

## Business and Regulatory Impact Assessment

<p><b>Title of Proposal - Regulations transferring Parking and Bus Lane Adjudicators into the Scottish Tribunals</b></p>
<p><b>Purpose and intended effect</b></p> <p><b>Background</b></p> <p><i>Tribunals (Scotland) Act 2014</i></p> <p>The Tribunals (Scotland) Act 2014 (the 2014 Act) created a new, two-tier structure for devolved tribunals in Scotland; the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. The 2014 Act is not thought to have any impact on Scottish business or the third sector, nor did it transfer costs, so no BRIA was undertaken.</p> <p>The Parking and Bus Lane Adjudicators consider appeals following the issue of a penalty charge notice for a parking offence or the removal of a vehicle or the issue of a bus lane contravention notice. The functions and members of the Parking and Bus Lane Adjudicators, if approved by the Scottish Parliament, will transfer into the Scottish Tribunals on 1<sup>st</sup> April 2020 and become part of the General Regulatory Chamber of the First-tier Tribunal.</p> <p><i>Appeals to the Upper Tribunal</i></p> <p>There is currently a two-tier tribunal process; appeals to the Parking and Bus Lane Adjudicators followed by a right of review of that decision. Legal Aid is not available for these appeals.</p> <p>A new provision in the Rules of Procedure regulations will now enable a party also to appeal to the Upper Tribunal, on a point of law only. This may be done either by way of application for leave to appeal which is heard by the First-tier Tribunal, who will then decide whether there is a case to be heard, or if the application is refused, by way of an application for leave to appeal made directly to the Upper Tribunal.</p> <p>Under Schedule 2 of the Legal Aid (Scotland) Act 1986 there is provision for civil legal aid to be available “in or with respect to an appeal to the Upper Tribunal for Scotland (including an application for permission to appeal)”.</p> <p>Civil legal aid will be available subject to a merits and a means assessment as part of the application process; eligibility is not automatic.</p> <p>When considering the likely number of appeal applications to the Upper Tribunal, the existing rate of reviews gives a broad indication of potential numbers. For example, in 2017-18 there were 40 requests for a review, of which only 3 were accepted. We also have a precedent in the implementation of new review processes in other tribunals. The grounds for review in all other jurisdictions are significantly wider than the single ground for an appeal, but we are advised that this new process has not impacted business volumes.</p> <p>We would expect there to be even fewer competent appeals to the Upper Tribunal on a point of law, although there may be an increase in the number of applications for leave to appeal. Legal aid will be available to eligible appellants.</p> <p>The current two tier tribunal process requires the local authorities who operate a decriminalised parking and bus lane contravention regimes to enter into arrangements with the Traffic Commissioner, who operates the appeals scheme on their behalf. Each local authority is charged by case, with Adjudicators calculating their time on an hourly basis. Upon transfer, local authorities will continue to fund the provision of the administrative service and SCTS will make service level arrangements with them. They will not at this time fund cases that are appealed to the Upper Tribunal. This is a new right of appeal as a consequence of the transfer to the Scottish Tribunals and the costs will be picked up by Scottish Government until such time as primary legislation can be brought forward.</p> <p><b>Objective and rationale</b></p> <p><i>Appeals to Upper Tribunal</i></p> <p>To provide consistency with other proceedings which come before the First-tier Tribunal, it is appropriate to make regulations to enable a party to appeal to the Upper Tribunal on a point of law only. As with other jurisdictions in the Scottish Tribunals, Legal Aid will be available to support these cases.</p>
<p><b>Consultation</b></p> <p><b>Within Government</b></p> <p>Throughout policy development of the regulations, the tribunals policy team has have been in contact with Transport Scotland, given their interest and expertise in the subject matter.</p> <p>Tribunals policy has also consulted with SLAB, SCTS, the DVSA, the Lord President, the President of the Scottish Tribunals, the President of the General Regulatory Chamber and the existing Parking and Bus Lane Adjudicators, where appropriate.</p> <p><b>Public Consultation</b></p> <p>A public consultation on a draft of the regulations transferring the Parking and Bus Lane Adjudicators into the Scottish Tribunals</p>

was carried out between September and November 2018 and 5 responses were received. Where approval has been given, the responses have been [published](#) online. The consultation addressed the regulations only. However, following the consultation, the potential for applications for appeals on a point of law was raised as a possible issue together with the implications for the Scottish Legal Aid Board

### **Business**

There is no impact on business or the third sector.

### **Options**

#### **Option 1 -**

Doing nothing to the legal aid eligibility criteria, which applies to all appeals in the Upper Tribunal, will allow appellants in Parking and Bus Lane cases to access legal aid for this additional stage in proceedings. Legal aid will be available to support an application to appeal against a decision of the First-tier Tribunal on a point of law.

Scottish Government will pick up the cost of cases in the Upper Tribunal.

#### **Benefits**

As is currently the case, all appellants appealing to the Upper Tribunal are eligible for means tested legal aid. The extension of this right to the new appeal process for Parking and Bus Lane cases will mean that all appellants to the Upper Tribunal are treated equally.

The Scottish Courts and Tribunals Service will be assured that the cost of the administration of parking and bus lane appeals will be met by the Scottish Government.

#### **Cost**

In relation to this new appeal stage, we would expect there to be very few competent appeals to the Upper Tribunal on a point of law. Consequently, we anticipate minimal additional costs accruing to the Scottish Legal Aid Board and to Scottish Government for administration costs.

#### **Option 2 –**

Remove the right of appeal in the Upper Tribunal/legal aid from appellants to the Upper Tribunal.

The transfer to the Scottish Tribunals is intended to facilitate a new simplified, coherent framework for all tribunals. Whilst it is possible to remove the right of appeal in these cases, it is not consistent with policy or the 2014 Act to remove the right of appeal to the Upper Tribunal on cost grounds. Scottish Government will, however in due course, consider if there is an appropriate vehicle to bring forward legislation intended to transfer responsibility for the cost of administering appeals in the Upper Tribunal to local authorities.

The transfer to the Scottish Tribunals is intended to facilitate a new simplified, coherent framework for all tribunals. Whilst it is possible to exclude appellants in these cases from the right to apply for legal aid for appeals to the Upper Tribunal, it is not consistent with policy or the 2014 Act to remove that right on cost grounds.

#### **Benefits**

Minimal cost savings to the Scottish Legal Aid Board and Scottish Government.

#### **Costs**

There would be costs to change the Scottish Legal aid legislation or remove the right of appeal in these cases.

### **Scottish Firms Impact Test**

As set out above, it is not considered that the proposal will have any impact on Scottish business.

### **Competition Assessment**

It is not considered that the proposal will have any impact on competition.

### **Consumer Assessment**

It is not considered that the proposal will have any impact on consumers.

### **Digital Impact Test**

It is not considered that the proposal will have any impact on digital technology.

### **Legal Aid Impact Test**

It is not considered that the proposal will have any significant impact on the Scottish Legal Aid Fund. Given the numbers of cases likely to be appealed on a point of law and the fact that legal aid is means tested, SLAB have indicated that they are not concerned about the extension of legal aid in these cases.

### **Enforcement, sanctions and monitoring**

The proposal does not create any new enforcement mechanisms.

**Implementation and delivery plan**

Existing Scottish Legal Aid Board processes will apply.

**Post Implementation review**

No review will be required..

**Summary and recommendation**

It is recommended that the Justice Committee note that:

- there may be a small increased cost to the Scottish Legal Aid Board, if there are appeals on a point of law to the Upper Tribunal, and appellants are eligible for means tested legal aid. However, we expect those costs to be minimal.
- there may be a small increased cost to the Scottish Government, if there are appeals on a point of law to the Upper Tribunal. However, we expect those costs to be minimal.

**Declaration and publication**

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Ash Denham**

**Date: 13<sup>th</sup> February 2020**

**Minister's name Ash Denham**

**Minister's title Minister for Community Safety**

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