

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

The Upper Tribunal for Scotland (Bus Registration Appeals Rules of Procedure) Regulations 2024 (SSI 2024/249)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 14 November 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Upper Tribunal for Scotland \(Bus Registration Appeals Rules of Procedure\) Regulations 2024](#) (SSI 2024/249)

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

Laid on: 20 September 2024

Procedure: Negative

Deadline for committee consideration: 11 November 2024

Deadline for Chamber consideration: 14 November 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 2 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
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. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 8 October 2024 and reported on it in its [60th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. These Regulations make provision regulating the practice and procedure to be followed in the Upper Tribunal when deciding appeals against the imposition of penalties under section 39(5A) of the Transport (Scotland) Act 2001 (“the 2001 Act”) and appeals against service standard decisions made by the Traffic Commissioner in connection with bus services improvement partnerships under the 2001 Act.
9. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

10. So far, no motion recommending annulment has been lodged.
11. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

12. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
13. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee October 2024

Annexe A: Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to negative procedure.

Purpose of the instrument

The purpose of the instrument is to set rules governing the practice and procedure to be followed in the Upper Tribunal for Scotland (“the Upper Tribunal”) in relation to certain appeals. The appeals in question are those under section 39(5A) of the Transport (Scotland) Act 2001 (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. Paragraph 4 of schedule 9 of the 2014 Act allows the Scottish Ministers, by regulations, to make Tribunal Rules until such time as the provisions of that Act conferring responsibility on the Scottish Civil Justice Council and the Court of Session for the making of Tribunal Rules are commenced.

These regulations make provision regulating the practice and procedure to be followed in the Upper Tribunal when deciding appeals against the imposition of penalties under section 39(5A) of the Transport (Scotland) Act 2001 (“the 2001 Act”) and appeals against 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.

The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 provide rules of procedure for the Upper Tribunal, but these relate to appeals from the First-tier Tribunal only. It is therefore necessary to constitute new rules for the Upper Tribunal when it sits as an initial appellate tribunal in these cases.

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 Rules of Procedure) 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](#)

One of the respondents sought clarity on the powers of disposal available to the Upper Tribunal in respect of the 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.