

Delegated Powers and Law Reform Committee

12th Meeting, 2023 (Session 6)

Tuesday, 18 April 2023

Instrument Responses

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.