

Tribunals (Scotland) Act 2014

Consultation on Draft Regulations regarding:

(1) adding the Bus Lane Adjudicators to Schedule 1 of the Tribunals (Scotland) Act 2014;

(2) the First -tier Tribunal for Scotland

(Transfer of Functions and Members of the Parking and Bus Lane Adjudicators) to the Scottish Tribunals;

(3) the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Procedure);

(4) The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition)

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PART 1: BACKGROUND

1. The Tribunals (Scotland) Act 2014 (the 2014 Act) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act creates 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 provides a mechanism for regulations to transfer the functions of existing tribunals and their membership to the First-tier Tribunal and/or the Upper Tribunal. Alternatively, functions may be directly conferred on the First-tier Tribunal and/or the Upper Tribunal for newly created jurisdictions or extensions of jurisdiction. The 2014 Act also provides for the First-tier Tribunal to be organised into a number of subject-specific Chambers.
3. A Parking Adjudicator is listed as a Tribunal in Schedule 1 of the Tribunals (Scotland) Act 2014. We will add the Bus Lane function to the Schedule.
4. The jurisdiction and functions of the Parking Adjudicators arise from the Road Traffic Act 1991 as amended. They consider appeals against penalty charge notices (PCN) for parking contraventions and the removal of vehicles in each local authority (LA) area where parking has been decriminalised. Each participating LA has an individual Designation Order amending the relevant sections of the Road Traffic Act 1991 that allows them to take on the functions of enforcement for their area. They are able to make Traffic Regulation Orders, the process for which is set out in The Local Authorities Traffic Order (Procedure) Scotland Regulations 1999. The individual Regulations set out the Adjudication and Enforcement process, which includes how appeals are to be made, provisions for the decision making process, hearings and expenses. The adjudicators also hear appeals against bus lane enforcement charge notices, which arise from the Transport (Scotland) Act 2001 and subsequent regulations.
5. It is proposed that the functions and members of the Parking and Bus Lane Adjudicators will transfer into the Scottish Tribunals on 1 April 2019 as part of the General Regulatory Chamber. The draft regulations are attached at **Annexes A, B, C and D**.
6. The draft regulations in **Annex A** provide for the addition of Bus Lane Adjudicators to Schedule 1 of the Tribunals (Scotland) Act 2014, which lists the tribunals that may transfer into the Scottish Tribunals.
7. The draft regulations in **Annex B** provide for the transfer of functions and members of the Parking and Bus Lane Adjudicators to the Scottish Tribunals; also, transitional and savings provisions with consequential amendments and repeals of primary legislation.
8. The draft regulations in **Annex C** set out the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals Rules of Procedure.

9. The draft regulations in **Annex D** set out the composition of the First-tier Tribunal General Regulatory Chamber Parking and Bus Lane Adjudicators and Upper Tribunal for Scotland.

PART 2: CONSULTATION ON ADDING BUS LANE ADJUDICATORS TO SCHEDULE 1 OF THE TRIBUNALS (SCOTLAND) ACT 2014

Background

10. The Parking Adjudicators are already included in the list of tribunals in Schedule 1 of the Tribunals (Scotland) Act 2014. We intend through this regulation to add Bus Lane Adjudicators to the list so that the two bodies may be transferred into the Scottish Tribunals at the same time.

Q1. Do you have any comments on the addition of the Bus Lane adjudicators to the list of tribunals in Schedule 1 of the Tribunal (Scotland) Act 2014?

PART 3: CONSULTATION ON DRAFT REGULATIONS TRANSFERRING THE FUNCTIONS AND MEMBERS OF THE PARKING AND BUS LANE ADJUDICATORS TO THE SCOTTISH TRIBUNALS.

Background

11) Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.

12) Schedule 2 and section 29 of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members of the listed tribunals to the First-tier or Upper Tribunal.

Draft Regulations

13. The current eligibility criteria for Parking and Bus Lane adjudicators are set out in the Road Traffic Act 1991 as amended. The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) 2011 Regulations state that a person appointed as a parking adjudicator shall act as a bus lane adjudicator.

14. The policy intention is for the Parking and Bus Lane Adjudicators to transfer into the Scottish Tribunals structure from 1 April 2019 with their existing functions. Upon transfer the Parking and Bus Lane Adjudicators in their current form will be abolished and thereafter decisions will be heard in the First-Tier Tribunal General Regulatory Chamber Parking and Bus Lane Appeals with onward appeal on a point of law only to the Upper Tribunal.

15. All existing Parking and Bus Lane Adjudicators, who are not already members of the First-tier Tribunal, will transfer into the Scottish Tribunals as long as they meet the eligibility criteria. In order to ensure consistency across the First-tier Tribunal, we propose to replicate the effect of the Judicial Pensions and Retirement Act 1993. Scottish Tribunals members are required to retire from the Scottish Tribunals at the age of 70, although Scottish Ministers can choose to reappoint a member for one year at a time, until they reach the age of 75, if the reappointment is in the public interest.

16. We propose to retain the criteria for legal membership. A Parking and Bus Lane adjudicator must therefore either meet the criteria in Schedule 3(5) of the Tribunals (Scotland) Act 2014 (which requires the member to be practising and have practised for at least 5 years, as a solicitor or advocate in Scotland) or meet the criteria in the terms of the Eligibility Regulations (Scotland) 2015 (which is that a legal member must have had 5 years engagement in practice as a solicitor or advocate and to also have had experience of either a judicial function in any court or tribunal, practice or employment as a lawyer or teaching or researching law).

17. The draft regulations set out the transitional arrangements, which state that cases in progress before the day of transfer will be completed in the First-tier Tribunal by the same member, where possible. Time limits which have started to run

prior to commencement of these regulations and have not expired shall continue to apply.

18. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-tier and Upper Tribunals. We intend that the Parking and Bus Lane Adjudicators will continue to consist of a single adjudicator and if the Upper Tribunal are to hear a case then that should be in line with other Tribunal rules consisting of either a legal or judicial member of the Upper Tribunal, or the Chamber President, acting either alone or with a legal or judicial member of the Upper Tribunal, or the President of the Tribunal acting alone or with another Upper Tribunal member, or the Lord President, acting alone or with another Upper Tribunal member.

19. The Transfer of Functions and Members draft regulation also repeals the various current Procedural Rules for each local authority that operates a decriminalised parking scheme. These will be replaced with a single set of Rules of Procedure for the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals. Where appropriate, these new Rules, replicate the previous individual rules subject to some additions and amendments with a view to consistency across the Scottish Tribunals.

Q1: Do you have any comments on the draft regulations relating to the transfer of functions of the Parking and Bus Lane Appeals to the First-tier Tribunal?

Q2: Are you content with the provisions relating to the transfer of members to the First-tier Tribunal?

Q3: Do you have any other comments regarding the transitional and savings provisions, consequential amendments, repeals or revocations?

Q4. Do you have any further comments you wish to make?

PART 4: DRAFT REGULATIONS SETTING OUT THE RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL GENERAL REGULATORY CHAMBER FOR PARKING AND BUS LANE APPEALS

Background

20. Schedule 9, paragraph 2(2) and section 81 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of the First-tier Tribunal.

Draft Regulations

21. The Parking and Bus Lane Adjudicators already have comprehensive procedural rules in place, but the transfer of the adjudicators to the First-tier Tribunal provides an opportunity to enhance the current rules of procedure to the benefit of all parties and to maximise consistency of procedural rules across the Scottish Tribunals. We have therefore, proposed some additions to the current rules, which includes:

- an overriding objective for the Tribunal,
- provision to convene a hearing over the telephone or video link if the First-tier Tribunal are satisfied that this does not prejudice the administration of justice
- case management powers to enhance efficiency in administration of the tribunal;
- powers to strike out a case in specific circumstances;
- provision to deal with accidental slips or omissions.

QUESTIONS ON THE FIRST-TIER GENERAL REGULATORY CHAMBER RULES OF PROCEDURE

Q1: Do you have any specific comments on the draft regulations on the First-tier Tribunal General Regulatory Chamber Parking and Bus Lane Adjudicators Rules of Procedure?

Q2. In Rule 11(3) “disposing of an appeal without a hearing” we have included provision that unless both parties consent to the disposal taking place on an earlier date, the First-tier Tribunal must not decide an appeal without a hearing until after 28 days. As telephone hearings and a new IT system may considerably speed up the process. Do you believe:

- This provision be deleted;
- The time period should be shortened;
- or should we retain this provision in full.

Q3. Do you have any comments to make about the new powers to strike out a case in specific circumstances?

Q4. Currently the adjudicators decide on whether there should be a review of a case and if so, carry out that review. Do you think this process should continue at this level or should this power now fall within the remit of the new Chamber President?

Q5. Do you have any further comments?

PART 5: DRAFT REGULATIONS SETTING OUT COMPOSITION OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND

Background

22. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-Tier and Upper Tribunals.

23. The draft regulations in Annex D apply to the composition of members when hearing cases within the First-tier Tribunal General Regulatory Chamber to the Upper Tribunal.

24. The policy intention is for the First-tier Tribunal to mirror current arrangements whereby a single legal member will hear the appeal. If an Upper Tribunal is to be convened on a point of law then the composition of the tribunal panel will mirror the composition options set out in the 2014 Act. The President of the Tribunals will determine how the Upper Tribunal should be composed on a case by case basis.

Q1. Do you have any comments on the proposals regarding the composition of the First-tier Tribunal Parking and Bus Lane Adjudicator Tribunal within the General Regulatory Chamber?

Q2. Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing appeals from the General Regulatory Chamber?

Q3. Do you have any other comments you wish to make?

PART 6: RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by 9 November 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at: <https://consult.gov.scot/tribunals-and-administrative-justice/parking-and-bus-lane-adjudicators>

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 9 November.

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

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

Handling your response

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 attached included in this document. 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 14 provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

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 <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

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.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Tribunals.consultations@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all of our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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