

Draft Regulations laid before the Scottish Parliament under section 79(2)(c) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

SCOTTISH STATUTORY INSTRUMENTS

2019 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland (Transfer of Functions and Members of the Parking and Bus Lane Adjudicators) Regulations 2019

Made -----

Coming into force *1st April 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 29, 79(1), 80 and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014 (a)¹ and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions and Members of the Parking and Bus Lane Adjudicators) Regulations 2019.

(2) These Regulations come into force on 1st April 2019.

Interpretation

2. In these Regulations -----

“the 1991 Act” means the Road Traffic Act 1991(b)²;

“the 2001 Act” means the Transport (Scotland) Act 2001(c)³;

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

¹ 2014 asp 10.

² 1991 c.40

³ 2001 asp 2

“appointed day” means 1st April 2019;

“bus lane adjudicator” means a person appointed under regulation 11(a) of The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011;

“bus lane adjudicators functions” means the functions exercised by bus lane adjudicators of proceedings in relation to parts IV and V of The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011;

“First-tier Tribunal” means the First-tier Tribunal for Scotland;

“parking adjudicator” means a person appointed under section 73(3) of the Road Traffic Act 1991 or paragraph 5 of schedule 6 of the 1991 Act;

“parking adjudicators functions” means the functions exercised by parking adjudicators by virtue of section 72(2) and 73(3) of the Road Traffic Act 1991 or paragraph 5 of schedule 6 of the 1991 Act; and

“proceedings” means proceedings before the parking and bus lane adjudicators in relation to appeals against parking contraventions and the removal of vehicles and appeals against Bus Lane Enforcement Charge Notices.

3.--- Transfer of parking and bus lane adjudicators functions to the First-tier Tribunal

(1) Subject to regulations 4 and 5, the parking adjudicator functions and bus lane adjudicators functions are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal General Regulatory Chamber.

4.--- Transfer of members of the Parking and Bus Lane Adjudicators to the First-tier Tribunal

(1) Subject to paragraphs (2) and (3), the parking adjudicators and bus lane adjudicators on the coming into force of these Regulations are transferred to and become legal members of the First-tier Tribunal.

(2) The persons transferred to the First-tier Tribunal under paragraph (1) are (subject to the provisions of the 2014 Act) to be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers immediately before transfer, which are to supersede any existing terms and conditions of appointment.

(3) A person who is aged 70 or over on the coming into force of these Regulations may transfer only if the Scottish Ministers in consultation with the President of Tribunals consider it desirable in the public interest that the member should transfer.

(4) Paragraph (1) does not apply to any Parking Adjudicator and Bus Lane Adjudicator if the person has already been transferred to and is a member of the First-tier Tribunal by virtue of

regulations made under section 28(2) of the 2014 Act which were in force prior to these Regulations coming into force.

5.--- Transitional and savings provisions

- (1) Section 4 of The First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 is not to apply to the First-tier Tribunal for Scotland General Regulatory Chamber for Parking and Bus Lane Appeals Cases.
- (2) Schedule 1 of these Regulations contains further transitional and savings provisions.

6.--- Consequential amendments, repeals and revocations

- (1) Schedule 2 of these Regulations contains consequential amendments and repeals of primary legislation.
- (2) Schedule 3 of these Regulations contains consequential amendments and revocations of subordinate legislation.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Transitional and savings provisions

Regulation 5

Representations, appeals and proceedings in progress before the Parking and Bus Lane Adjudicators immediately before 1st April 2019 to transfer to the First-tier Tribunal

1. Any representation or appeal to the Parking Adjudicator or Bus Lane Adjudicator in progress or pending including applications in relation to parking fines and bus lane encroachment immediately before the appointed day but not yet determined and any proceedings of the Parking Adjudicator or Bus Lane Adjudicator in progress immediately before that date must be transferred to and is to be completed by the First-tier Tribunal but with so far as possible the same person hearing and determining the case before the First-tier Tribunal as a member of that tribunal as was prior to the appointed day hearing the case as a member of the General Regulatory Chamber for Parking and Bus Lane cases.

Decisions, directions and orders of the Parking and Bus Lane Adjudicators to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in or in respect of a representation or appeal to, any proceedings before, the Parking Adjudicator and Bus Lane Adjudicator which is in force immediately before the appointed day remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

Time limits in respect of representations and appeals to, and proceedings before, the Parking and Bus Lane Adjudicators to carry over to the First-tier Tribunal

3. Any time limit which has started to run before the appointed day in respect of a representation, an appeal and proceeding before, the Parking Adjudicator and Bus Lane Adjudicator (and which has not expired) must continue to apply where representations, appeals and proceedings are transferred to the First-tier Tribunal.

Unexercised right of review to a different Adjudicator if exercised, is a right of review to the First-tier Tribunal

4. Where in respect of a decision of the Parking Adjudicator or Bus Lane Adjudicator before 1st April 2019, there lies a right of review to a different adjudicator which has not been exercised before that date but is still exercisable, any review on or after 1st April 2019 shall be to the First-tier Tribunal.

Exercised right of review to a different Adjudicator is a right of review to the First-tier Tribunal

5. Where in respect of a decision of the Parking Adjudicator or Bus Lane Adjudicator before 1st April 2019, there lies a right of review to a different Adjudicator which has been exercised before that date, the review shall not be affected by these Regulations and be completed by the different Adjudicator.

Unexercised right of appeal is a right of appeal to the Upper Tribunal

6. Where in respect of a decision of the Parking Adjudicator or Bus Lane Adjudicator before 1st April 2019, there lies a right of appeal on point of law only to the Upper Tribunal, which has not been exercised before that date but is still exercisable, any appeal on or after 1st April 2019 shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

Exercised right of appeal is a right of appeal to the Upper Tribunal

7. Where in respect of a decision of the Parking Adjudicator or Bus Lane Adjudicator before 1st April 2019, there lies a right of appeal on point of law only to the Upper Tribunal which has been exercised before that date, the appeal shall be an appeal from the First-tier Tribunal for the purposes of 46(1) of the 2014 Act.

SCHEDULE 2

Regulation 6

PART 1

Consequential amendments and repeals of primary legislation

1.--- Road Traffic Act 1991

(1) The Road Traffic Act 1991 is amended as follows.

(2) In Schedule 6 for “parking adjudicator” substitute “First-tier Tribunal for Scotland General Regulatory Chamber”.

2.--- Tribunals and Inquiries Act 1992

(1) The Tribunals and Inquiries Act 1992 is amended as follows.

(2) In Schedule 1 (Tribunals Under General Supervision of Council Road traffic) paragraph 40 (b)

after the words Act 1991 (c.40) insert –

“

And a bus lane adjudicator appointed under regulation 11(a) of The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011.”

SCHEDULE 3

Consequential amendments and revocations of subordinate legislation

1.--- The following instruments are revoked:

- (a) The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018⁴
- (b) The Road Traffic (Parking Adjudicators) (North Lanarkshire Council) Regulations 2017⁵
- (c) The Road Traffic (Parking Adjudicators) (Stirling Council) Regulations 2017⁶
- (d) The Road Traffic (Parking Adjudicators) (Angus Council) Regulations 2017⁷
- (e) The Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2017⁸
- (f) The Road Traffic (Parking Adjudicators) (Highland Council) Regulations 2016⁹
- (g) The Road Traffic (Parking Adjudicators) (Inverclyde Council) Regulations 2014¹⁰
- (h) The Road Traffic (Parking Adjudicators) (Argyll and Bute Council) Regulations 2014¹¹

⁴ S.S.I. 2018/62

⁵ S.S.I. 2017/344

⁶ S.S.I. 2017/84

⁷ S.S.I. 2017/81

⁸ S.S.I. 2017/409

⁹ S.S.I. 2016/247

¹⁰ S.S.I. 2014/171

- (i) The Road Traffic (Parking Adjudicators) (East Dunbartonshire Council) Regulations 2013¹²
- (j) The Road Traffic (Parking Adjudicators) (Fife Council) Regulations 2013¹³
- (k) The Road Traffic (Parking Adjudicators) (East Renfrewshire Council) Regulations 2013¹⁴
- (l) The Road Traffic (Parking Adjudicators) (South Ayrshire Council) Regulations 2012¹⁵
- (m) The Road Traffic (Parking Adjudicators) (East Ayrshire Council) Regulations 2012¹⁶
- (n) The Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010¹⁷
- (o) The Road Traffic (Parking Adjudicators) (South Lanarkshire Council) Regulations 2005¹⁸
- (p) The Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004¹⁹
- (q) The Road Traffic (Parking Adjudicators) (Aberdeen City Council) Regulations 2003²⁰
- (r) The Road Traffic (Parking Adjudicators) (Perth and Kinross Council) Regulations 2002²¹
- (s) The Road Traffic (Parking Adjudicators) (City of Glasgow Council) Regulations 1999²²
- (t) The Road Traffic (Parking Adjudicators) (City of Edinburgh Council) Regulations 1998²³

¹¹ S.S.I. 2014/86

¹² S.S.I. 2013/312

¹³ S.S.I. 2013/95

¹⁴ S.S.I. 2013/68

¹⁵ S.S.I. 2012/142

¹⁶ S.S.I. 2012/139

¹⁷ S.S.I. 2010/98

¹⁸ S.S.I. 2005/13

¹⁹ S.S.I. 2004/86

²⁰ S.S.I. 2003/71

²¹ S.S.I. 2002/400

²² S.S.I. 1999/60

²³ S.S.I. 1998/2233

2.---(1) The Bus Lane Contraventions (Charges, Adjudication and Enforcement) Scotland Regulations 2011 is amended as follows.

(2) Part 5 (Appeals Against Charges) is revoked.

3. --(1) The First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 is amended as follows.

(2) After regulation 4(1) (Transitional and savings provisions) insert –

“(1A) Paragraph (1) does not apply to the First-tier Tribunal General Regulatory Chamber Parking and Bus Lane Appeals Cases”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions and members of the Parking and Bus Lane Adjudicators. The First-tier Tribunal was established by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The First-tier Tribunal General Regulatory Chamber for Parking and Bus Lane Appeals cases dealing with appeals against Bus Lane Enforcement Charge Notices, parking contraventions and removal of vehicle matters and is one of two jurisdictions of the General Regulatory Chamber with the other being The Scottish Charity Appeals Panel.

These Regulations also make consequential amendments to legislation. Transitional provisions are made to manage the transfer of on-going casework. When this instrument comes into force on 1st April 2019, all applications to the Parking Adjudicator not yet determined transfer to the First-tier Tribunal, including applications not yet accepted as validly made.