

# Equalities, Human Rights and Civil Justice Committee

11th Meeting, 2023 (Session 6), Tuesday 9 May 2023

## Subordinate legislation

### Note by the Clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instruments:
  - [The First-tier Tribunal for Scotland General Regulatory Chamber and Upper Tribunal for Scotland \(Composition and Rules of Procedure\) \(Miscellaneous Amendment\) Regulations 2023 \(SSI 2023/Draft\)](#)
  - [The First-tier Tribunal for Scotland \(Allocation of Functions to the General Regulatory Chamber\) Regulations 2023 \(SSI 2023/Draft\)](#)

#### The First-tier Tribunal for Scotland General Regulatory Chamber and Upper Tribunal for Scotland (Composition and Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft)

2. The Tribunals (Scotland) Act 2014 created a new structure for tribunals dealing with devolved matters under the judicial leadership of the Lord President of the Court of Session as head of the Scottish Tribunals.
3. It provides for a First-tier Tribunal for Scotland divided into chambers and an Upper Tribunal for Scotland divided into divisions.
4. The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 provide for the rules of procedure to apply in the General Regulatory Chamber when hearing appeals against decisions of a local authority to issue parking penalty charge notices or bus lane charge notices.
5. The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations

2020 provide for the composition of the General Regulatory Chamber and the Upper Tribunal when dealing with parking cases and bus lane cases.

6. These Regulations amend:

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

to enable the General Regulatory Chamber and the Upper Tribunal to hear appeals against decisions of a local authority to issue penalty charge notices relating to low emission zone schemes, double parking prohibitions, pavement parking prohibitions, dropped footway parking prohibitions and workplace parking licensing schemes. This reflects changes introduced under the Transport (Scotland) Act 2019.

## The First-tier Tribunal for Scotland (Allocation of Functions to the General Regulatory Chamber) Regulations 2023 (SSI 2023/Draft)

7. The Tribunals 2014 Act created a new structure for the devolved tribunals in Scotland. Under powers in the Tribunals (Scotland) Act 2014 the Scottish Ministers can transfer the functions of some existing tribunals to the new First-tier Tribunal which was established under that Act.

The Policy Note states that the Transport (Scotland) Act 2019 legislates for the creation and civil enforcement of:

- Low Emission Zones (LEZ) schemes
- Workplace Parking Licensing
- Parking prohibitions specifically pavement parking, double parking and dropped footway parking

The General Regulatory Chamber currently deals with appeals against parking and bus lane contraventions. This instrument expands the current functions to include appeals, referrals or reviews related to Low Emission Zones (LEZ) schemes, Workplace Parking Licensing and further parking prohibitions.

## Delegated Powers and Law Reform Committee Consideration

8. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on [28 March 2023](#). The DPLR Committee agreed that

it did not need to draw the Parliament's attention to either of the instruments on any grounds within its remit.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

9. The draft instruments were laid on 22 March 2023 and referred to the Equalities, Human Rights and Civil Justice Committee. The instruments are subject to affirmative procedure (Rule 10.6) and due to come into force on 1 June 2023. It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
10. The previous Minister for Community Safety (Elena Whitham) has, by motions [S6M-08337](#) and [S6M-08338](#) proposed that the Committee recommends the approval of the instruments.
11. The newly appointed Minister for Victims and Community Safety (Siobhian Brown) is due to attend the Committee meeting on 9 May to answer any questions on the instruments and to move the motions for approval.
12. **It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 16 May 2023. Thereafter, the Parliament will be invited to approve the instruments.**
13. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instruments for publication.**

Clerks to the Committee  
May 2023

# Annexe A

## Scottish Government Policy Note

### The First-tier Tribunal for Scotland General Regulatory Chamber and Upper Tribunal for Scotland (Composition and Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft)

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 10(2) and (3), 38(1) and (2), 40(1) to (5) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 ('the 2014 Act'). The instrument is subject to affirmative procedure.
2. In accordance with section 11(2) and paragraph 4(3) schedule 9 of that Act, the President of the Scottish Tribunals and other persons as considered appropriate have been consulted.

### Purpose of the Instrument

3. The purpose of this instrument is to amend the composition of the First-tier Tribunal General Regulatory Chamber and the Upper Tribunal when hearing appeals and amend the procedure of the General Regulatory Chamber to include: appeals in relation to Low Emission Zone (LEZ) schemes; Workplace Parking Licensing schemes; and, dropped footway parking, double parking and pavement parking prohibitions as contained in the Transport (Scotland) Act 2019.

### Policy Objectives

4. The 2014 Act allows Scottish Ministers to determine the composition of the First-tier Tribunal for Scotland or the Upper Tribunal for Scotland when convened to decide any matter in a case before it.
5. The First-tier Tribunal for Scotland and the Upper Tribunal for Scotland were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the Tribunal's functions, with the General Regulatory Chamber dealing with appeals against parking and bus lane contraventions.
6. These Regulations amend the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 and the First-tier for Scotland General Regulatory Chamber

Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 (SSI 2020/97) to enable the General Regulatory Chamber to hear appeals against decisions of a local authority to issue penalty charge notices relating to low emission zone schemes, double parking prohibitions, dropped footway parking prohibitions, pavement parking prohibitions and workplace parking licensing schemes.

7. Fuller 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.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

8. The Transport (Scotland) Act 2019 provides legislation enabling the creation and civil enforcement of: Low Emission Zone Schemes; Workplace licensing schemes; and dropped footway parking, double parking and pavement parking prohibitions.

## Consultation

9. A consultation with interested parties took place in 2022. There were no concerns raised in relation to the proposed composition of the First-tier Tribunal or Upper Tribunal.
10. A full list of those consulted and who agreed to the release of their consultation responses is available on the Scottish Government website – see link below:

[Tribunals \(Scotland\) Act 2014 consultation on regulations allocating the new Transport Appeals to the General Regulatory Chamber - Scottish Government - Citizen Space](#)

## Impact Assessments and Financial Effects

11. An Equality Impact Assessment (“EQIA”) has already been completed for the Tribunals (Scotland) Bill – see link below:

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

12. An Equality Impact Assessment (EQIA) is not required for these regulations.
13. A Business and Regulatory Impact Assessment (BRIA) is not required as the instrument has no financial effects on the Scottish Government, local government, the third sector or on business.

## Annexe B

# The First-tier Tribunal for Scotland (Allocation of Functions to the General Regulatory Chamber) Regulations 2023 (SSI 2023/Draft)

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 20(2) and 79(1) of the Tribunals (Scotland) Act 2014. The instrument is subject to affirmative procedure.
2. In accordance with section 11(1)(a) and (b) of the 2014 Act, the approval of this instrument by the Lord President of the Court of Session has been obtained and other persons have been consulted as considered appropriate.

## Purpose of the Instrument

3. The purpose of the instrument is to provide for the allocation of certain functions to the First-tier Tribunal for Scotland, General Regulatory Chamber. These functions relate to Low Emission Zone (LEZ) schemes; Workplace Parking Licensing schemes; and, pavement parking, double parking, and, dropped footway parking prohibitions as contained in the Transport (Scotland) Act 2019.

## Policy Objectives

4. The First-tier Tribunal for Scotland was established by the Tribunals (Scotland) Act 2014 (“the 2014 Act”).
5. The First-tier Tribunal for Scotland is divided into chambers according to the subject matter of the Tribunal’s functions. The 2014 Act allows Scottish Ministers to allocate functions to chambers of the Scottish Tribunals.
6. The Transport (Scotland) Act 2019 (“the 2019 Act”) provides legislation enabling the creation and civil enforcement of: Low Emission Zone (LEZ) schemes; Workplace Parking Licensing schemes; and dropped footway parking, double parking and pavement parking prohibitions.
7. The General Regulatory Chamber currently deals with appeals against parking and bus lane contraventions. These Regulations amend the current functions of the General Regulatory Chamber to include appeals, referrals or reviews relating to Low Emission Zone (LEZ) schemes, workplace parking licensing schemes, and dropped footway parking, double parking, pavement parking prohibitions.
8. To provide for these routes of appeal, two statutory instruments are being promoted. This one, allocating these new functions to the General Regulatory Chamber together with the First-tier Tribunal for Scotland General Regulatory Chamber and Upper Tribunal for Scotland (Composition and Rules of

Procedures) (Miscellaneous Amendment) Regulations 2023 which amend the existing rules of procedure accordingly.

9. Fuller 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.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

## Consultation

10. A consultation with interested parties took place in 2022. There were no concerns raised in relation to the proposals regarding the First-tier Tribunal or Upper Tribunal.
11. A full list of those consulted and who agreed to the release of their consultation responses is available on the Scottish Government website – see link below:

[Tribunals \(Scotland\) Act 2014 consultation on regulations allocating the new Transport Appeals to the General Regulatory Chamber - Scottish Government - Citizen Space](#)

## Impact Assessments and Financial Effects

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