



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 19 April 2023  
SP Paper 351  
26th Report, 2023 (Session 6)

# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 18 April 2023**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish Parliament website at:  
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

<b>Introduction</b>	<b>1</b>
<b>Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament</b>	<b>2</b>
<b>No points raised</b>	<b>3</b>
<b>Annex</b>	<b>4</b>

# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Carol Mochan**  
Scottish Labour



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 18 April<sup>i</sup>, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
  - Tuberculosis (Scotland) Order 2023 (SSI 2023/93)
2. The Committee's recommendations in relation to this instrument are set out in the next section of the report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

---

<sup>i</sup> James Dornan MSP substituted for Stuart McMillan MSP

# Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

## Tuberculosis (Scotland) Order 2023 (SSI 2023/93)

4. This instrument consolidates and revokes existing secondary legislation which provides measures to prevent the spread of tuberculosis in bovine animals, and also introduces new measures to strengthen prevention and increase compliance.
5. The Committee identified an error in article 26(2)(a) of the Order in that the reference to article 2 of the instrument should instead be to article 22.
6. The Scottish Government confirmed it intends to rectify this error by way of a correction slip.
7. A copy of the correspondence can be found in the **Annex**.
8. The lead committee for this instrument is the Rural Affairs and Islands Committee.

9. **The Committee draws this instrument to the attention of the Parliament on the general reporting ground for a cross-referencing error. In article 26(2)(a) the reference to article 2 should be to article 22.**

10. **The Committee notes that the Scottish Government intends to correct the error by way of a correction slip.**

# No points raised

## Criminal Justice Committee

Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Consequential Modifications, Saving and Transitional Provisions) Regulations 2023 (SSI 2023/Draft)

Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Commencement No. 2) Regulations 2023 (SSI 2023/99 (C.10))

## Local Government, Housing and Planning Committee

Town and Country Planning (Play Sufficiency Assessment) (Scotland) Regulations 2023 (SSI 2023/97)

Planning (Scotland) Act 2019 (Commencement No. 12 and Saving and Transitional Provisions) Regulations 2023 (SSI 2023/100 (C.11))

Valuation Timetable (Scotland) Amendment Order 2023 (SSI 2023/109)

## Net Zero, Energy and Transport Committee

National Smart Ticketing Advisory Board (Gender Representation on Public Boards) (Scotland) Regulations 2023 (SSI 2023/Draft)

- The Committee noted that this instrument, which makes the National Smart Ticketing Advisory Board subject to the requirements of the Gender Representation on Public Boards (Scotland) Act 2018, will come into force two weeks after the Board itself is established; and
- that the Scottish Government has given the Committee an assurance that it does not intend to make any appointments to the Board until the Parliamentary process for this instrument is complete.

National Smart Ticketing Advisory Board (Scotland) Regulations 2023 (SSI 2023/80)

Heat Networks (Scotland) Act 2021 (Commencement No. 2) Regulations 2023 (SSI 2023/77 (C.8))

- The Committee agreed to bring to the lead committee's attention the correspondence between the Committee and the Scottish Government in relation to the commencement of section 93 of the Heat Networks (Scotland) Act 2021 (which relates to a Heat Networks Delivery Plan). The correspondence can be found in the **Annex**.



# Annex

## **National Smart Ticketing Advisory Board (Gender Representation on Public Boards) (Scotland) Regulations 2023 (SSI 2023/Draft)**

On 21 March 2023, the Committee asked the Scottish Government:

This instrument is due to come into force on 26 May 2023. On that date it makes the National Smart Ticketing Advisory Board (“the Board”) subject to the requirements of the Gender Representation on Public Boards (Scotland) Act 2018. The Board itself will be established on 12 May 2023, at which point the power to appoint members to the Board comes into force (under the National Smart Ticketing Advisory Board (Scotland) Regulations 2023 (SSI 2023/80)). The power to appoint members to the Board will therefore exist for two weeks before the requirement comes into force that the appointments process must comply with the 2018 Act. Is this in line with the policy intention?

On 28 March 2023, the Scottish Government responded:

This is in line with the policy intention. This instrument and SSI 2023/80 are connected, and, in light of that fact, it was considered appropriate to lay both instruments on the same date. When choosing the coming into force date for each instrument, the Scottish Government’s intention was simply to have each instrument come into force at the earliest opportunity while complying with the applicable laying requirements. It is the Scottish Government’s intention that the process for appointing members to the Board will be subject to the requirements of the Gender Representation on Public Boards (Scotland) Act 2018. The Scottish Government does not intend to make any appointments to the Board until the Parliamentary process for this instrument is complete.

## **National Smart Ticketing Advisory Board (Scotland) Regulations 2023 (SSI 2023/80)**

On 21 March 2023, the Committee asked the Scottish Government:

1. Regulation 3 paragraphs (1) and (2) specify a maximum and minimum number for each type of Board member, with the exception of “other non-voting members” for which a maximum but no minimum number is given (regulation 3(1)(b)). The Explanatory Note says “Regulation 3 specifies a minimum and maximum number for each type of member.” Is the policy intention that there should be a minimum number for other non-voting members in regulation 3(1)(b)?

2. Regulation 3(4) provides that the non-voting membership must, so far as practicable, include persons who have experience relevant to “smart ticketing”. “Smart ticketing” is not defined in the instrument and the definition of “smart ticketing arrangements” and the related term “ticketing arrangements” in the parent Act (in 27A(1) and (2) of the 2001 Act, inserted by s. 41(2) of the 2019 Act)

is not yet in force. When the instrument comes into force will it be sufficiently clear what “smart ticketing” means in regulation 3(4)?

On 28 March 2023, the Scottish Government responded:

1. Question 1 appears to be based on the understanding that regulation 3(1) creates three

different types of member i.e. the chairperson, “other non-voting members”, and voting members. It is, however, the Scottish Government’s position that regulation 3(1) creates two types of member i.e. non-voting members made up of: (i) the chairperson (defined in regulation 1 as a non-voting member) and other non-voting members; and (ii) voting members. That being so, regulation 3 does provide a minimum and maximum number of both types of member and the sentence in the Explanatory Note quoted in the question accurately describes the provision contained in regulation 3. This is especially so when this sentence is read in context – paragraph 3 of the Explanatory Note begins:

“Regulation 3 makes provision in relation to the constitution and membership of the Board. The Board will have voting and non-voting members. A non-voting member will be appointed to act as chairperson, and the chairperson will have a casting vote in the case of an equality of votes (see regulation 6(5)). Regulation 3 specifies a minimum and maximum number of each type of member, ...”.

It is therefore the Scottish Government’s position that if one considers paragraph 3 of the Explanatory Note in full, it is clear that the different types of member for which minimum and maximum numbers are specified are voting members and non-voting members.

As regards the final part of Question 1, it is not the policy intention that there should be a minimum number specified for the “other non-voting members” referred to in regulation 3(1)(b). It is intended that non-voting members would be selected from outside of the groups from which the voting membership must be drawn and would bring wider relevant experience and knowledge. The Scottish Government intends to allow up to three “other non-voting members” to be appointed (in addition to the chairperson) but wished to ensure that the Board could still operate without any “other non-voting members” if it was considered, from time to time, that additional non-voting members were not needed (due to the current make-up and experience of the chairperson and voting members) or if there was an absence of other appropriately qualified and experienced individuals to hold such a role.

2. It is the Scottish Government’s view that the definitions of “smart ticketing arrangements” and “ticketing arrangements” not being in force yet does not give rise to any difficulty in respect of this instrument, because this instrument does not use those terms. The term “smart ticketing” is used in regulation 3(4) to describe the type of expertise that non-voting members should have. The term “smart ticketing” is not defined in the regulations or the parent Act and will be interpreted based on the ordinary meaning of the words. The Scottish Government considers that the concept of “smart ticketing”, which is wider than “smart ticketing arrangements” or “ticketing arrangements”, is well understood by the industry and the wider public and does not foresee any difficulty arising from the fact that this term is not given a statutory definition.

### **Tuberculosis (Scotland) Order 2023 (SSI 2023/93)**

On 30 March 2023, the Committee asked the Scottish Government:

Article 26 of the instrument provides for payment of reduced compensation where the keeper of an animal has been served with notice to apply a diagnostic test for tuberculosis and has failed to do so by the date specified in the notice. Article 26(2)(a) states that where a test is carried out more than 90 days after the latest date specified in the notice the compensation payable for the slaughtered animal is 50% of the market value of the animal as ascertained in accordance with article 2. Article 2 (interpretation) provides a definition of ‘market value’. Article 22 (ascertainment of market value) sets out how the

market value of an animal should be determined.

1. In article 26(2)(a) should the reference to article 2 properly be to article 22?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 11 April 2023, the Scottish Government responded:

1. Yes.
2. A correction slip will be issued.

**Heat Networks (Scotland) Act 2021 (Commencement) (No.2) Regulations 2023 (SSI 2023/77 (C. 8))**

On 23 March 2023, the Committee asked the Scottish Government:

In considering the note as to earlier commencement regulations in the instrument, we observed that section 93 of the Heat Networks (Scotland) Act 2021, which is closely related to section 92, has not yet been commenced. However, a Heat Networks Delivery Plan, which bears to have been laid under section 93, was laid before the Parliament in March last year.

We should be grateful if you would explain the Scottish Government's position regarding the commencement of section 93.

On 6 April 2023, the Scottish Government responded:

The Scottish Government thanks the Delegated Powers and Law Reform Committee for pointing this matter out to us. It is intended to bring section 93 into force along with other provisions of the Act by regulations which are expected to be made in May 2023.

