

Tribunals (Scotland) Act 2014

Consultation on regulations for new Transport Appeals

March 2022

Tribunals (Scotland) Act 2014

Consultation on draft regulations regarding:

- (1) The allocation of functions to the First-tier Tribunal for Scotland General Regulatory Chamber for appeals relating to Low Emission Zone Schemes, Workplace Parking Licensing Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

- (2) The amendment of the composition and Rules of Procedure in the First-tier Tribunal for Scotland General Regulatory Chamber and the Upper Tribunal for Scotland for appeals relating to Low Emission Zone Schemes, Workplace Parking Licensing Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

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Part 1: Policy Background

Policy background to the structure of the Tribunals (Scotland) Act 2014

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 for the functions of existing tribunals and their membership to be transferred 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.

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 had been established in an ad hoc fashion, with no common system of leadership, appointments, practice and procedure or reviews and appeals. This could lead to a narrowness of outlook and allowed for a variation of standards and performances across the tribunals landscape.

6. The 2014 Act sought 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. By establishing a more coherent framework for tribunals, opportunities have been created for improvement in the quality of services that cannot be achieved by tribunals operating separately.

General information on the new functions created in the Transport (Scotland) Act 2019.

7. The functions referred to in this consultation are entirely new functions, introduced by the Transport (Scotland) Act 2019. The 2019 Act introduces new rights of appeal to the Scottish Tribunals in relation to new transport policies to be introduced into Scotland on Low Emission Zones Schemes (known as the LEZ schemes”), Workplace Parking Licensing Schemes (known as the WPL schemes) and the prohibition of Dropped Footway Parking, Pavement parking and Double Parking.

8. It is anticipated that these new functions will be allocated to the General Regulatory Chamber (“GRC”) of the First-tier Tribunal for Scotland.

9. The functions of the Scottish Charity Appeals Panel (SCAP) to consider appeals against decisions made by the Office of the Scottish Charity Regulator were transferred to the GRC in 2018 and the functions of the Parking and Bus Lane Appeal Tribunal for Scotland were transferred to the GRC in 2020.

10. The GRC currently considers appeals against penalty charge notices issued by a number of councils within Scotland for parking contraventions and bus lane enforcement notifications.

11. It is anticipated that the GRC will be the most appropriate chamber of the First-tier Tribunal in which to accommodate and operate the new functions set out below, as introduced by the 2019 Act.

12. This is because the current members of the GRC have experience of dealing with transport related appeals, and because the existing composition and Rules of Procedure regulations can be amended to accommodate the new functions, as outlined below.

13. It is proposed that the appeal functions relating to LEZ schemes and WPL schemes will be allocated into the Scottish Tribunals on 1 June 2023 to the GRC. It is proposed that the appeal functions relating to the prohibition of dropped footway parking, double parking and pavement parking will be allocated into the Scottish Tribunals on 1 December 2023. The draft regulations are attached at Annexes A and B.

14. The draft regulations in Annex A provide for the allocation of functions to the First-tier Tribunal for Scotland GRC for appeals relating to LEZ Schemes, WPL Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

15. The draft regulations in Annex B set out amendments to the composition and Rules of Procedure in the First-tier Tribunal for Scotland General Regulatory Chamber and the Upper tribunal for Scotland for appeals relating to Low Emission Zone Schemes, Workplace Parking Licensing Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

Specific detail of the new functions created in the Transport (Scotland) Act 2019.

Low Emission Zone Schemes – Policy Background

16. LEZ schemes set an environmental limit on certain road spaces (known as low emission zones), restricting access for the most polluting vehicles in order to improve air quality. This helps protect public health within our towns and cities,

making them more attractive places in which to live, work and to visit. The LEZ schemes are set out in the Low Emission Zones (Scotland) Regulations 2021¹.

17. The Transport (Scotland) Act 2019 also provides for the civil enforcement of LEZ schemes and any contraventions that occur within the LEZ². [The Low Emission Zones \(Emission Standards, Exemptions and Enforcement\) \(Scotland\) Regulations 2021³](#) have been made and are now in force for this purpose and to facilitate such enforcement.

18. Vehicles that do not meet the emission standards set by a LEZ scheme for a LEZ will be penalised if entering that LEZ⁴. A penalty charge will be payable when a non-compliant vehicle enters the LEZ. A penalty charge, following review, may be appealed to the First-tier Tribunal.

Workplace Parking Licensing Schemes – Policy background

19. The Transport (Scotland) Act 2019 permits Scottish local authorities to set up workplace parking licensing (known as “WPL”) schemes. It will be for local authorities to decide whether they wish to use this power to set up WPL schemes and, if so, to shape proposals to suit local circumstances.

20. Where a WPL scheme is in place, liable occupants of premises will be required to obtain a licence from the local authority for each workplace parking place provided for use by employees and certain visitors such as workers, agents, suppliers, business customers and business visitors. Parking places made available for someone attending a course of education or training, and parking places made available for members of bodies whose affairs are controlled by its members, may also require to be licensed under the WPL scheme.

21. A charge will be levied for each workplace licence on the basis of the number of parking places specified in the licence. Obtaining a WPL licence and paying any levies will be the responsibility of the occupier of the premises, i.e. the employer, business, or organisation, except in certain circumstances.

22. The local authority will make licensing decisions for the issue of WPL licences to occupiers of premises. These decisions, following review, may be appealed to the sheriff court.

23. The Transport (Scotland) Act 2019 provides for the civil enforcement of WPL schemes⁵. Contraventions under the WPL schemes will be subject to a penalty charge payable by the occupier of the premises. A penalty charge, following review, may be appealed to the First-tier Tribunal. [The Workplace Parking Licensing](#)

¹ S.S.I 2021/26.

² Section 8 of the Transport (Scotland) Act 2019.

³ S.S.I. 2021/177.

⁴ Section 6 of the Transport (Scotland) Act 2019.

⁵ Section 83 of the Transport (Scotland) Act 2019.

[\(Scotland\) Regulations 2022](#)⁶ have been made and are now in force for this purpose and to facilitate such enforcement.

24. It is now for Scottish local authorities to decide if, and when, to make and operate local WPL schemes.

Prohibition of Dropped Footway Parking, Double Parking and Pavement Parking – Policy background.

25. The Transport (Scotland) Act 2019 introduces three new prohibitions on the parking of vehicles in Scotland: in relation to parking on dropped footways⁷, on pavements⁸ and double parking⁹. These prohibitions will apply across all local authority areas in Scotland.

26. When these prohibitions come into effect, vehicles will be penalised for double parking or on pavements or dropped footways, although there will be exemptions for certain types of parking such as for emergency workers or for delivery drivers. Local authorities will also have the power to exempt certain streets or areas as they deem locally appropriate.

27. A penalty charge will be payable for contraventions of these parking prohibitions¹⁰. The Transport (Scotland) Act 2019 provides for the civil enforcement of these parking prohibitions and any resulting contraventions¹¹. Regulations relating to the enforcement arrangements for these parking prohibitions are still to be drafted but the current proposal is that these regulations, once made, will provide for penalty charges issued in relation to parking prohibitions, to be appealed to the First-tier Tribunal for Scotland.

⁶ S.S.I. 2022/4.

⁷ Section 56 of the Transport (Scotland) Act 2019.

⁸ Section 50 of the Transport (Scotland) Act 2019.

⁹ Section 54 of the Transport (Scotland) Act 2019.

¹⁰ Section 58 of the Transport (Scotland) Act 2019.

¹¹ Sections 59, 61, 62 and 63 of the Transport (Scotland) Act 2019. Scottish Ministers may also make regulations in connection with the enforcement of these parking prohibitions under these sections of the 2019 Act but no regulations are yet made at this time.

Part 2:

Consultation on Draft regulations allocating functions to the First-tier Tribunal for Scotland General Regulatory Chamber for appeals relating to Low Emission Zone Schemes, Workplace Parking Licensing Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

Background

28. Section 20 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the organisation of the First-tier Tribunal into chambers, and to set out how the functions of the First-tier Tribunal are to be allocated between those chambers.

Draft regulations

29. The draft regulations in Annex A provide for the allocation of new functions to the General Regulatory Chamber of the First-tier Tribunal for Scotland.

30. These new functions will provide the General Regulatory Chamber with additional responsibility to deal with appeals against penalty charges issued for vehicle contraventions set out in certain sections of the Transport (Scotland) Act 2019. These relate to:

- Low Emission Zone schemes
- Workplace Parking Licensing schemes
- the Dropped Footway Parking prohibition
- the Double Parking prohibition
- the Pavement Parking prohibition.

31. As set out at paragraphs 11 and 12 above the policy intention is for decisions in relation to these new functions to be heard by the members of the First-Tier Tribunal General Regulatory Chamber who already hear appeals in relation to penalty charge notices issued for parking and bus lane contraventions. Onward appeals from the First-tier Tribunal General Regulatory Chamber will be permitted on a point of law only to the Upper Tribunal for Scotland.

32. When legal members of the First-tier Tribunal for Scotland General Regulatory Chamber exercise their current functions to hear appeals in relation to parking and bus lane contraventions, they are referred to as the First-tier Tribunal General Regulatory Chamber Parking and Bus Lane Appeals. As the proposed new functions will relate not only to parking and bus lane contraventions, but will also now include contraventions in relation to low emission zone schemes, workplace parking licensing schemes as well as prohibitions on dropped footway parking, double parking and pavement parking, a change to this reference is being considered. The current proposal is for legal members, when exercising both their current functions relating to parking and bus lane contraventions as well as their new functions in this Chamber, to be referred to as the First-tier Tribunal General Regulatory Chamber Transport Appeals and informally known as the Transport Tribunal; however, views are being sought on this point.

Questions on the allocation of the functions to the First-tier Tribunal General Regulatory Chamber of the Scottish Tribunals

33. Q1: Do you have any comments on the draft regulations relating to the allocation of new functions for Low Emission Zone schemes, Workplace Parking Licensing schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking to the First-tier Tribunal General Regulatory Chamber of the Scottish Tribunals?

34. Q2: Do you have any comments on the informal name being proposed for use when members in this Chamber are exercising these new transport related functions as well as their current functions relating to parking and bus lane contraventions?

35. Q3: Do you have any further comments you wish to make regarding the allocation of the new transport related functions to the First-tier Tribunal General Regulatory Chamber?

Part 3:

Consultation on draft regulations amending the composition and the Rules of Procedure in the First-Tier Tribunal for Scotland General Regulatory Chamber and the Upper Tribunal for Scotland for appeals relating to Low Emission Zone Schemes, Workplace Parking Licensing Schemes and the prohibition of Dropped Footway Parking, Pavement Parking and Double Parking.

Background

36. Schedule 9, paragraph 4(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations setting out the procedural rules to be applicable to chambers of the First-tier Tribunal for Scotland and to the Upper Tribunal.

37. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulations, to determine the composition of the First-tier and Upper Tribunals.

Draft regulations

38. The draft regulations in Annex B set out amendments to be made to the current Rules of Procedure which apply to parking and bus lane appeals in the First-tier Tribunal General Regulatory Chamber. They also set out amendments to be made to composition of the Scottish Tribunals when deciding cases relating to the new functions before the General Regulatory Chamber and appeals from the General Regulatory Chamber to the Upper Tribunal for Scotland.

First-tier Tribunal for Scotland

39. The Scottish Government proposes that the composition of the First-tier Tribunal for Scotland General Regulatory Chamber when convened to hear appeals relating to LEZ schemes, WPL schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking should mirror the current composition of the General Regulatory Chamber when convened to hear appeals in relation to a parking case or a bus lane case. This is currently provided for by regulation 3 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020¹². This is intended to ensure consistency in the composition of the General Regulatory Chamber, where legal members have experience and knowledge of dealing with similar transport-related cases.

40. As a result, it is proposed that cases in relation to the new functions be decided by a single legal member of the First-tier Tribunal General Regulatory Chamber. Where practicable, a legal member must not have been involved in the case prior to its being appealed, reviewed or referred.

41. There are Rules of Procedure already in place in the First-tier Tribunal General Regulatory Chamber which apply in parking and bus lane appeals by way of

¹² S.S.I. 2020/97.

the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020¹³. The intention is to apply the same Rules of Procedure to appeals cases relating to LEZ schemes, WPL schemes and parking prohibition contraventions.

42. Despite no substantive changes being proposed to the Rules of Procedure, they do need to be amended to ensure that they will also apply to the new appeal cases. The changes relate to ensuring that the new terminology in relation to the LEZ schemes, WPL schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking is incorporated into the Rules of Procedure. These include various definitions within the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020¹⁴ and the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020¹⁵, including changes to the meaning of the words of:

- “appeal”
- “notice of rejection”
- “original representations”
- “penalty charge notices
- “respondent authority”.

43. In addition, rule 14 of the Rules of Procedure requires to be amended to make provision for the use of additional approved devices in the enforcement regimes for LEZ, WPL and parking prohibitions contraventions. Please note that the parking prohibitions regulations are not yet finalised and therefore additional approved devices, if necessary, will also be added to rule 14 once known.

44. At present, the First Tier General Regulatory Chamber, when hearing appeals relating to parking and bus lane contraventions, is referred to as the Parking and Bus Lane Tribunal. This name appears in correspondence with First-tier Tribunal General Regulatory Chamber, and as referred on their website at www.generalregulatorychamber.scot. There no legislative provision is made for this name.

45. As the jurisdiction of the First-tier Tribunal General Regulatory Chamber is now increasing to encompass both parking and bus lane appeals and now also appeals relating to penalty charge notices issued for low emission zone, workplace parking licensing and parking prohibition contraventions, it is considered appropriate to change the name of the Tribunal.

46. The Traffic Penalty Tribunal England & Wales operates in that jurisdiction handling similar appeal cases. However, in Scotland, as the jurisdiction of the First-tier Tribunal General Regulatory Chamber is likely also to incorporate appeals relating to bus schemes in the future, it is considered a more generic name would be appropriate. As a result, the current proposal is to change the Parking and Bus Lane

¹³ S.S.I 2020/98

¹⁴ S.S.I 2020/98

¹⁵ S.S.I 2020/97

Tribunal to the Transport Tribunal. We would welcome views on this proposal as well as any other comments.

Upper Tribunal for Scotland

47. The Scottish Government proposes that the composition of the Upper Tribunal for Scotland when convened to hear appeals relating to LEZ schemes, WPL schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking should mirror the current composition of the Upper Tribunal when convened in relation to a parking case or a bus lane case, as is currently provided for by regulation 4 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020¹⁶.

48. As a result, it is proposed that cases in relation to the new functions be decided by a legal or judicial member of the Upper Tribunal acting alone, the Chamber President of the General Regulatory Chamber (as long as they were not involved in the case prior to its being appealed, reviewed or referred), the President of Tribunals, the Lord President, or a judicial member of the Upper Tribunal. A judicial member of the Upper Tribunal is, in terms of these regulations, a judge of the Court of Session or a sheriff.

49. There are no proposed changes to the procedure or composition for the Upper Tribunal as it is anticipated that the current rules are fit for purpose.

Questions on the First-Tier General Regulatory Chamber rules of procedure and composition.

50. Q4: Do you have any comments on the proposed composition of the First-tier Tribunal General Regulatory Chamber when dealing with appeals relating to Low Emission Zone schemes, Workplace Parking Licensing schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking?

51. Q5: Do you have any comments on the proposals to apply the same Rules of Procedure in the General Regulatory Chamber as are currently used in parking and bus lane cases to the new cases heard in the General Regulatory Chamber relating to Low Emission Zone schemes, Workplace Parking Licensing schemes and the prohibition of Dropped Footway Parking, Double Parking and Pavement Parking?

52. Q6: Do you have any further comments you wish to make on the draft regulations or on any of the above matters?

¹⁶ S.S.I. 2020/97.

Part 4: Responding to this Consultation

53. We are inviting responses to this consultation by 14 June 2022.

54. 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:

<https://consult.gov.scot/justice/allocating-new-transport-appeals-to-grc>

55. 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 14 June 2022.

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

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

57. 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.

58. 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

59. 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 on the Scottish Government's consultation website, the address of which is <http://consult.scotland.gov.uk>.

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

61. 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.



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