

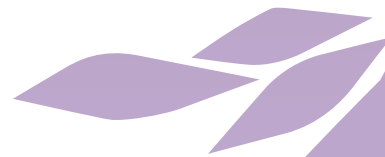


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Justice Committee Comataidh a' Cheartais

Subordinate Legislation Considered by the Justice Committee on 10 March 2020



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



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Scottish Green Party



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Scottish National Party



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Democrats



Shona Robison
Scottish National Party

Scottish Courts and Tribunals Service Instruments

1. At its meeting on 10 March 2020, the Justice Committee considered the following instruments:
 - the [Scottish Courts and Tribunals Service \(Judicial Members\) Amendment Order 2020 \[draft\]](#)
 - the [Scottish Courts and Tribunals Service \(Procedure for Appointment of Members\) Amendment Regulations 2020 \[draft\]](#)
2. The instruments were laid before the Scottish Parliament on 13 February 2020 and referred to the Justice Committee. The instruments are subject to the affirmative procedure.

Purpose of the Instruments

3. The Scottish Courts and Tribunals Service (Judicial Members) (Amendment) Order 2020 [draft] is made under paragraph 2(5) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008(a).
4. The purpose of the Order is to amend Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 to provide that those holding the office of Summary Sheriff may now be appointed to the board of the Scottish Courts and Tribunals Service.
5. The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft] are made under paragraph 3(2) and (3) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008.
6. The purpose of the Regulations is to amend Paragraph (3)(a) of regulation 2 of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 to provide that those holding the office of Summary Sheriff may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service.

Consideration by the Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform Committee considered both instruments at its meeting on 25 February 2020 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

Consideration by the Justice Committee

8. The Minister for Community Safety, Ash Denham MSP, lodged motions S5M-21023 and S5M-21024 proposing that the Justice Committee recommends approval of the instruments. The Committee took oral evidence from the Minister and her officials on the instruments at its meeting on 10 March 2020.
9. The Minister explained in her opening remarks that the office of summary sheriff was established by the Courts Reform (Scotland) Act 2014, and summary sheriffs are now an established part of the judicial landscape in Scotland. However, the Judiciary and Courts (Scotland) Act 2008 currently makes no provision for those holding the office of summary sheriff to be appointed to the board of the Scottish Courts and Tribunals Service.
10. One of the policy intentions of the 2008 act is to ensure that the board has a judicial majority in its membership—including representation from each level of the Scottish judiciary. The amendment order, in conjunction with the consequential amendment to the appointment procedure regulations, will fulfil that policy intention.
11. There being no questions from Members, the Minister moved the motions in her name:
 - S5M-21023 That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft] be approved.
 - S5M-21024 That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft] be approved.
12. The motions were agreed to without debate or dissent.
13. The Justice Committee recommends to the Scottish Parliament that it approve the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft] and the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft].

Parking and Bus Lane Adjudicator Instruments

14. The following four instruments were also considered by the Justice Committee at its meeting on 10 March 2020:
- the [First-tier Tribunal for Scotland \(Transfer of Functions of Bus Lane Adjudicators\) Regulations 2020 \[draft\]](#)
 - the [First-tier Tribunal for Scotland \(Transfer of Functions of Parking Adjudicators\) Regulations 2020 \[draft\]](#)
 - the [First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland \(Composition\) Regulations 2020 \[draft\]](#)
 - the [First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals \(Rules of Procedure\) Regulations 2020 \[draft\]](#)
15. The instruments were laid before the Scottish Parliament on 13 February 2020 and referred to the Justice Committee. The instruments are subject to the affirmative procedure.

Purpose of the Instruments

16. The [First-tier Tribunal for Scotland \(Transfer of Functions of Bus Lane Adjudicators\) Regulations 2020 \[draft\]](#) and the [First-tier Tribunal for Scotland \(Transfer of Functions of Parking Adjudicators\) Regulations 2020 \[draft\]](#) are made under sections 20(2), 28(2), 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014.
17. The purpose of these instruments is to make provision for the transfer to the First-tier Tribunal for Scotland of the functions of bus lane adjudicators and parking adjudicators.
18. The [First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland \(Composition\) Regulations 2020 \[draft\]](#) are made under sections 10(2) and (3), 38(1) and (2) and 40(1) to (5) of the Tribunals (Scotland) Act 2014.
19. The purpose of this instrument is to make provision as to the composition of the General Regulatory Chamber of the First-tier Tribunal for Scotland when dealing with appeals, referrals or reviews of parking cases and bus lane cases.
20. The [First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals \(Rules of Procedure\) Regulations 2020 \[draft\]](#) are made under section 43(3)(b)(ii), section 67(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014.
21. The purpose of this instrument is to provide for the rules of procedure which are to apply in the First-Tier Tribunal for Scotland General Regulatory Chamber when

hearing cases against the decision of a local authority to issue a penalty charge notice or bus lane enforcement notice.

Consideration by the Delegated Powers and Law Reform Committee

22. The Delegated Powers and Law Reform Committee considered all four instruments at its meeting on 25 February 2020 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

Consideration by the Justice Committee

23. The Minister for Community Safety, Ash Denham MSP, lodged motions S5M-21025, S5M-21026, S5M-21027 and S5M-21028 proposing that the Justice Committee recommends approval of the instruments. The Committee took oral evidence from the Minister and her officials on the instruments at its meeting on 10 March 2020.
24. In her opening remarks, the Minister explained the purpose of the instruments, as set out previously. In response to questions from Members, the Minister advised that there are no plans to replace the eligibility criteria that existing adjudicators must meet to allow them to become legal members of the First-Tier tribunal. That is why no specific eligibility criteria regulations have been laid as part of the transfer process. There are only two existing adjudicators, and they both meet the criteria.
25. The Minister also advised that, local authorities will not be expected to cover the additional costs that the new right of appeal to the Upper Tribunal may bring. It is anticipated that there might only be a very small number of such cases that have been referred upwards and that, at the moment, the costs that are associated with those will be covered by the Scottish Government until it is able to update the legislation.
26. There being no further questions from Members, the Minister moved the motions in her name:
- S5M-21025 That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft] be approved.
 - S5M-21026 That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft] be approved.
 - S5M-21027 That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] be approved.

- S5M-21028 That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft] be approved.

27. The motions were agreed to without debate or dissent.

28. The Justice Committee recommends to the Scottish Parliament that it approve the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft], the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft], the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] and the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft].

