

# **Tribunals (Scotland) Act 2014 - Draft Regulations**

**Consultation - analysis and response**

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Tribunals (Scotland) Act 2014 - Draft Regulations Consultation - analysis of the consultation on draft regulations transferring certain appeal functions of the Transport Tribunal and allocating new appeal functions relating to bus services improvement partnerships to the Upper Tribunal for Scotland, along with rules governing composition and procedure.

### **1. Introduction**

The Scottish Government has undertaken analysis of the responses to the public consultation on the allocation of certain transport appeals to the Upper Tribunal for Scotland. These are appeals against the following:

- Penalties issued by the Traffic Commissioner to bus operators under section 39(1) of the Transport (Scotland) Act 2001 for failure to comply with certain statutory requirements; and
- Decisions of the Traffic Commissioner in connection with service standards decisions imposed by bus services improvement partnerships.

### **2. Consultation Background**

The consultation was designed to gather views of stakeholders and individuals in relation to the draft regulations allocating the above transport related appeals to the Upper Tribunal for Scotland. It also sought views on the draft regulations setting out the rules regarding composition and procedure that would apply to the Upper Tribunal when dealing with these appeals.

Eight questions were posed in total with the first seven asking about the draft regulations, and the final question invited any other comments on the proposals more generally.

The consultation period ran for 12 weeks from 7 August 2023 to 27 October 2023 and was published on the Scottish Government Citizen Space website. Interested parties could submit responses online, by email or by post.

### **3. Overview of responses**

Five responses were received in total, all submitted via Citizen Space. Two responses were received from local transport authorities and the remaining three from individuals.

### **4. Analysis of Responses**

While five responses to the consultation were received, respondents were not required to answer every question and typically answered the questions that interested them or that they felt informed to answer. As such, the total number of

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respondents varies for each question. The questions were all open ended and gave respondents an opportunity to provide a written comment if they wished.

Of the five respondents, three were content for their responses to be published, two of which wished for their responses to be published anonymously. Where this is the case, the responses have been anonymised prior to publication. Any comments or quotes made within this report have been included in a way which maintains their anonymity. The remaining two respondents did not give permission for their responses to be published.

### **Q1. Do you have any comments on the draft regulations which propose to add the Transport Tribunal to the list of tribunals in schedule 1 of the 2014 Act?**

Two respondents answered this question. One commented the regulations were well drafted, while the other offered support for the proposal.

### **Q2. Do you have any comments on the draft regulations relating to the transfer of certain appeal functions under section 39 of the 2001 Act to the Upper Tribunal?**

Four respondents answered this question. One response was in favour of the transfer proposal. Other comments observed that the draft regulations appeared to be well drafted and that the transfer of appeals to the Upper Tribunal was acceptable. The other responses were out of the scope of the consultation.

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

Three respondents answered this question, and one was in favour of the transfer of functions. The other responses were out of the scope of the consultation.

### **Q4. Do you have any comments of the draft regulations providing for appeals relating to service standards decisions in the Upper Tribunal?**

All five respondents answered this question. One of the responses commented that the regulations were well drafted while one stated they supported the proposals. One commented that the proposal that appeals regarding service standards decisions be heard in the Upper Tribunal in the first instance appeared appropriate and welcomed the possibility of joint appeals being lodged by transport authorities. The two remaining respondents made general remarks concerning their local services, which were outwith the scope of the consultation.

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

Two respondents answered this question, both agreeing with the allocation of functions to the Upper Tribunal.

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### **Q6. Do you have any comments on the draft regulations setting out the procedural rules to be followed in the Upper Tribunal when dealing with the specified appeals?**

Four respondents answered this question. Two felt that the draft regulations were appropriate and supported the proposals, while the other response was outwith the scope of the consultation. The fourth respondent felt the rules could be made more specific.

### **Q7. Do you have any comments on the draft regulations providing for the composition of the Upper Tribunal when dealing with the specified appeals?**

Four respondents answered this question. One queried the point of the proposal, while two respondents felt them appropriate and supported the proposal. The remaining respondent noted an error in the numbering of the draft which has been rectified in the draft regulations.

### **Q8. Please provide any further comments on the proposals set out in this consultation.**

Two respondents answered this question. One questioned if we required the proposals at all. The other respondent agreed with the proposals and noted they were well thought out while also suggesting certain areas of the regulations be more specific.

## **5. Conclusion**

From the comments and feedback received it is clear that the majority of respondents either stated that they were in favour of the proposals or commented that the draft regulations appeared to be appropriate. Feedback was that the regulations appeared to be well drafted. The responses that did not offer explicit support used the consultation to comment about their own local services, which was outwith the scope of the consultation.

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### 6. Consultation response

Analysis of responses to the consultation on:

1. Draft regulations adding the Transport Tribunal to Part 1 of Schedule 1 of the Tribunals (Scotland) Act 2014,
2. Draft regulations transferring certain appeal functions under section 39 of the Transport (Scotland) Act 2001 to the Upper Tribunal for Scotland,
3. Draft regulations providing for appeals relating to bus services improvement partnerships to be heard in the Upper Tribunal for Scotland,
4. 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,
5. 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.

### 7. Background

8. 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 an organised structure for new jurisdictions.
9. The 2014 Act creates two tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals. A programme of work to transfer devolved functions of the tribunals listed in schedule 1 of the 2014 Act is underway.
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. 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 6ZA of the 1985 Act;
  - d) Failed to comply with section 32(1) or 34(3) of the 2001 Act; or
  - e) Failed to comply with a requirement of regulations made under section 181A of the Equality Act 2010.

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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.
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 local 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 services 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 the service standards decisions of the Traffic Commissioner, to ensure a fair determination of their civil rights. Section 37 of the 2019 Act 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.
15. It is proposed to route appeals against the service standards decisions of the Traffic Commissioner into the Scottish Tribunals. At the same time, it is proposed that appeals against decisions of the Traffic Commissioner under 39(1) of the 2001 Act (except for those appeals under 39(1(d), which concern penalties under the Equality Act 2010, and so remain a reserved matter) will transfer from the UK Transport Tribunal into the Scottish Tribunals structure. The intention is for both these appeal routes to be allocated to the Upper Tribunal for Scotland.
16. To achieve this, regulations are required to amend schedule 1 of the 2014 Act to add the Transport Tribunal to the listed tribunals at schedule 1, and an additional set of regulations are required to then transfer the devolved functions of the Transport Tribunal into the Upper Tribunal for Scotland. In addition, a further set of regulations are required to create a right of appeal against BSIP service standards decisions of the Traffic Commissioner and to allocate those appeals to the Upper Tribunal. Finally, a further suite of regulations will provide the composition of the Upper Tribunal and for a set of rules regarding the practice and procedure to be followed by the Upper Tribunal when hearing the transferred-in appeals and new BSIP service standards decision appeals.

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17. The Scottish Government ran a consultation (from 7 August 2023 to 27 October 2023) to gather views from stakeholders and individuals on draft regulations as described in the preceding paragraph.

### 18. Consultation Responses

19. We received five responses from individuals and organisations, including two local transport authorities.

20. The majority of respondents were content with the provisions and offered their support. Comment was made that the regulations appeared well drafted. The main concerns raised have been addressed in the analysis of consultation responses document.

### 21. Next Steps

22. The draft regulations have been amended as considered appropriate, in light of respondents' comments.

### 23. Summary of Consultation responses and Scottish Government response

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

Three responses to this question, one from an individual and two from organisations, all welcomed and supported the draft regulations. We welcome the positive feedback.

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

Four comments were made regarding these draft regulations. Two from organisations which both accepted and supported the draft regulations. One response commented that the regulations were well drafted. We welcome the positive responses. There was one comment received from an individual which was out of scope of the consultation.

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

Four further comments were made regarding these draft regulations. Two from organisations which accepted and supported the draft regulations. We welcome the positive responses. Two comments received from individuals were out of scope of the consultation.

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

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Five comments were made regarding these draft regulations. Two from organisations which supported the draft regulations. We welcome the positive responses. Two comments received from individuals were out of scope of the consultation.

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

Two further comments were made regarding these draft regulations, one from an organisation, the other an individual, both supported the draft regulations. We welcome the positive responses.

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

Four comments were made regarding these draft regulations. Two from organisations which supported the draft regulations. One comment suggested amendments to the draft regulations. One comment stated that regulations were not needed. We welcome the feedback provided and the positive responses. We believe the regulations for procedural rules are required.

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

Four comments were made regarding these draft regulations. Two from organisations that supported the draft regulation. One comment identified misnumbering in the draft regulations. The other comment questioned the need of the draft regulations. We welcome the positive responses and the feedback provided. We believe that composition regulations are required.

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

Two comments were made regarding these draft regulations, both from individuals. One individual while supportive in general suggested amendments. Some comments were outwith the scope of the consultation.





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