

Equalities, Human Rights and Civil Justice Committee
Tuesday 29 October 2024
22nd Meeting, 2024 (Session 6)

Subordinate legislation: consideration of affirmative instruments

Overview

1. At this meeting, the Committee will take evidence from the Minister for Victims and Community Safety and officials on the following two draft affirmative instruments before debating the relevant motions inviting the Committee to recommend approval of the instruments.
 - **The Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024 [draft]**
 - **The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 [draft].**
2. These are draft Scottish Statutory Instruments (SSIs), which require approval by resolution of the Parliament before they can become law.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote.

If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

8. Information about the instruments are summarised in the order in which they will be taken on the Agenda below.

The Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024 [draft]

Link to instrument: [The Upper Tribunal for Scotland Bus Registration Appeals \(Composition\) Regulations 2024 \[draft\]](#)

Laid under: [Tribunals \(Scotland\) Act 2014](#)

Laid on: 20 September 2024

Procedure: Affirmative

Lead committee to report by: 14 November 2024

Commencement: If approved, the instrument comes into force on 2 December 2024.

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instrument on 1 October 2024 and reported on it in its [58th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

10. The purpose of the instrument is to make provision in respect of the composition of the Upper Tribunal for Scotland when hearing certain appeals under section 39(5A) of the Transport (Scotland) Act 2001 and those under the Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024.
11. 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.

The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 [draft]

Link to instrument: [The Upper Tribunal for Scotland \(Transfer of Functions of the Transport Tribunal\) Regulations 2024 \[draft\]](#)

Laid under: [Tribunals \(Scotland\) Act 2014](#)

Laid on: 20 September 2024

Procedure: Affirmative

Lead committee to report by: 14 November 2024

Commencement: If approved, the instrument comes into force on 2 December 2024.

Delegated Powers and Law Reform Committee consideration

12. The DPLR Committee considered the instrument on 1 October 2024 and reported on it in its [58th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

13. The purpose of the instrument is to make provision for the transfer of certain functions of the Transport Tribunal to the Upper Tribunal for Scotland.

Report

14. The Committee is invited to consider any issues which it wishes to raise on the instruments and to delegate to the Convener responsibility for finalising a report for publication that the Clerks will prepare on the basis of today's meeting.

**Clerks to the Committee
October 2024**

Annexe A: Scottish Government Policy Notes

The Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024 [draft]

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

Purpose of the instrument

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

Policy objectives

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

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

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

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

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

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

Further details of the policy objectives relating to the 2014 Act are set out in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum:

[Tribunals \(Scotland\) Bill | Scottish Parliament Website](#)

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

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

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

EU alignment consideration

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

Consultation

A public consultation took place from 7 August 2023 to 27 October 2023. There were five responses to this consultation. Three respondents gave permission to publish their responses, which are available on the Scottish Government website:

[Published responses for Draft regulations allocating bus service appeals to the Scottish Tribunals: consultation - Scottish Government consultations - Citizen Space](#)

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

Impact assessments

An Equality Impact Assessment (EQIA) has already been completed for the Tribunals (Scotland) Bill and is linked below:

[Tribunals \(Scotland\) Bill - Equality Impact Assessment - Results \(webarchive.org.uk\)](#)

The Bill EQIA made a number of key findings:

- The operation of the tribunal jurisdictions transferring onto the new structure will not be affected.
- Tribunal users will not be affected directly by the Bill provisions.
- Tribunals distinctiveness will be protected.
- Tribunal members will not be adversely affected and their independence will be enhanced.

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

An [impact assessment regarding Child Rights and Wellbeing](#) has been completed.

Financial effects

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

The Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 [draft]

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

Purpose of the instrument

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

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

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

Policy objectives

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

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

These regulations make provision for the transfer of the devolved functions of the Transport Tribunal into the Upper Tribunal. The functions to be transferred are the appeal functions exercisable by the Transport Tribunal by virtue of section 39(6) of the 2001 Act in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d) (failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010, which is a reserved matter).

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

- (a) failing to operate a local service registered under section 6 of the Transport Act 1985
- (b) operating a local service in contravention of that section or section 3F(1) or 13B(1)(b) or (3) of the 2001 Act
- (ba) failing to comply with a requirement under section 6ZA of the Transport Act 1985

- (bb) failing to comply with a requirement to provide information (including a requirement to provide it within a specified time or in a specified form) under section 3K(2) or 13R(2) of the 2001 Act
- (c) failing to comply with section 32(1) or 34(3) of the 2001 Act.

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

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

Further details of the policy objectives relating to the 2014 Act are set out in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum: [Tribunals \(Scotland\) Bill | Scottish Parliament Website](#)

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

Consultation

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

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