you wish to make regarding the transfer of these functions to the Upper Tribunal?

## **Part 4: Draft regulations providing for appeals relating to BSIP service standards decisions to be heard by the Upper Tribunal**

24. The draft regulations in **Annex C** make provision for appeals relating to BSIP service standards decisions listed in section 6M of the 1985 Act (“service standards decisions”).

25. As noted in paragraph 13 above, the 2019 Act introduces bus services improvement partnerships (“BSIPs”). BSIPs involve local transport authorities formulating a plan with bus operators in their area with the aim of improving bus services in the area. A key part of the BSIP model is the setting of service standards with which all qualifying local operators within the BSIP area must comply.

26. Service standards decisions are decisions taken by the Traffic Commissioner in connection with the registration of a local service under section 6 of the 1985 Act and service standards imposed by a BSIP.

27. These draft regulations provide appeals may be raised against service standards decisions in the Upper Tribunal. An appeal may be raised by the operator (or would-be operator) of the service to which the service standards decision relates or the local transport authority who made the BSIP scheme to which the service standards decision relates. The draft regulations also provide that when the BSIP scheme is made by multiple local transport authorities acting jointly, those authorities may raise an appeal jointly.

## **Questions on the draft regulations providing for appeals relating to BSIP service standards decisions to be heard by the Upper Tribunal**

Q4: Do you have any comments on the draft regulations (Annex C) providing for appeals relating to service standards decisions in the Upper Tribunal?

Q5: Do you have any further comments you wish to make regarding the allocation of these functions to the Upper Tribunal?

## **Part 5: Draft regulations providing procedural rules to be followed in the Upper Tribunal when dealing with specified appeals**

28. Paragraph 4(2) of schedule 9 of the 2014 Act confers on the Scottish Ministers the function of making rules regulating the practice and procedure to be followed in proceedings at the Scottish Tribunals, until such time as the Scottish Civil Justice Council and the Court of Session are involved in the making of those rules.

29. The draft regulations in Annex D set out rules regulating the practice and procedure in the Upper Tribunal when dealing with the appeals specified in the regulations. The appeals specified are those under section 39(6) of the 2001 Act in relation to a penalty imposed under any paragraph of section 39(1) except paragraph (d) (i.e. those appeals transferred by the draft regulations in Annex B), and the appeals made in relation to BSIP service standards decisions (i.e. those provided for in the draft regulations in Annex C).

## **Questions on the draft regulations providing procedural rules to be followed in the Upper Tribunal when dealing with specified appeals**

Q6: Do you have any comments on the draft regulations (**Annex D**) setting out the procedural rules to be followed in the Upper Tribunal when dealing with the specified appeals?

## **Part 6: Draft regulations providing for the composition of the Upper Tribunal when dealing with specified appeals**

30. Section 40 of the 2014 Act confers a power on the Scottish Ministers to make provision, by way of regulations, for determining the composition of the Upper Tribunal when convened to decide any matter in a case before it.

31. The draft regulations in Annex E make provision for the composition of the Upper Tribunal when dealing with the appeals specified in the regulations. The appeals specified are those under section 39(6) of the 2001 Act in relation to a penalty imposed under any paragraph of section 39(1) except paragraph (d) (i.e. those appeals transferred by the draft regulations in Annex B), and the appeals made in relation to BSIP service standards decisions (i.e. those provided for in the draft regulations in Annex C).

32. Members of the Upper Tribunal can be ordinary members, legal members or judicial members. These draft regulations provide any of the following members may hear the appeals referred to in the paragraph above:

- (a) a legal or judicial member of the Upper Tribunal acting alone, or
- (b) two or three legal or judicial members of the Upper Tribunal, or
- (c) the President of Tribunals, acting alone or with no more than two legal or judicial members of the Upper Tribunal.

33. Also, the draft regulations provide that the authority to determine the composition of the Upper Tribunal in respect of the alternative options above is delegated to the President of Tribunals.

### **Questions on the draft regulations providing for the composition of the Upper Tribunal when dealing with specified appeals**

Q7: Do you have any comments on the draft regulations (Annex E) providing for the composition of the Upper Tribunal when dealing with the specified appeals?

## Part 7: Responding to this consultation

34. We are inviting responses to this consultation by 27th October 2023.

35. Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at the following address:

[Responding to this Consultation](#)

36. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 27th October 2023.

37. If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send it to:

Marcus Chalmers  
Tribunals and Administrative Justice Policy  
GW15 St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### Handling your response

38. If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published. If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

39. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government is subject to the Freedom of Information (Scotland) Act 2002, and would therefore have to consider

any request for information relating to responses made to this consultation exercise which is made under that Act.

### **Next steps in the process**

47. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <https://consult.gov.scot/>

48. If you use Citizen Space to respond, you will receive a copy of your response via email.

49. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

# ANNEX A

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2024 No.

### TRIBUNALS AND INQUIRIES

#### The Scottish Tribunals (Listed Tribunals) Regulations 2024

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 27(2) of the Tribunals (Scotland) Act 2014<sup>(a)</sup> 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 resolution of the Scottish Parliament.

#### Citation and commencement

1. These Regulations may be cited as the Scottish Tribunals (Listed Tribunals) Regulations 2024 and come into force on [\*\*\*].

#### Amendment of the Tribunals (Scotland) Act 2014

2.—(1) Schedule 1 of the Tribunals (Scotland) Act 2014 (listed tribunals) is amended in accordance with paragraphs (2) and (3).

(2) In Part 1 (list of tribunals), after paragraph 9A insert—

“9B. The Transport Tribunal”.

(3) In Part 2 (further specification), in paragraph 13 after sub-paragraph (9A) insert—

“(9B) The entry in paragraph 9B relates to the functions exercisable by the Transport Tribunal by virtue of section 39(6) of the Transport (Scotland) Act 2001<sup>(b)</sup> in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d).”.

[Name]

Authorised to sign by the Scottish Ministers

St. Andrew’s House,  
Edinburgh  
[\*\*\*]

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<sup>(a)</sup> 2014 asp 10.  
<sup>(b)</sup> 2014 asp 10.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations add the Transport Tribunal to the tribunals listed in schedule 1 of the Tribunals (Scotland) Act 2014 whose functions may be transferred to the Scottish Tribunals under that Act.

These Regulations also specify the functions exercisable by the Transport Tribunal to which the entry in schedule 1 relates. The functions specified are those exercisable by the Transport Tribunal by virtue of 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).



# ANNEX B

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2024 No.

### TRIBUNALS AND INQUIRIES

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

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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<sup>(a)</sup> 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) In these Regulations—

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

“relevant functions of the Transport Tribunal” means the functions exercisable by the Transport Tribunal by virtue of 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), 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.

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<sup>a)</sup> 2014 asp 10.

<sup>(b)</sup> 2001 asp 2.

<sup>(c)</sup> Section 39(1) was amended by section 17(6)(a) and (b) of the Bus Services Act 2017 c. 21 and section 39(2) of the Transport (Scotland) Act 2019 asp 17.

## Consequential amendments

4. Schedule 2 which contains consequential amendments has effect.

St. Andrew's House,  
Edinburgh  
[\*\*\*]

[Name]  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 3

### Transitional and saving provisions

#### **Relevant appeals in progress before the Transport Tribunal immediately before [coming into force date] to transfer to the Upper Tribunal**

1. Any relevant appeal to the Transport Tribunal in progress immediately before [coming into force date] but not yet determined, any application related to a relevant appeal received by the Transport Tribunal before that date that is not yet determined, and any proceedings of the Transport Tribunal related to a relevant appeal in progress immediately before that date is transferred to and must be completed by the Upper Tribunal as if they were appeals and applications to the Upper Tribunal or proceedings in the Upper Tribunal.

#### **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 [coming into force date] 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 [coming into force date] in respect of relevant appeals and applications related to relevant appeals to, and proceedings related to relevant appeals before, the Transport Tribunal (and which has not expired) 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 [coming into force date] 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 [coming into force date] 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.

## SCHEDULE 2

Regulation 4

### Consequential amendments

#### **Transport (Scotland) Act 2001**

- 1.—(1) The Transport (Scotland) Act 2001 is amended in accordance with sub-paragraphs (2) and (3).
- (2) In section 39(6) (penalties)—
  - (a) after “under” insert “any paragraph except paragraph (d) of,” and
  - (b) for “Transport Tribunal” substitute “Upper Tribunal for Scotland”.
- (3) After section 39(6) insert—

“(6A) Any operator on whom a penalty has been imposed under paragraph (d) of subsection (1) above may appeal to the Transport Tribunal against the imposition of the penalty.”

#### **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 those functions exercisable by the Transport Tribunal by virtue of 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 certain functions of the Transport Tribunal are transferred to the Upper Tribunal for Scotland.

# ANNEX C

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## SCOTTISH STATUTORY INSTRUMENTS

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2024 No.

### TRANSPORT

#### The Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 6M of the Transport Act 1985<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 61(2) of the Public Passenger Vehicles Act 1981<sup>(b)</sup>, they have consulted with such representative organisations as they think fit.

#### Citation, commencement and interpretation

1—(1) These Regulations may be cited as the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024 and come into force on [\*\*\*].

(2) In these Regulations, “service standards decision” means a decision specified in section 6M of the Transport Act 1985.

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<sup>(a)</sup> 1985 c. 67 (“the 1985 Act”). Section 6M was inserted by section 37 of the Transport (Scotland) Act 2019 (asp 17). Section 134 of the 1985 Act provides that section 60 of the Public Passenger Vehicles Act 1981 (c. 14) (“the 1981 Act”) has effect as if Parts I and II of the 1985 Act were contained in that Act. Section 60(2) of the 1981 Act contains a definition of “regulations” relevant to the exercise of the powers under which these Regulations are made. The functions of the Secretary of State under section 60 of the 1981 Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

<sup>(b)</sup> Section 135 of the 1985 Act provides that section 61 of the 1981 Act has effect as if Parts I and II of the 1985 Act were contained in that Act. The functions of the Secretary of State under section 61 of the 1981 Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

## Appeals to the Upper Tribunal for Scotland

2.—(1) An appeal against a service standards decision may be made to the Upper Tribunal for Scotland by—

- (a) a person who is, or would be, the operator of the service to which the service standards decision relates,
- (b) a local transport authority who made the bus services improvement partnership scheme under section 3B of the Transport (Scotland) Act 2001<sup>(a)</sup> to which the service standards decision relates.

(2) Where a scheme mentioned in paragraph (1)(b) is made by two or more local transport authorities acting jointly, those authorities may jointly appeal against a service standards decision.

[Name]

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
[\*\*\*]

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for appeals relating to the decisions listed in section 6M of the Transport Act 1985 (“service standards decisions”).

Sections 3A to 3M of the Transport (Scotland) Act 2001 (the “2001 Act”) provide for bus services improvement partnerships (“BSIPs”). BSIPs involve local transport authorities (defined by section 82(1) of the 2001 Act) formulating a plan with operators of local bus services in their area and then deciding how best to implement the plan through supporting schemes (“partnership schemes”). A partnership scheme imposes one or more service standards in relation to the local services that have one or more stopping places in the area.

Service standards decisions are decisions by the traffic commissioner about the registration of a local service under section 6 of the Transport Act 1985, related to service standards imposed by a partnership scheme.

Regulation 2 provides that appeals may be made against service standards decisions to the Upper Tribunal for Scotland. An appeal may be made by two categories of person: the person who is the operator, or would be the operator, of the service to which the service standards decision relates; and the local transport authority who made the partnership scheme to which the service standards decision relates. Where a partnership scheme is made by two or more local transport authorities acting jointly, regulation 2 provides that those authorities may jointly appeal against a service standards decision.

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<sup>(a)</sup> 2001 asp 2. Section 3B was inserted by section 35 of the Transport (Scotland) Act 2019 (asp 17).

# ANNEX D

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## SCOTTISH STATUTORY INSTRUMENTS

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**2024 No.**

### **TRIBUNALS AND INQUIRIES**

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with paragraph 4(3) of that schedule, the Scottish Ministers have consulted the President of Tribunals and such other persons as they considered appropriate.

#### **Citation and commencement**

**1.**—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) Regulations 2024 and the Rules contained in the schedule may be cited as the Upper Tribunal for Scotland Bus Registration Appeals Rules of Procedure 2024.

(2) These Regulations come into force on [\*\*\*].

#### **Disapplication of the Upper Tribunal for Scotland Rules 2016**

**2.** The Upper Tribunal for Scotland Rules of Procedure 2016<sup>(b)</sup> do not apply to proceedings before the Upper Tribunal when the Upper Tribunal is exercising functions by virtue of—

- (a) section 39(6) of the Transport (Scotland) Act 2001<sup>(c)</sup> in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d)<sup>(d)</sup>,
- (b) regulation 2 of the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024<sup>(e)</sup>.

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<sup>(a)</sup> 2014 asp 10.

<sup>(b)</sup> The Rules are contained in schedule 1 of S.S.I. 2016/232. The Rules were amended by S.S.I. 2016/333.

<sup>(c)</sup> 2001 asp 2.

<sup>(d)</sup> Section 39(1) was amended by section 17(6)(a) and (b) of the Bus Services Act 2017 c. 21 and section 39(2) of the Transport (Scotland) Act 2019 asp 17.

<sup>(e)</sup> [\*\*\*].

### Application of Rules in the schedule

3. The Rules in the schedule of these Regulations apply to all proceedings before the Upper Tribunal when exercising the functions specified in regulation 2.

[Name]

Authorised to sign by the Scottish Ministers

St. Andrew's House,  
Edinburgh  
[\*\*\*]

## SCHEDULE

Regulation 3

### The Upper Tribunal for Scotland Bus Registration Appeals Rules of Procedure 2024

## CONTENTS

### PART 1

Interpretation

1. Interpretation

### PART 2

Role of the Upper Tribunal

2. Purpose of the Upper Tribunal and overriding objective

### PART 3

Procedure for cases in the Upper Tribunal

3. Notice of appeal
4. Response to the notice of appeal
5. Appellant's reply

### PART 4

General Powers and Provisions

6. Delegation to staff
7. Case management
8. Procedure for applying for and giving orders
9. Failure to comply with rules etc.
10. Dismissal of a party's case
11. Addition, substitution and removal of parties

12. Expenses
13. Representatives
14. Supporters
15. Calculating time
16. Signature of documents
17. Sending and delivery of documents
18. Disclosure of documents and information
19. Evidence and submissions
20. Citation of witnesses and orders to answer questions or produce documents
21. Withdrawal
22. Chairing member
23. Transitional and saving provisions

## PART 5

### Hearings

24. Decision with or without a hearing
25. Venue for hearings
26. Entitlement to attend a hearing
27. Notice of hearings
28. Public and private hearings
29. Hearings in a party's absence

## PART 6

### Decisions

30. Notice of decisions and reasons
31. Enforcement of decisions
32. Reviews

## PART 7

### Appealing decisions of the Upper Tribunal

33. Interpretation
34. Application for permission to appeal a decision of the Upper Tribunal
35. Upper Tribunal's consideration of application for permission to appeal

## PART 1

### Interpretation

#### **Interpretation**

**1.** —(1) In these Rules—

“the 2014 Act” means the Tribunals (Scotland) Act 2014<sup>(a)</sup>,

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<sup>(a)</sup> 2014 asp 10.



“appeal”, except in Part 7, means an appeal under—

- (a) 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), or
- (b) regulation 2 of the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024,

“appellant” means—

- (a) the person (or persons) bringing the appeal,
- (b) a person (or persons) substituted as an appellant under rule 11 (addition, substitution and removal of parties),

“Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>(a)</sup>,

“document” means anything in which information is recorded in any form,

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000<sup>(b)</sup> and “electronic signature” has the same meaning as in section 7 of that Act<sup>(c)</sup>,

“excluded decision” means a decision referred to in section 51 of the 2014 Act,

“hearing” means an oral hearing and includes a form of hearing conducted in whole or in part by video link, telephone or other means of instantaneous multi-party electronic communication,

“interested party” means a person other than the appellant or respondent on whom the Upper Tribunal has ordered the proceedings before it to be served,

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Upper Tribunal,

“penalty” means a penalty imposed by the traffic commissioner under any paragraph of section 39(1) of the Transport (Scotland) Act 2001<sup>(d)</sup> except paragraph (d),

“practice direction” means a practice direction issued in terms of section 74 of the 2014 Act,

“the President” means the President of Tribunals,

“proceedings” includes, unless indicated otherwise, a part of the proceedings,

“respondent” means the traffic commissioner,

“review” means the review provided for by section 43(1) of the 2014 Act,

“review period” means the time period between an application by a party for a review under rule 32(1), or, as the case may be, the Upper Tribunal’s decision to review a decision under that rule, and the receipt by a party of a notification under rule 32(5),

“traffic commissioner” means the person appointed from time to time to be the commissioner for Scotland under section 4 of the Public Passenger Vehicles Act 1981<sup>(e)</sup>,

“traffic commissioner decision” means any decision, refusal or cancellation of the traffic commissioner specified in section 6M of the Transport Act 1985<sup>(f)</sup>,

“Upper Tribunal” means the Upper Tribunal for Scotland as defined by section 1(1) of the 2014 Act,

“witness statement” means a written statement of a witness ordered by the Upper Tribunal to stand for the evidence-in-chief of the witness.

(2) For the purpose of these Rules, where information is sent—

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(a) 1998 c. 42.

(b) 2000 c. 7. Section 15(1) was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c. 21).

(c) Section 7 was amended by paragraph 1 of schedule 3 of the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016/969.

(d) 2001 asp 2. Section 39 was amended by section 17(6)(a) and (b) of the Bus Services Act 2017 c. 21 and section 39(2) of the Transport (Scotland) Act 2019 asp 17.

(e) 1981 c. 27.

(f) 1985 c. 67. Section 6M was inserted by section 37(3) of the Transport (Scotland) Act 2019 asp 17.

- (a) via the postal service to the last known address held for a party, or
  - (b) by email to the last known email address held for the party,
- the party is presumed to have received the information 48 hours after it is sent, unless the contrary is shown.

## PART 2

### Role of the Upper Tribunal

#### **Purpose of the Upper Tribunal and overriding objective**

- 2.** —(1) The Upper Tribunal hears and decides appeals.
- (2) Appeals may be made in relation to issues of fact or law.
  - (3) The overriding objective of these Rules is to secure that proceedings before the Upper Tribunal to which these Rules apply are handled fairly and justly.
  - (4) Dealing with proceedings fairly and justly includes—
    - (a) dealing with the proceedings in ways which are transparent and proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties,
    - (b) avoiding unnecessary formality and seeking flexibility in the proceedings,
    - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings and are treated with dignity and respect,
    - (d) using any special expertise of the Upper Tribunal effectively, and
    - (e) avoiding delay, so far as compatible with proper consideration of the issues.
  - (5) The Upper Tribunal must seek to give effect to the overriding objective when it—
    - (a) exercises any power under these Rules, or
    - (b) interprets any rule or practice direction.
  - (6) Parties must, insofar as reasonably possible—
    - (a) help the Upper Tribunal to further the overriding objective, and
    - (b) co-operate with the Upper Tribunal generally.

## PART 3

### Procedure for cases in the Upper Tribunal

#### **Notice of appeal**

- 3.** —(1) An appeal to the Upper Tribunal is to be made by giving written notice in accordance with the following paragraphs.
- (2) A notice of appeal must include—
    - (a) a statement that the notice is a notice of appeal,
    - (b) the full name and address of the appellant,
    - (c) the full name and address of any representative,
    - (d) an address where documents for the appellant may be sent or delivered,
    - (e) the date and reference number (if any) of the penalty or traffic commissioner decision to which the appeal relates,
    - (f) a statement of the alleged error (or errors) of fact or law in the penalty or traffic commissioner decision,

- (g) a statement as to whether the appellant consents to the Upper Tribunal making a decision on the case without a hearing, and
  - (h) the signature of the appellant or the representative.
- (3) The appellant must provide with the notice of appeal a copy of—
- (a) any written record of the penalty or traffic commissioner decision being challenged, and
  - (b) any separate documents issued by the traffic commissioner in relation to the penalty or traffic commissioner decision.
- (4) A notice of appeal is to be received by the Upper Tribunal within a period of 30 days beginning with the date of service by the traffic commissioner of the penalty or traffic commissioner decision on the appellant.
- (5) Within 14 days of receipt of the notice of appeal, the Upper Tribunal must send—
- (a) an acknowledgment of receipt of the notice of appeal to the appellant, and
  - (b) a copy of the notice and any accompanying documents to the respondent and any interested party.
- (6) If the appellant lodges the notice of appeal after the end of the 30-day period mentioned in paragraph (4)—
- (a) the notice of appeal must—
    - (i) include a request for an extension of time,
    - (ii) explain why the notice of appeal was not provided in time, and
    - (iii) state why it is said to be in the interests of justice that the time be extended, and
  - (b) unless the Upper Tribunal extends the time for lodging a notice of appeal, the Upper Tribunal may not admit the notice of appeal.
- (7) The Upper Tribunal may—
- (a) refuse permission to appeal,
  - (b) give permission to appeal,
  - (c) give permission to appeal on limited grounds or subject to conditions,
- and must send a notice of its decision to each party including reasons for any refusal of permission or limitations or conditions on any grant of permission.
- (8) Where the Upper Tribunal, without a hearing—
- (a) refuses permission to appeal, or
  - (b) gives permission to appeal on limited grounds or subject to conditions,
- the appellant may make a written application (within 14 days after the day of receipt of notice of the decision) to the Upper Tribunal for the decision to be reconsidered at a hearing.
- (9) An application under paragraph (8) must be heard and decided by a member or members of the Upper Tribunal different from the member or members who refused permission without a hearing.

### **Response to the notice of appeal**

- 4.**—(1) Subject to any order given by the Upper Tribunal, the respondent—
- (a) must provide the Upper Tribunal with copies of the documentation issued by the respondent to the appellant in relation to the relevant penalty or traffic commissioner decision, and
  - (b) may provide a written response to a notice of appeal.
- (2) Any documentation or response provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received no later than 30 days after the day on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.
- (3) A written response under paragraph (1)(b) must include—
- (a) the full name and address of the respondent,
  - (b) the full name and address of any representative,

- (c) an address where documents for the respondent may be sent or delivered,
- (d) a statement as to whether the respondent opposes the appeal,
- (e) the grounds on which the respondent relies, and
- (f) a statement as to whether the respondent consents to the Upper Tribunal making a decision on the case without a hearing.

(4) If the respondent provides the written response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 7(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(5) When the Upper Tribunal receives the documentation or a written response from the respondent it must send a copy of the documentation or written response and any accompanying documents to the appellant and any interested party.

### **Appellant's reply**

**5.—**(1) Subject to any order given by the Upper Tribunal, the appellant may provide a written reply to any response provided under rule 4 (response to the notice of appeal).

(2) Any reply provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 30 days after the day on which the Upper Tribunal sent a copy of the response to the appellant.

(3) If the appellant provides the reply to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 7(3)(a) (power to extend time), the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(4) When the Upper Tribunal receives the reply it must send a copy of the reply and any accompanying documents to the respondent and any interested party.

## **PART 4**

### **General Powers and Provisions**

#### **Delegation to staff**

**6.—**(1) Staff of the Scottish Courts and Tribunals Service<sup>(a)</sup> may, with the approval of the President, carry out functions of a judicial nature permitted or required to be undertaken by the Upper Tribunal, provided the functions are of a preliminary or an incidental nature.

(2) The approval referred to in paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Where the Upper Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may, within the period of 14 days beginning with the day on which the party is presumed to have received the notice, make a written application to the Upper Tribunal for that decision to be considered afresh by a member of the Upper Tribunal.

#### **Case management**

**7.—**(1) Subject to the provisions of the 2014 Act, these Rules and any practice direction given by the President, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give an order in relation to the conduct of proceedings before it at any time, including an order amending, suspending or setting aside an earlier order.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

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<sup>(a)</sup> The Scottish Courts and Tribunals Service was established by section 60 of the Judiciary and Courts (Scotland) Act 2008 (2008 asp 6).

- (a) extend or shorten the time for complying with any rule, practice direction or order,
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues,
- (c) specify one or more cases as a lead case or lead cases where—
  - (i) two or more cases are before the Upper Tribunal,
  - (ii) in each such case the proceedings have not been finally determined, and
  - (iii) the cases give rise to common or related issues of fact or law,
 and sist the other cases until the common or related issues have been determined,
- (d) permit or require a party to amend a document,
- (e) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party,
- (f) deal with an issue in the proceedings as a preliminary issue,
- (g) hold a hearing to consider any matter, including a case management issue,
- (h) decide the form of any hearing,
- (i) adjourn or postpone a hearing,
- (j) with the agreement of both parties, bring forward a hearing,
- (k) require a party to produce or lodge documents,
- (l) sist proceedings,
- (m) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings, or
  - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case,
- (n) suspend the effect of its own decision pending an appeal of that decision.

### **Procedure for applying for and giving orders**

**8.**—(1) The Upper Tribunal may give an order on the application of one or more of the parties or on its own initiative.

(2) An application for an order may be made—

- (a) by sending or delivering a written application to the Upper Tribunal, or
- (b) orally during the course of a hearing.

(3) An application for an order must include the reason for making that application.

(4) Before making an order, the Upper Tribunal must afford parties an opportunity to make representations to it concerning whether the order should be imposed and the terms of the order.

(5) The Upper Tribunal must send written notice of any order to each party to the case.

### **Failure to comply with rules etc.**

**9.**—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or an order, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or an order, the Upper Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement,
- (b) requiring the failure to be remedied, or
- (c) exercising its power under rule 10 (dismissal of a party's case).

### **Dismissal of a party's case**

- 10.**—(1) The Upper Tribunal must dismiss the whole or a part of the proceedings if the Upper Tribunal—
- (a) does not have jurisdiction in relation to the proceedings or that part of them, and
  - (b) does not exercise its power under rule 7(3)(m) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (2) The Upper Tribunal may dismiss the whole or a part of the proceedings if—
- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them,
  - (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly, or
  - (c) the Upper Tribunal considers there is no reasonable prospect of the appellant's case, or any part of it, succeeding.
- (3) The Upper Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.
- (4) The Upper Tribunal must notify each party and interested party in writing that dismissal has taken place.

### **Addition, substitution and removal of parties**

- 11.**—(1) The Upper Tribunal may give an order adding, substituting or removing a party as an appellant or a respondent including where—
- (a) the wrong person has been named as a party,
  - (b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.
- (2) A person who is not a party may make a written application to the Upper Tribunal to be added or substituted as a party under this rule.
- (3) The Upper Tribunal may, on receipt of an application from a person who appears to it to have an interest in any proceedings, give an order adding or as the case be may be substituting that person as a party to those proceedings.
- (4) If the Upper Tribunal gives an order under paragraph (1) or (3) it may give such consequential orders as it considers appropriate.
- (5) If the Upper Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Upper Tribunal.

### **Expenses**

- 12.**—(1) Except as provided for in paragraph (2), the Upper Tribunal may not order payment of expenses.
- (2) Notwithstanding paragraph (1) and without prejudice to that paragraph, the Upper Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session against a party if that party's act, omission or other conduct has caused any other party to incur expense which it would be unreasonable for that other party to be expected to pay, with the maximum recoverable expenses being the expenses incurred.

### **Representatives**

- 13.**—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the Upper Tribunal prior to any hearing.
- (2) A party may show any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the lay representative or legal representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or a precognition.

(5) The Upper Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned), or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

## **Supporters**

**14.**—(1) A party may be accompanied by another person to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support,
- (b) helping to manage tribunal documents and other papers,
- (c) taking notes of the proceedings,
- (d) quietly advising on—
  - (i) points of law and procedure,
  - (ii) issues which the party might wish to raise with the tribunal.

(3) The party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

(6) The Upper Tribunal may order that a person is not to act as a supporter of a party if—

- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned), or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

## **Calculating time**

**15.**—(1) An act required by these Rules, a practice direction or an order to be done on or by a particular day must be done by 5 pm on that day.

(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule, “working day” means any day except a Saturday, a Sunday, or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971<sup>(a)</sup>.

## **Signature of documents**

**16.** Where any of these Rules requires a document to be signed, that requirement will be satisfied—

- (a) if the signature is written, or
- (b) in the case of a document which is communicated electronically in accordance with these Rules, by the electronic signature of the individual who is required to sign it.

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<sup>(a)</sup> 1971 c. 80.

## **Sending and delivery of documents**

**17.**—(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or an order must be—

- (a) sent by pre-paid post or by document exchange, or delivered by hand, to the address of the Upper Tribunal, or
- (b) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or an interested party provides a fax number, email address or other details for the electronic transmission of documents to them, that party or interested party must accept delivery of documents by that method.

(3) If a party or an interested party informs the Upper Tribunal and all other parties and interested parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party or interested party, that form of communication must not be so used.

(4) If the Upper Tribunal or a party or an interested party sends a document to a party or interested party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each party and interested party may assume that the address provided by a party or interested party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

## **Disclosure of documents and information**

**18.** The Upper Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties or any interested party, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.

## **Evidence and submissions**

**19.**—(1) Subject to paragraph (2), evidence before the Upper Tribunal may be given orally or by written submission.

(2) Without restriction on the general powers in rule 7(1) and (2) (case management powers), the Upper Tribunal may give orders as to—

- (a) issues on which parties may lead evidence or make submissions,
- (b) the nature of any such evidence,
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence,
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally,
- (e) the manner in which any evidence or submissions are to be provided, which may include an order for them to be given—
  - (i) orally at a hearing, or
  - (ii) by written submissions or witness statement,
- (f) the time at which any evidence or submissions are to be provided.

(3) The Upper Tribunal may exclude evidence that would otherwise be admissible where—

- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or practice direction,
- (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction, or
- (c) it would otherwise be unfair to admit the evidence.



(4) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

### **Citation of witnesses and orders to answer questions or produce documents**

- 20.**—(1) On the application of a party or on its own initiative, the Upper Tribunal may—
- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation,
  - (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- (2) A citation under paragraph (1)(a) must—
- (a) give the person required to attend 14 days’ notice prior to the day of the hearing or such other period as the Upper Tribunal may order,
  - (b) where the person is not a party, state (if appropriate) how expenses of attendance necessarily incurred may be recovered,
  - (c) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the citation or order, if the person did not have an opportunity to object to it before it was made or issued, and
  - (d) state the consequences of failure to comply with the citation or order.
- (3) An order under paragraph (1)(b) must—
- (a) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the order, if the person did not have an opportunity to object to it before it was made, and
  - (b) state the consequences of failure to comply with the order.
- (4) A person making an application referred to in sub-paragraph (2)(c) or (3)(a) must do so as soon as reasonably practicable after receiving notice of the citation or order.

### **Withdrawal**

- 21.**—(1) The Upper Tribunal may, on such terms as to expenses or otherwise as it thinks fit, consent to any party withdrawing from the proceedings.
- (2) Subject to paragraph (3), a party may give notice to the Upper Tribunal of the withdrawal of the case made by that party in the Upper Tribunal proceedings, or any part of that case—
- (a) by sending or delivering to the Upper Tribunal a notice of withdrawal, or
  - (b) orally at a hearing.
- (3) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal.
- (4) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party and interested party in writing that a withdrawal has taken effect under this rule.
- (5) Where the appellant withdraws the appeal, no further appeal may be made in relation to the same matter.

### **Chairing member**

**22.** Where a matter is to be decided by two or more members of the Upper Tribunal, the President must determine the chairing member.

### **Transitional and saving provisions**

**23.** These procedures apply in accordance with the transitional and saving provisions in schedule 1 of the Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024.

## PART 5

### Hearings

#### **Decision with or without a hearing**

24. The Upper Tribunal may make any decision without a hearing.

#### **Venue for hearings**

25. The Upper Tribunal is to be convened at such time and place in Scotland as the President may determine.

#### **Entitlement to attend a hearing**

26. Subject to rules 13(5) (representatives), 14(6) (supporters) and 28(2) (public and private hearings), each party and interested party is entitled to participate at a hearing together with any legal or lay representatives and supporters permitted by rules 13 and 14.

#### **Notice of hearings**

27.—(1) The Upper Tribunal must give each party and interested party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days prior to the day of the hearing except that the Upper Tribunal may give shorter notice—

- (a) with the consent of the parties and interested parties, or
- (b) in urgent or exceptional circumstances.

#### **Public and private hearings**

28.—(1) Hearings of the Upper Tribunal must be held in public unless the Upper Tribunal, on its own initiative or following an application by an appellant, decides that it is justified—

- (a) in order to maintain the confidentiality of sensitive information, or
- (b) in order to ensure a fair hearing.

(2) Where a hearing, or part of it, is to be held in private, the Upper Tribunal may determine who is entitled to attend the hearing or part of it.

(3) When publishing a decision in terms of rule 30(4) (notice of decisions and reasons) following a hearing which was held wholly or partly in private, the Upper Tribunal must, so far as practicable, ensure that the decision does not disclose information which was referred to it in a part of the hearing that was held in private.

#### **Hearings in a party's absence**

29. If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and
- (b) considers that it is in the interests of justice to proceed with the hearing.

(2) Where a hearing has proceeded in a party's absence in accordance with paragraph (1), the Upper Tribunal, on an application made by that party within 7 days of receiving notice of the decision in that hearing, may if it is satisfied that there was sufficient reason for such absence, set aside its decision on such terms as to expenses or otherwise as it thinks fit.

## PART 6

### Decisions

#### Notice of decisions and reasons

- 30.**—(1) Subject to the remainder of this rule, the Upper Tribunal may give a decision orally at a hearing.
- (2) The Upper Tribunal must provide to each party and interested party as soon as reasonably practicable after making a decision (other than a decision under Part 7) which finally disposes of all issues in the proceedings or on a preliminary issue dealt with following an order given under rule 7(3)(f)—
- (a) a decision notice stating the Upper Tribunal’s decision, and
  - (b) notification of any rights of appeal against the decision and the time and manner in which such rights of appeal may be exercised.
- (3) If the Upper Tribunal does not provide written reasons for a decision, a party or an interested party may make a written request for written reasons within 14 days after the day of the decision.
- (4) The Upper Tribunal may publish any of its decisions if it considers it in the public interest so to do, with the manner of publication also at the discretion of the Upper Tribunal.

#### Enforcement of decisions

**31.** An order for the payment of a sum payable in pursuance of a decision of the Upper Tribunal, or a copy of such an order certified by the Upper Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the Court of Session.

#### Reviews

- 32.**—(1) The Upper Tribunal may at its own instance or on the application of a party review a decision (except an excluded decision) made by it if it considers it necessary in the interests of justice to do so and on review it may confirm, set aside, or set aside and redecide the decision.
- (2) A application under paragraph (1) must be made in writing within 14 days after the day of the decision and must state the reasons for making the application.
- (3) The Upper Tribunal must send a copy of the application to any other party involved in the proceedings within 10 working days after the day of receipt of the application.
- (4) The review must be decided as soon as reasonably practicable by the Upper Tribunal, with insofar as practicable the same members that decided the case, or where this is not practicable with members selected by the President.
- (5) A notice of the decision in relation to a review under paragraph (1) must as soon as reasonably practicable be sent by the Upper Tribunal to each party.
- (6) The period of 30 days referred to in regulation 2(2) of the Scottish Tribunals (Time Limits) Regulations 2016<sup>(a)</sup> in respect of an application to the Upper Tribunal is extended by any review period.

## PART 7

### Appealing decisions of the Upper Tribunal

#### Interpretation

**33.** In this Part, “appeal” means the exercise of a right of appeal under section 48(1) of the 2014 Act.

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<sup>(a)</sup> S.S.I. 2016/231.

### **Application for permission to appeal a decision of the Upper Tribunal**

- 34.**—(1) A party seeking permission to appeal must make a written application to the Upper Tribunal.
- (2) An application under paragraph (1) must—
- (a) identify the decision of the Upper Tribunal to which it relates, and
  - (b) identify the alleged error or errors of law in the decision.

### **Upper Tribunal’s consideration of application for permission to appeal**

- 35.**—(1) The Upper Tribunal must consider whether to give permission to appeal in relation to the decision or part of it.
- (2) The Upper Tribunal must provide a record of its decision to the parties and any interested party as soon as practicable.
- (3) If the Upper Tribunal refuses permission to appeal it must provide with the record of its decision —
- (a) a statement of its reasons for such a refusal,
  - (b) notification of the right to make an application to the Court of Session for permission to appeal and the time within which, and the method by which, such an application must be made.
- (4) The Upper Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (3) in relation to any grounds on which it has refused permission.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make the Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) 2024 regulating the practice and procedure to be followed in the Upper Tribunal for Scotland in relation to certain appeals under section 39(6) of the Transport (Scotland) Act 2001 and regulation 2 of the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.

These Rules will apply until such time as the powers of the Scottish Civil Justice Council and the Court of Session to make Tribunal Rules (under paragraph 13(2) to (5) of schedule 9 of the Tribunals (Scotland) Act 2014) come into force and are exercised.

The rules of procedure are set out in the schedule of the Regulations.

# ANNEX E

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2024 No.

### TRIBUNALS AND INQUIRIES

#### The Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(2) and (3) and 40(1), (3) and (4) of the Tribunals (Scotland) Act 2014<sup>(a)</sup>, and all other powers enabling them to do so.

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

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

#### Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024 and come into force on [\*\*\*].

(2) In these Regulations—

“bus service penalty case” means proceedings relating to an appeal under section 39(6) of the Transport (Scotland) Act 2001<sup>(b)</sup> in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d)<sup>(c)</sup>,

“service standards decision case” means proceedings relating to an appeal under regulation 2 of the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024<sup>(d)</sup>, and

“Upper Tribunal” means the Upper Tribunal for Scotland.

#### Composition of Upper Tribunal

2. —(1) The Upper Tribunal, when deciding a bus service penalty case or a service standards decision case, must consist of—

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(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) of the Transport (Scotland) Act 2019 asp. 17.

(d) [\*\*\*]

- (a) a legal or judicial member of the Upper Tribunal acting alone,
  - (b) two or three legal or judicial members of the Upper Tribunal, or
  - (c) the President of Tribunals, acting alone or with no more than two legal or judicial members of the Upper Tribunal.
- (2) The authority to determine the composition of the Upper Tribunal in respect of the alternative compositions referred to in paragraph (1) is delegated to the President of Tribunals, including determining whether a member is to be a legal member or a judicial member.

[Name]

Authorised to sign by the Scottish Ministers

St. Andrew's House,  
Edinburgh  
[\*\*\*]

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision as to the composition of the Upper Tribunal when dealing with certain appeals under section 39(6) of the Transport (Scotland) Act 2001 and appeals under the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.

The Upper Tribunal was established by the Tribunals (Scotland) Act 2014. Members of the Upper Tribunal can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. This instrument sets out which member or members may hear the appeals referred to in the paragraph above.

# ANNEX F

## Tribunals (Scotland) Act 2014 – draft regulations: consultation

A consultation on draft regulations transferring certain appeal functions of the Transport Tribunal under section 39 of the Transport (Scotland) Act 2001 to the Upper Tribunal for Scotland, and allocating new appeal functions to the Upper Tribunal relating to bus services improvement partnerships, along with new rules governing the composition and procedure of the Upper Tribunal when hearing those appeals.

### Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



# Questionnaire

## Questions on the draft regulations adding the Transport Tribunal to Part 1 of schedule 1 of the Tribunals (Scotland) Act 2014

**Question 1** - Do you have any comments on the draft regulations (**Annex A**) which propose to add the Transport Tribunal to the list of tribunals in schedule 1 of the 2014 Act?

Please add any comments below.

## Questions on the draft regulations transferring certain functions of the Transport Tribunal to the Upper Tribunal

**Question 2** - Do you have any comments on the draft regulations (Annex B) relating to the transfer of certain appeal functions under section 39 of the 2001 Act to the Upper Tribunal?

Please add any comments below.

**Question 3** - Do you have any further comments you wish to make regarding the transfer of these functions to the Upper Tribunal?

Please add any comments below.

**Questions on the draft regulations providing for appeals relating to BSIP service standards decisions to be heard by the Upper Tribunal**

**Question 4** - Do you have any comments on the draft regulations (Annex C) providing for appeals relating to service standards decisions in the Upper Tribunal?

Please add any comments below.

**Question 5** - Do you have any further comments you wish to make regarding the allocation of these functions to the Upper Tribunal?

Please add any comments below.

**Questions on the draft regulations providing procedural rules to be followed in the Upper Tribunal when dealing with specified appeals**

**Question 6** - Do you have any comments on the draft regulations (**Annex D**) setting out the procedural rules to be followed in the Upper Tribunal when dealing with the specified appeals?

Please add any comments below.

**Questions on the draft regulations providing for the composition of the Upper Tribunal when dealing with specified appeals**

**Question 7** - Do you have any comments on the draft regulations (Annex E) providing for the composition of the Upper Tribunal when dealing with the specified appeals?

Please add any comments below.

**Question 8** - Please provide any further comments on the proposals set out in this consultation below.



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