
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

TRIBUNALS AND INQUIRIES

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

Made - - - - 2020

Coming into force - - 1st April 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014(a) 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. These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 and come into force on 1 April 2020.

Interpretation

2. In these Regulations—

“the 2011 Regulations” means the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011(b),

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

“bus lane adjudicator” (except insofar as the context otherwise requires in regulation 5) means a person who is appointed as a parking adjudicator for the purposes of Part 2 of the Road Traffic Act 1991(c) and, by virtue of regulation 11(a) of the 2011 Regulations, is a bus lane adjudicator,

“bus lane contravention” has the meaning given by section 44(3) of the Transport (Scotland) Act 2001(d) in which a motor vehicle is involved, and

(a) 2014 asp 10.

(b) S.S.I. 2011/442.

(c) 1991 c.40 to which there are amendments not relevant to these Regulations.

(d) 2001 asp 2.

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

Transfer of functions of bus lane adjudicators to the First-tier Tribunal

3. The functions exercised by bus lane adjudicators by virtue of Part 4 and Part 5 of the 2011 Regulations are transferred to the First-tier Tribunal with allocation to the General Regulatory Chamber(a).

Transfer of bus lane adjudicators to the First-tier Tribunal

4.—(1) Bus lane adjudicators are transferred to and become legal members of the First-tier Tribunal.

(2) Bus lane adjudicators 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 of appointment to be offered by the Scottish Ministers immediately before transfer, which are to supersede any existing terms and conditions of appointment.

(3) Paragraph (1) does not apply to any bus lane adjudicator if the bus lane adjudicator 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.

Abolition of the office of bus lane adjudicator

5. The office of bus lane adjudicator (created by regulation 11(a) of the 2011 Regulations) is abolished.

Transitional and saving provisions

6. Schedule 1 which contains transitional and saving provisions has effect.

Consequential amendments and revocations

7. Schedule 2 which contains consequential amendments and revocations has effect.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(a) The General Regulatory Chamber of the First-tier Tribunal for Scotland was brought into being by S.S.I. 2016/341.

Transitional and saving provisions

Representations, appeals and proceedings in progress before bus lane adjudicators immediately prior to 1 April 2020 to transfer to the First-tier Tribunal

1. Any representation or appeal to a bus lane adjudicator in progress or pending immediately prior to 1 April 2020 not yet determined and any proceedings before a bus lane adjudicator in progress or pending immediately prior to that date must be transferred to and must 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 1 April 2020 hearing the case as a bus lane adjudicator.

Decisions, directions and orders of 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 a bus lane adjudicator which is given or made immediately prior to 1 April 2020 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, bus lane adjudicators to carry over to the First-tier Tribunal

3. Any time limit which has started to run prior to 1 April 2020 in respect of a representation, appeal or proceedings before a bus lane adjudicator (and which has not expired) continues to apply where representations, appeals or proceedings are transferred to the First-tier Tribunal.

Unexercised right of review, if exercised, is a right of review by the First-tier Tribunal

4. Where in respect of a decision of a proper officer or bus lane adjudicator prior to 1 April 2020 there lies a right to apply for review^(a) which has not been exercised prior to that date, but is still exercisable, any application for review on or after 1 April 2020 is to be to the First-tier Tribunal as if the decision has been made by the First-tier Tribunal and the review is to be a review under section 43 of the 2014 Act.

Exercised right of review is a right of review by the First-tier Tribunal

5. Where in respect of a decision of a proper officer or bus lane adjudicator prior to 1 April 2020 there lies a right of review, which has been exercised prior to that date, the review is to be completed by the First-tier Tribunal as if the application for a review were a request for a review under section 43 of the 2014 Act.

(a) Set out in regulation 21 (review of adjudicator's or proper officer's decision) of the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 (S.S.I. 2011/442).

Consequential amendments and revocations of secondary legislation

Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011

- 1.—(1) The 2011 Regulations are amended in accordance with sub-paragraphs (2) to (9).
- (2) In regulation 2 (interpretation)—
- (a) paragraph (1) is amended as follows—
- (i) omit the entries relating to “adjudicator”, “proper officer” and “register”,
 - (ii) in the entry relating to “statutory grounds for appeal”, for “an adjudicator” substitute “the First-tier Tribunal”,
 - (iii) after the entry relating to “enforcing authority” insert—

““First-tier Tribunal” means the First-tier Tribunal for Scotland and has the meaning given in section 1(1) of the Tribunals (Scotland) Act 2014(a);”, and
 - (iv) after the entry relating to “statutory grounds of appeal” insert—

““Upper Tribunal” has the meaning given in section 1(1) of the Tribunals (Scotland) Act 2014;”, and
- (b) in paragraph (2), omit the entries relating to “charge notice concerned” and “hearing”.
- (3) In regulation 8(5)(m) (charge notices), for “an adjudicator” substitute “the First-tier Tribunal”.
- (4) In regulation 10(4)(b), (4)(e) and (4)(g) (response to representations), for “an adjudicator” substitute “the First-tier Tribunal”.
- (5) The title of Part 4 becomes “APPROVED LOCAL AUTHORITY COSTS”.
- (6) For regulation 11 (conferral of the function of bus lane adjudicator) substitute—

“Costs to be met by Approved Local Authority

11. Where an approved local authority has resolved to impose charges under regulation 3(1) the approved local authority must meet the costs incurred by the Scottish Courts and Tribunals Service(b)—

- (a) for the provision of all accommodation and administrative staff and facilities, and
- (b) in relation to the remuneration and expenses of legal members,

required for the operation of the First-tier Tribunal exercising the functions set out in Part 4 and Part 5 of these Regulations.”.

- (7) In regulation 12 (making an appeal)—
- (a) in paragraph (1), for “adjudicator” substitute “First-tier Tribunal”,
 - (b) in paragraph (2) for “to the proper officer” substitute “in writing to the First-tier Tribunal”, and
 - (c) omit paragraphs (3) to (6).
- (8) Regulations 13 to 29 are revoked.
- (9) In regulation 30(2)(b) (charge certificates) for “the adjudicator’s decision” to the end substitute “the decision by the First-tier Tribunal or the Upper Tribunal is sent to the appellant;”.

(a) 2014 asp 10.

(b) The Scottish Courts and Tribunals Service was established by section 60 of the Judiciary and Courts (Scotland) Act 2008 (2008 asp 6).

Bus Lane Contraventions (Approved Local Authorities) (Scotland) Order 2011

2.—(1) The Bus Lane Contraventions (Approved Local Authorities) (Scotland) Order 2011(a) is amended in accordance with sub-paragraph (2).

(2) In the schedule—

- (a) in the entry for The City of Edinburgh Council for “and S.S.I. 2007/446” substitute “; S.S.I. 2007/446; S.S.I. 2011/323 and S.S.I. 2020/XXX”;
- (b) in the entry for Glasgow City Council for “and S.S.I. 2006/446” substitute “; S.S.I. 2006/446 and S.S.I. 2020/XXX”, and
- (c) in the entry for Aberdeen City Council after “S.S.I. 2006/446” insert “and S.S.I. 2020/XXX”.

(a) S.S.I. 2011/443.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer to the First-tier Tribunal for Scotland General Regulatory Chamber of the functions of bus lane adjudicators. A person appointed as a parking adjudicator by Part 2 of the Road Traffic Act 1991 is also a bus lane adjudicator by virtue of regulation 11(a) of the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 in relation to bus lane contraventions by motor vehicles as set out in section 44(3) of the Transport (Scotland) Act 2001.

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 their subject-matter. The First-tier Tribunal General Regulatory Chamber already has functions transferred from the Scottish Charity Appeals Panel. On 1 April 2020, bus lane adjudicators will transfer into, and become legal members of, the General Regulatory Chamber of the First-tier Tribunal.

Transitional provisions are made to manage the transfer of on-going casework. These Regulations also make consequential amendments to legislation.

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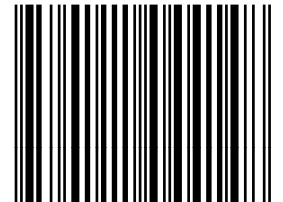
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