

# Net Zero, Energy and Transport Committee

## 15<sup>th</sup> Meeting, 2023 (Session 6)

Tuesday, 2 May 2023

### Cover note: The National Smart Ticketing Advisory Board (Scotland) Regulations 2023 (SSI 2023/080)

**Title of Instrument:** [The National Smart Ticketing Advisory Board \(Scotland\) Regulations 2023](#) (SSI 2023/080)

**Type of Instrument:** Negative

**Laid Date:** 16 March 2023

**Circulated to Members:** 17 March 2023

**Meeting Date:** 2 May 2023

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 8 May 2023

1. An electronic copy of the Regulations is available at:  
<https://www.legislation.gov.uk/ssi/2023/80/contents/made>

2. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on the instrument.

## Purpose

4. The purpose of this instrument is to establish the National Smart Ticketing Advisory Board (“NSTAB”, “the Board”) and make provision about the Board, including provision about the appointment, removal, and replacement of members; the remuneration of members (including as to payment of a member’s expenses); and the process by which the Board makes decisions.

## Delegated Powers and Law Reform Committee consideration

5. At its meeting on 18 April 2023, the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. [Read the Official Report – 18 April 2023](#)

6. 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 **Annexe B**.

## Procedure for Negative Instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for this instrument.

9. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument.

10. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

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Net Zero, Energy and Transport Committee

# Annexe A

## Scottish Government Explanatory Note

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations establish an advisory committee to be known as the National Smart Ticketing Advisory Board (“the Board”) and make provision in relation to the Board.

Regulation 2 establishes the Board.

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. This regulation also provides the voting membership must, so far as practicable, include a specified number of persons representing specified sectors and the non-voting membership must, so far as practicable, include persons with expertise relevant to the technology of smart ticketing and the strategic development of smart ticketing in Scotland.

Regulation 4 makes provision in relation to the appointment and removal of members to and from the Board. Members will be appointed by the Scottish Ministers and may be removed by the Scottish Ministers. Members may also resign by giving written notice to the Scottish Ministers. Voting members of the Board may make recommendations to the Scottish Ministers in relation to the appointment of members, and in relation to amendments to the rules about membership contained in regulation 3.

Regulation 5 provides for the provision of administrative support to the Board. This regulation also provides that the Scottish Ministers may pay members of the Board remuneration, and that the Scottish Ministers must pay or reimburse members’ reasonable expenses.

Regulation 6 makes provision in relation to meetings held by the Board and the process by which the Board makes decisions.

Regulation 7 provides that the validity of the proceedings of the Board is not affected by a vacancy amongst members, any defect in the appointment of a member, nor any failure to comply with a requirement imposed by these Regulations.

Regulation 8 provides that the Board is to prepare and publish a work programme detailing its proposed work for a period described in this regulation. Regulation 8 also provides that the Scottish Ministers must approve the work programme, and makes further provision in relation to the process to be followed in order to obtain the Scottish Ministers’ approval.

Regulation 9 provides that the Board must publish the advice it provides and the recommendations it makes to the Scottish Ministers.

Regulation 10 provides that the Board is to prepare an annual report to the Scottish Ministers in which the Board measures its success for the previous financial year and collates all advice given and recommendations made by the Board during that financial year. The Board must publish this report after it has been submitted to the Scottish Ministers.

## Scottish Government Policy Note

### POLICY NOTE

#### THE NATIONAL SMART TICKETING ADVISORY BOARD (SCOTLAND) REGULATIONS 2023

#### SSI 2023/80

The above instrument was made in exercise of the powers conferred by sections 27C and 81(2) of the Transport (Scotland) Act 2001 (the “2001 Act”). The instrument is subject to negative procedure.

#### Purpose of the instrument

The purpose of this instrument is to establish the National Smart Ticketing Advisory Board (“NSTAB”, “the Board”) and make provision about the Board, including provision about the appointment, removal, and replacement of members; the remuneration of members (including as to payment of a member’s expenses); and the process by which the Board makes decisions.

#### Policy Objectives

Section 43 of the Transport (Scotland) Act 2019 inserted section 27C into the 2001 Act. Section 27C(1) requires the Scottish Ministers to establish an advisory committee to be known as the National Smart Ticketing Advisory Board. The function of the Board is to advise the Scottish Ministers in relation to their functions insofar as they relate to smart ticketing arrangements, and the national technological standard for smart ticketing. The Board also has the function of issuing advice and recommendations to the Scottish Ministers in relation to the strategic development of smart ticketing in Scotland.

The rationale for establishing the Board comes from the wider context of smart ticketing in Scotland. Most public transport operators in Scotland recognise and accept that the travelling public expect to see modern systems in place on public transport that make the use of smart ticketing and payment widespread, consistent, and easy to use. Most of the larger operators in Scotland have already invested in the main systems necessary to facilitate this, but interoperability across all public transport modes and all of Scotland cannot happen unless all operators are using a common technology platform. This is the rationale for government intervention and would help ensure that: passengers are able to access smart ticketing or payment on the major public transport modes across Scotland; there is a consistent customer

experience which gives the public confidence in using public transport; and there is good governance of current and future delivery of smart ticketing in Scotland, ensuring that all key stakeholders are able to contribute to decision making.

NSTAB is required to enhance the governance structure of smart ticketing in Scotland. For the Board to be effective, there needs to be clear expectations, boundaries, and powers, which is provided by this instrument. This makes sure that the Board operates to a high standard and can be a trusted source of balanced advice to the Scottish Ministers.

The Board will have no employees, but this instrument requires the Scottish Ministers to make arrangements for the Board to be provided with appropriate administrative support and office accommodation. This instrument provides the Scottish Ministers may pay Board members remuneration, and the Scottish Ministers must pay or reimburse members' reasonable expenses incurred in connection with the Board's functions.

This instrument provides that the Board is to consist of a chairperson, between 10 and 14 voting members, and up to 3 non-voting members, including representatives of operators, users (including disabled users), local transport authorities, regional Transport Partnerships and one member representing the views of the Scottish Ministers (due to the provision of the national concessionary travel scheme by the Scottish Ministers). This number of members is intended to provide a suitable number of positions to represent different modes in Scotland (5-7 positions), with a balancing 5-7 positions held by local transport authorities, regional Transport Partnerships, user groups, and representative of the Scottish Ministers. It is intended that membership will be representative of Scotland, including rural-urban representation. There is provision for up to 3 non-voting advisory members to assist in the debate and decision making of the Board, including on technological matters. The quorum for all meetings of the Board is a majority of the current voting membership of the Board, and a resolution is passed when a majority of the voting members attending the meeting have voted in favour of it. The chairperson is a non-voting member but has a casting vote in the case of an equality of votes.

All members will be appointed for a period by the Scottish Ministers. Members may resign and the Scottish Ministers may remove members if they meet at least one of a number of conditions.

This instrument provides that the Board is required to produce a work programme which will outline how the Board intends to perform its statutory functions over a period at least every 3 financial years, and this must be approved by the Scottish Ministers to ensure that the Board is advising the Scottish Ministers in the required policy areas. Any advice and recommendations provided to the Scottish Ministers must be published. Voting members with dissenting views will be able to communicate their dissenting opinions to the Scottish Ministers.

The Board must produce and submit a report to the Scottish Ministers on their activities over the financial year measuring their success against the work programme and collating advice and recommendations submitted. This must then be published as soon as practicable after it is submitted to the Scottish Ministers.

## Consultation

To comply with the requirements of section 27C(5) of the 2001 Act, the Scottish Government carried out a 9-week public consultation between 10 August 2021 and 13 October 2021 in relation to the membership of NSTAB. A full list of respondents to the consultation is published on the Transport Scotland website and is contained within the associated Business & Regulatory Impact Assessment. Responses came from mainly local authority organisations, transport operators, and passenger/user/interest groups. Overall, there is support for establishing NSTAB, and many of the responses provided very detailed insights into the practical considerations of establishing such a board. There was only a single response opposing 'smart ticketing' as a general policy area.

The consultation has informed the contents of these regulations, including the size and formation of Board membership, the mechanisms for making and submitting advice to the Scottish Ministers, and the management of Board operations and expenses.

## Impact Assessments

The following impact assessments have been completed in full:

- **[Business & Regulatory Impact Assessment \(BRIA\)](#)**  
Builds on the BRIA completed for the primary legislation (Transport (Scotland) Act 2019), considering why a legislative approach is preferred and the likely costs associated with different options. Primary costs are expected to government in the form of remuneration, expenses, and work programme associated costs. Costs to business is expected to be negligible, and primarily relates to the time commitment of members. It also considers the cost to business of adding NSTAB to the Gender Representation on Public Boards (Scotland) Act 2018, which is also expected to be minimal.
- **[Equality Impact Assessment](#)**  
NSTAB will take due regard of equality, including producing a Code of Conduct for members, being intended to be added to the Gender Representation on Public Boards (Scotland) Act 2018, appointing a representative of disabled users, and holding meetings virtually by default.
- **[Data Protection Impact Assessment](#)**  
As NSTAB will be managing the appointment of members, this impact assessment considers the personal data that will be processed in applications and ensures that all data being collected is specifically required.

Other impact assessments have been considered, but through engagement with the Impact Assessment teams, were not necessary to continue beyond screening. Any new policy for smart and integrated ticketing will be subject to reassessment of all the impact assessments.

- Child Rights Wellbeing Impact Assessment – Due to the function of NSTAB and the targeted nature of the legislation, screening identified that it is not expected to impact child rights or wellbeing.

- Fairer Scotland Duty Impact Assessment – Establishing NSTAB has minimal impacts on socio-economic inequalities, but effort will be made to make sure that it is considered by members. Not significant enough to justify a full assessment.
- Island Communities Impact Assessment – NSTAB will consider the variety of communities within Scotland and will aim to have membership that understands this, as well as virtual meetings by default to maximise geographical outreach. The impact of establishing the Board to island communities is not deemed significant enough to justify a full assessment.
- Strategic Environment Assessment – Establishing NSTAB has minimal impacts on the environment, but aspects, such as virtual meetings, help to minimise impact. Not significant enough to justify full assessment.

### **Financial Effects**

Primary costs are expected to government in the form of remuneration, expenses, and work programme associated costs. Costs to business is expected to be negligible, and primarily relates to the time commitment of members.

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## **Scottish Government - Other documents**

- [Business and Regulatory Impact Assessment \(legislation.gov.uk\)](https://legislation.gov.uk)
- [Data Protection Impact Assessment \(legislation.gov.uk\)](https://legislation.gov.uk)
- [Equality Impact Assessment \(legislation.gov.uk\)](https://legislation.gov.uk)



## Annexe B

Consideration by the Delegated Powers and Law Reform Committee – correspondence with the Scottish Government included in the Committee’s [report published 19 April 2023](#)

### **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.