

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).

Analysis of responses

Table of Contents

Background	Page 3
Consultation Responses	Page 4
Analysis of Responses	Page 4
Next Steps	Page 4
Annex A: Summary of responses to main comments	Page 6

ANALYSIS OF RESPONSES TO THE CONSULTATION ON DRAFT REGULATIONS FOR:

- 1) The addition of Bus Lane Adjudicators to schedule 1 of the Tribunals (Scotland) Act 2014,**
- 2) The transfer of functions and members of the Parking and Bus Lane Adjudicators to the Scottish Tribunals,**
- 3) The rules of procedure for the First-tier Tribunal for Scotland General Regulatory Chamber parking and bus lane appeals,**
- 4) The composition of the Scottish Tribunals when hearing appeals and referrals in and from the First-tier Tribunal for Scotland General Regulatory Chamber parking and bus lane appeals.**

BACKGROUND

1. The Scottish Government is in the process of implementing the Tribunals (Scotland) Act 2014 (the 2014 Act) which creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing an organised structure for new jurisdictions.
2. 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. In due course all the devolved tribunal jurisdictions will transfer-in to the Scottish Tribunals. The first tribunals (the private rented housing panel, the homeowner housing panel and their respective committees) transferred into the Scottish Tribunals in 2016. The Scottish Tax Tribunal transferred in April 2017, the Additional Support Needs Tribunals for Scotland and the Scottish Charity Appeals Panel transferred in January 2018 with the Social Security Chamber created in November 2018.
3. A Parking Adjudicator is listed as a Tribunal in schedule 1 of the Tribunals (Scotland) Act 2014. A Bus Lane Adjudicator and 'the functions exercisable by a bus lane adjudicator' were added to schedule 1 in November 2019 by way of regulations - the Scottish (Listed Tribunals) Regulations 2019.
4. The primary role of the Parking Adjudicators is to consider appeals against penalty charge notices (PCN) issued by the 21 local authorities who currently participate in decriminalised parking enforcement schemes. Section 66 of the Road Traffic Act 1991 (the RTA 1991) as amended sets out when a PCN can be issued and schedule 6 of the RTA 1991 sets out the process of the Notice to Owner, the grounds of appeal the adjudicator can consider and the Notice of Rejection process (which is a decision and process carried out internally by each local authority and which can ultimately be appealed to the Parking Adjudicator). In addition, Parking Adjudicators consider appeals where the PCN has been issued, the vehicle removed and the appellant has paid the PCN, removal and possibly storage charges. The appellant is then seeking revocation of the PCN and reimbursement. This is contained in sections 71 and 72 of the RTA 1991.

5. The Parking Adjudicators also perform the role of Bus Lane Adjudicators. The primary role of Bus Lane Adjudicators is to consider appeals against Bus Lane Enforcement Charge Notices (currently only three local authorities participate in this scheme, being Edinburgh, Glasgow and Aberdeen). These arise under Section 44 of the Transport (Scotland) Act 2001 and subsequent Regulations.
6. The functions and members of the Parking Adjudicators and Bus Lane Adjudicators will transfer into the Scottish Tribunals on 1 April 2020 as part of the General Regulatory Chamber.
7. The Scottish Government ran a consultation between 14 September 2018 and 9 November 2018 on the suite of draft regulations required to transfer the Parking Adjudicators and the Bus Lane Adjudicators into the Scottish Tribunals¹.

Consultation Responses

8. We received 5 responses including four from local authorities. Due to the small number of responses this analysis relies on consideration of the key points raised in the responses relating to each set of regulations rather than an in-depth statistical analysis of the responses.

Analysis of responses

9. The majority of respondents were content with the provisions. The main comments received suggested amendments to the two existing sets of rules of procedure, which have now been amalgamated into one to cover both parking and bus lane appeals. No issues were raised in relation to the composition regulations. Where concerns were raised, these have been addressed in the analysis of consultation responses in the Summary of Key Responses document in Annex A.

Next Steps

10. A Bus Lane Adjudicator and 'the functions exercisable by a bus lane adjudicator' were added to schedule 1 of the Tribunals (Scotland) Act 2014 in November 2019 by way of the Scottish (Listed Tribunals) Regulations 2019.
11. The draft regulations have been amended as considered appropriate, in light of respondents' comments.
12. The final suite of four draft regulations laid before Parliament on 13 February 2020 were as follows:
 - i) The First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020

¹ https://consult.gov.scot/tribunals-and-administrative-justice/parking-and-bus-lane-adjudicators/user_uploads/sct09184664421-00.pdf

ii) The First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020

iii) The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020

iv) The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020

13. It is the intention for the Parking and Bus Lane Adjudicators to transfer into the Scottish Tribunals on 1 April 2020.

Question	Summary of Consultation Responses	Scottish Government Response
<p>1. Do you have any comments on the addition of the Bus Lane Adjudicators to schedule 1 of the Tribunal (Scotland) Act 2014?</p>	<p>One respondent suggested that it should be clarified in schedule 1 that the functions of the Parking Adjudicator as stated in schedule 1 part 2 paragraph 13(9) of the Tribunal (Scotland) Act 2014 do not only refer to those functions set out in sections 72(2) and 73(3) of the Road Traffic Act 1991, but also include the functions set out in schedule 6, paragraph 5 of the Road Traffic Act 1991 (as amended).</p>	<p>This amendment was taken on board. The issue was addressed in regulation 2(3)(b) of the Scottish Tribunals (Listed Tribunals) Regulations 2019 which were made and subsequently came into force on 7th November 2019.</p>
<p>1. 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?</p>	<p>One respondent questioned whether paragraphs 6 and 7 in schedule 1 are necessary as there is currently no right of appeal to the Upper Tribunal.</p> <p>Minor typographical changes were suggested to schedule 2 part 1 so that it would read “<u>a</u> parking adjudicator” and “<u>the</u> First-tier Tribunal for Scotland General Regulatory Chamber”.</p> <p>One respondent questioned whether schedule 2 of the draft Regulations should contain an amendment to paragraph 13(9) of schedule 1 part 2 of the Tribunal (Scotland) Act 2014 to incorporate the functions of the parking adjudicator into schedule 6 paragraph 5 of the Road Traffic Act 1991 as well as into parts 4 and 5 of the Bus Lane Contraventions (Charges,</p>	<p>This amendment was taken on board. The relevant paragraphs were removed from the draft regulations.</p> <p>This amendment was not required as the final consequential amendments did not necessitate amendment to schedule 6 of the Road Traffic Act 1991. Instead regulation 5 of the draft Parking Regulations and regulation 5 of the draft Bus Lane Regulations abolish the respective offices of parking adjudicator and bus lane adjudicator.</p> <p>These comments were taken account of and the matter was addressed in the Scottish Tribunals (Listed Tribunals) Regulations 2019 which came into force on 7th November 2019.</p>

	Adjudication and Enforcement) (Scotland) Regulations 2011.	
2. Are you content with the provisions relating to the transfer of members to the First-tier Tribunal?	All respondents answered yes.	Noted.
3. Do you have any other comments regarding the transitional and savings provisions, consequential amendments, repeals or revocations?	<p>There was a query as to whether there is likely to be an impact on timelines.</p> <p>It was noted that local authorities currently pay for this service. It was queried as to whether the payments and the process would remain the same or whether local authorities would no longer be required to pay for the appeals service.</p>	<p>All decisions, directions and orders made by adjudicators will continue in force post transfer; all time limits in respect of representations and appeals will continue to apply post transfer.</p> <p>Invoices will be issued to local authorities on a quarterly basis as is currently the case.</p> <p>The statutory basis for the requirement of a local authority operating a decriminalised parking enforcement scheme to fund an appeals service is contained within the Road Traffic Act 1991 and the subsequent individual regulations covering each local authority's operation of the scheme.</p> <p>Paragraph 1(3)(c)(iii) of schedule 2 (and all subsequent amending paragraphs for each local authority) of the Parking Regulations confirms that the current reimbursement arrangements with the local authorities will continue following transfer. Local authorities are required to meet the costs incurred by the Scottish Courts and Tribunals Service (SCTS) for the provision of all accommodation, administrative staff and facilities to the First-tier Tribunal as well as the remuneration and expenses of the legal members.</p> <p>Staff currently responsible for administering the decriminalised</p>

	<p>One respondent questioned whether paragraph 13(9) of schedule 1 part 2 of the Tribunal (Scotland) Act 2014 should be amended to incorporate the functions of the parking adjudicators into schedule 6 paragraph 5 of the Road Traffic Act 1991.</p> <p>One respondent suggested that they were unable to comment as they had not seen any detail regarding saving provisions, consequential amendments, repeals or revocations.</p>	<p>scheme will transfer over to the SCTS under TUPE provisions. The Department of Vehicle Standards Agency currently provides the IT appeals case management system for adjudicators and the SCTS is finalising arrangements to novate the contract to ensure that the current software can still be used when the service transfers.</p> <p>Whilst there will be a new right of appeal to the Upper Tribunal on a point of law, local authorities will not be asked to reimburse the costs associated with the Upper Tribunal at this time.</p> <p>These comments were taken account of and the matter was addressed in the Scottish Tribunals (Listed Tribunals) Regulations 2019 which came into force on 7th November 2019.</p> <p>Regulation 5 of the draft regulations set out in the Consultation confirmed that transitional and saving provisions were contained in schedule 1 of the draft regulations. Regulation 6 confirmed that consequential amendments, repeals and revocations were contained in schedules 2 and 3. These references have been amended in the final draft regulations with further consequential provisions added.</p> <p>The regulations were amended to reflect that regulations 6, 7 and 8 refer to schedules 1, 2 and 3 of the regulations which set out the transitional and saving provisions, the consequential amendments and the revocations respectively.</p>
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<p>4. Do you have any further comments you wish to make?</p>	<p>It was suggested that Part V of the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 should not be revoked in its entirety, as the functions contained in section 12 of those regulations are referenced as ‘the functions exercised by bus lane adjudicators of proceedings in relation to Parts IV and V’ in the interpretation section of regulation 2 of the Transfer of Functions Regulations.</p>	<p>Schedule 2 of the final draft Bus Lane Regulations makes consequential amendments to regulations 2, 8, 10, 11 and 12 of the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 and only regulations 13 to 29 are revoked.</p>
<p>1. Do you have any specific comments on the draft regulations on the First-tier General Regulatory Chamber Parking and Bus Lane Adjudicators Rules of Procedure?</p>	<p>Generally positive responses were received in respect of this question.</p> <p>One respondent confirmed support so long as the First-tier Tribunal are satisfied that a telephone or video link hearing does not prejudice the administration of justice. The same respondent was supportive of case management powers to enhance the efficiency of the Tribunal as well as the powers to strike out a case or to deal with accidental administrative slips or omissions in respect of cases.</p> <p>Specific comments were made in relation to the following rules set out in the regulations:</p> <p>Rule 1. Interpretation section:</p> <p>It was suggested that ‘appeal’ should include a reference to an appeal against removal of a vehicle.</p>	<p>The existing option for a hearing in person will remain for those parties that do not wish to avail themselves of the new telephone and video link options.</p> <p>This amendment was taken account of by confirmation that the functions of adjudicators under sections 72 and 73 of the Road Traffic Act 1991 make reference to representations under section 71 of the 1991 Act, which includes reference to adjudication in</p>

	<p>It was suggested that a local authority cannot be an appellant and as such should not be included in the definition of “appellant”.</p> <p>Rule 2. Of those who commented, the respondents were supportive of the inclusion of an overriding objective.</p> <p>Rule 3. The more detailed case management powers for the Adjudicators were welcomed. There was a request for a line to be added “or by direction bring forward a hearing”.</p> <p>Rule 4. The terms of this rule, on striking out, were welcomed as an aid to limiting ‘timewasting’ in proceedings.</p> <p>Rule 5(2). There was a suggestion that this should be amended to include appeals against removal of a vehicle or against a Penalty Charge Notice, as the reference to charge notice only covers appeals against Bus Lane Charges.</p> <p>It was suggested that it would be helpful to reference the name of the local authority imposing the decision plus the date and reference number.</p> <p>Rule 9. A suggestion to replace “appellant” with “party” to reflect</p>	<p>relation to removal of vehicles. The functions are transferred by way of the draft Regulations and so will be exercisable in respect of these cases in the new system.</p> <p>Where appropriate the word “appellant” has been amended to “parties” and defined as “local authority” where necessary.</p> <p>These comments were taken account of and the rule retained.</p> <p>Case management powers are now contained in rule 4. This suggested amendment is taken account of at rule 4(3)(i) with the addition of “with the agreement of both or all the parties, bring forward a hearing”.</p> <p>Rule 4 is now rule 5. Wording has been amended to replace “strike out” with the word “dismiss”. The circumstances in which a case can be dismissed are now also listed.</p> <p>This matter is now set out in Rule 6. The definition of a “notice of rejection” set out in Rule 1 (Interpretation) includes all the specific types of relevant case.</p> <p>This comment was taken account of by inserting the requirement for the name of the local authority and the date and reference number of the notice of rejection.</p> <p>This comment was taken on board and ‘appellant’ has been replaced</p>
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	<p>the change in the proposed definition change to rule 1.</p> <p>Rules 12 and 13. As above, a suggestion that references to “appellant” should be amended to “each party”.</p> <p>Rule 14(2). It was suggested that this should specify this is relating to a “bus lane contravention” rather than just “contravention”.</p> <p>There was some concern expressed around the use of the words “may permit evidence”. It was suggested that the wording be amended to reflect that evidence <i>will</i> require to be permitted to avoid local authorities having to argue the case for lodging evidence with the resulting possibility of a separate hearing being required to determine whether evidence should be allowed or permitted.</p> <p>Rule 20. One respondent asked to retain the expressly limited nature of an order for expenses as set out in regulation 22 of the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 and regulation 12 of each individual local authority Road Traffic (Parking Adjudicators) Regulations.</p> <p>Rule 21. There was the suggestion that this rule would mean a change in procedure whereby the Tribunal would now require to actively make a decision as opposed to the current procedure whereby parties can agree an outcome with an Adjudicator simply signing this</p>	<p>by ‘party’ in this rule.</p> <p>This comment was taken on board and ‘appellant’ has been replaced by ‘party’ throughout these Regulations where appropriate.</p> <p>This comment has been taken on board and “bus lane” has been added before “contravention” for clarification.</p> <p>This wording is a direct replication of the existing wording already in operation and set out in the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 as well as similarly set out in the procedure rules in operation for each of the local authorities. The policy intention is that this should not change and so we are preserving the status quo.</p> <p>This comment was closely considered but has not been taken on board. We consider that there is sufficient clarity in the terms of rule 20(1)(a) and (b) of the final draft regulations. We consider that they make it quite clear that expenses can only be awarded in very limited circumstances.</p> <p>This procedure is now set out as part of the usual decision making procedure at rule 15(2).</p>
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	<p>off. There was some concern from one respondent that this may cause additional work for the Tribunal.</p> <p>Rule 23. Clarity was requested around the wording of rule 23(1) and (7). Further, a query was raised as to whether the wording of rule 23(2)(e) should read ‘manner’.</p>	<p>These amendments have been taken on board and this rule has been rephrased for clarity. Rule 23(2)(e) is now renumbered as 23(3) and there has been further clarification as to the ‘manner’ of transmission.</p>
<p>2. 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</p> <ul style="list-style-type: none"> • This provision be deleted? • the time period should be shortened • or should we retain this provision in full. 	<p>All available options set out in this question have been selected by at least one of the respondents. These are as below:</p> <ul style="list-style-type: none"> • 1 respondent answered that the provision should be deleted; • 2 respondents answered that the time period should be shortened; and • 2 respondents answered that this provision should be retained in full. 	<p>The views on this rule have been carefully considered. As there is no clear consensus on the matter, and given the comment made on this issue at question 5 below, the rule has been retained in full to preserve the status quo.</p>
<p>3. Do you have any comments to make about the new powers to strike out a case in specific circumstances?</p>	<p>Respondents were generally supportive of rule 4 however one respondent made a suggestion to clarify the circumstances that could result in a case being struck out.</p>	<p>Rule 4 is now rule 5. Wording has been amended to replace “strike out” with the word “dismiss”. The circumstances in which a case can be dismissed are now also listed. It is considered that there is sufficient information contained throughout the Rules to provide</p>

		clarity as to the circumstances when a case is to be struck out.
4. 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?	<p>Most respondents agreed that the process of review should continue at the level of a new legal member (formerly an Adjudicator). One respondent answered that their view was that the power should now fall within the remit of the new Chamber President.</p>	<p>Rule 17 details the review process set out in section 43 of the Tribunals (Scotland) Act 2014. This allows for the First-tier Tribunal to review a decision at its own instance, in addition to responding to such a request from a party.</p> <p>Where practicable, the review is to be undertaken by a different member of the First-tier Tribunal from the member who made the original decision to which the review relates.</p>
5. Do you have any further comments?	<p>One respondent questioned whether it was appropriate for an Adjudicator to be asking for a review of their own decision.</p> <p>Another respondent referred back to question 2 above, confirming that whilst new modern technology is welcome, a reasonable time period is still necessary to allow a case to be progressed or not called.</p>	<p>Rule 17 allows for the First-tier Tribunal to review a decision at its own instance, in addition to responding to such a request from a party. This is set out in section 43 of the Tribunals (Scotland) Act 2014 and is a right of review which extends across all Scottish Tribunals.</p> <p>The views on rule 11(3) have been carefully considered. As there is no clear consensus on disposal times for hearings, the rule has been retained in full to preserve the status quo.</p>
1. 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	No issues were raised.	Noted.

Regulatory Chamber?		
2. Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing appeals from the General Regulatory Chamber?	No issues were raised.	Noted.
3. Do you have any other comments you wish to make?	No issues were raised.	Noted.



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