
STATUTORY INSTRUMENTS

2006 No. 312

The Disability Discrimination (Northern Ireland) Order 2006

Transport

Rail vehicles: enforcement and penalties

10.—(1) In the 1995 Act, after section 47C (which is inserted by Article 9) insert—

“Penalty for using rail vehicle without accessibility compliance certificate

47D. If a regulated rail vehicle to which section 47A(1) applies is used for carriage at a time when no rail vehicle accessibility compliance certificate is in force for the vehicle, the Department for Regional Development may require the operator of the vehicle to pay a penalty.

Penalty for using rail vehicle that does not conform with accessibility regulations

47E.—(1) Where it appears to the Department for Regional Development that a regulated rail vehicle does not conform with a provision of rail vehicle accessibility regulations with which the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform with the provision; and
- (b) specifying the improvement deadline.

(2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(3) Subsection (4) applies where—

- (a) the Department for Regional Development has given a notice under subsection (1);
- (b) the improvement deadline specified in the notice has passed; and
- (c) it appears to the Department for Regional Development that the vehicle still does not conform with the provision identified in the notice.

(4) The Department for Regional Development may give to the operator a further notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform to the provision; and
- (b) specifying the final deadline.

(5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(6) If—

- (a) the Department for Regional Development has given a notice under subsection (4) to the operator of a regulated rail vehicle, and

(b) the vehicle is used for carriage at a time after the final deadline when the vehicle does not conform with the provision identified in the notice,
the Department for Regional Development may require the operator to pay a penalty.

Penalty for using rail vehicle otherwise than in conformity with accessibility regulations

47F.—(1) Where it appears to the Department for Regional Development that a regulated rail vehicle has been used for carriage otherwise than in conformity with a provision of rail vehicle accessibility regulations with which use of the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the provision and how it was breached;
- (b) identifying which of the regulated rail vehicles operated by the operator is or are covered by the notice; and
- (c) specifying the improvement deadline.

(2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(3) Subsection (4) applies where—

- (a) the Department for Regional Development has given a notice under subsection (1);
- (b) the improvement deadline specified in the notice has passed; and
- (c) it appears to that Department that a vehicle covered by the notice has after that deadline been used for carriage otherwise than in conformity with the provision identified in the notice.

(4) The Department for Regional Development may give to the operator a further notice—

- (a) identifying the provision and how it was breached;
- (b) identifying which of the regulated rail vehicles covered by the notice under subsection (1) is or are covered by the further notice; and
- (c) specifying the final deadline.

(5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(6) If—

- (a) the Department for Regional Development has given a notice under subsection (4), and
- (b) a vehicle covered by the notice is at a time after the final deadline used for carriage otherwise than in conformity with the provision identified in the notice,

that Department may require the operator of the vehicle to pay a penalty.

(7) For the purposes of subsection (1), a vehicle is operated by a person if that person is the operator of the vehicle.

Sections 47E and 47F: inspection of rail vehicles

47G.—(1) Where the Department for Regional Development has reasonable grounds for suspecting that a regulated rail vehicle may not conform with provisions of rail vehicle accessibility regulations with which it is required to conform, a person authorised by that Department—

- (a) may inspect the vehicle for conformity with the provisions;
 - (b) for the purpose of exercising his power under paragraph (a)—
 - (i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and
 - (ii) may enter the vehicle; and
 - (c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.
- (2) Where the Department for Regional Development has given a notice under section 47E(1) or (4), a person authorised by that Department—
- (a) may inspect the vehicle concerned for conformity with the provision specified in the notice;
 - (b) for the purpose of exercising his power under paragraph (a)—
 - (i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and
 - (ii) may enter the vehicle; and
 - (c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.
- (3) A person exercising power under subsection (1) or (2) shall, if required to do so, produce evidence of his authority to exercise the power.
- (4) Where a person obstructs the exercise of power under subsection (1), the Department for Regional Development may, for purposes of section 47E(1) or 47F(1), draw such inferences from the obstruction as appear proper.
- (5) Where a person—
- (a) obstructs the exercise of power under subsection (2), and
 - (b) the obstruction occurs before a notice under section 47E(4) is given in respect of the vehicle concerned,
- the Department for Regional Development may treat section 47E(3)(c) as satisfied in the case concerned.
- (6) Where a person obstructs the exercise of power under subsection (2) and the obstruction occurs—
- (a) after a notice under section 47E(4) has been given in respect of the vehicle concerned, and
 - (b) as a result of the operator, or a person who acts on his behalf, behaving in a particular way with the intention of obstructing the exercise of the power,
- the Department for Regional Development may require the operator of the vehicle to pay a penalty.
- (7) In this section “inspect” includes test.

Sections 47E and 47F: supplementary powers

47H.—(1) For the purposes of section 47E, the Department for Regional Development may give notice to a person requiring the person to supply the Department for Regional Development, by a time specified in the notice, with a vehicle number or other identifier for a rail vehicle—

- (a) of which that person is the operator; and
- (b) which is described in the notice.

(2) The time specified in a notice given to a person under subsection (1) may not be earlier than the end of 14 days beginning with the day when the notice is given to the person.

(3) If a person to whom a notice is given under subsection (1) does not comply with the notice by the time specified in the notice, the Department for Regional Development may require the person to pay a penalty.

(4) Where the Department for Regional Development has given a notice to a person under section 47E(1) or (4) or 47F(1) or (4), that Department may request that person to supply that Department, by a time specified in the request, with a statement detailing the steps taken in response to the notice.

(5) The time specified in a request under subsection (4) must—

- (a) if the request relates to a notice under section 47E(1) or 47F(1), be no earlier than the improvement deadline; and
- (b) if the request relates to a notice under section 47E(4) or 47F(4), be no earlier than the final deadline.

(6) Where a request under subsection (4)—

- (a) relates to a notice under section 47E(1) or 47F(1), and
- (b) is not complied with by the time specified in the request,

the Department for Regional Development may treat section 47E(3)(c) or (as the case may be) section 47F(3)(c) as being satisfied in the case concerned.

Penalties under sections 47D to 47H: amount, due date and recovery

47J.—(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) The amount of a penalty—

- (a) must not exceed the maximum prescribed for the purposes of this subsection; and
- (b) must not exceed 10 per cent of the turnover of the person on whom it is imposed.

(3) For the purposes of subsection (2)(b), a person’s turnover shall be determined in accordance with regulations.

(4) A penalty must be paid to the Department for Regional Development before the end of the prescribed period.

(5) Any sum payable to the Department for Regional Development as a penalty may be recovered by that Department as a debt due to it.

(6) In proceedings under subsection (5) for enforcement of a penalty, no question may be raised as to—

- (a) liability to the imposition of the penalty; or
- (b) its amount.

(7) Any sum paid to the Department for Regional Development as a penalty shall be paid by it into the Consolidated Fund.

(8) The Department for Regional Development shall issue a code of practice specifying matters to be considered in determining the amount of a penalty.

(9) The Department for Regional Development may from time to time revise the whole or any part of the code and issue the code as revised.

(10) Before issuing the first or a revised version of the code, the Department for Regional Development shall lay a draft of that version before the Assembly.

(11) After laying the draft of a version of the code before the Assembly, the Department for Regional Development may bring that version of the code into operation by order.

(12) The Department for Regional Development shall have regard to the code (in addition to any other matters it thinks relevant)—

- (a) when imposing a penalty; and
- (b) when considering under section 47K(6) a notice of objection under section 47K(4).

Penalties under sections 47D to 47H: procedure

47K.—(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) If the Department for Regional Development decides that a person is liable to a penalty, that Department must notify the person of the decision.

(3) A notification under subsection (2) must—

- (a) state that Department’s reasons for deciding that the person is liable to the penalty;
- (b) state the amount of the penalty;
- (c) specify the date before which, and the manner in which, the penalty must be paid; and
- (d) include an explanation of the steps that the person may take if he objects to the penalty.

(4) Where a person to whom a notification under subsection (2) is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high,

the person may give a notice of objection to the Department for Regional Development.

(5) A notice of objection must—

- (a) be in writing;
- (b) give the objector’s reasons; and
- (c) be given before the end of the prescribed period.

(6) Where the Department for Regional Development receives a notice of objection to a penalty in accordance with this section, that Department shall consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty; or
- (c) determine to do neither of those things.

(7) Where the Department for Regional Development considers under subsection (6) a notice of objection under subsection (4), it shall—

- (a) inform the objector of its decision before the end of the prescribed period or such longer period as it may agree with the objector; and
- (b) if it reduces the penalty, notify the objector of the reduced amount.

Penalties under sections 47D to 47H: appeals

47L.—(1) A person may appeal to the county court against a penalty imposed on him under any of sections 47D to 47H on the ground that—

- (a) he is not liable to the imposition of a penalty; or
- (b) the amount of the penalty is too high.
- (2) On an appeal under this section, the county court may—
 - (a) allow the appeal and cancel the penalty;
 - (b) allow the appeal and reduce the penalty; or
 - (c) dismiss the appeal.
- (3) An appeal under this section shall be a re-hearing of the decision of the Department for Regional Development to impose a penalty, and shall be determined having regard to—
 - (a) any code of practice under section 47J which has effect at the time of the appeal; and
 - (b) any other matters which the county court thinks relevant (which may include matters of which the Department for Regional Development was unaware).
- (4) An appeal may be brought by a person under this section against a penalty whether or not—
 - (a) he has given notice of objection under section 47K(4); or
 - (b) the penalty has been reduced under section 47K(6).

Sections 46 to 47H: interpretation

47M.—(1) In sections 46 to 47H “operator”, in relation to any rail vehicle, means the person having the management of that vehicle.

(2) For the purposes of those sections, a person uses a vehicle for carriage if he uses it for the carriage of passengers.

(3) Where an exemption order under section 47 authorises use of a rail vehicle even though the vehicle does not conform with a provision of rail vehicle accessibility regulations, references in sections 47A to 47G to provisions of rail vehicle accessibility regulations with which the vehicle is required to conform do not, in the vehicle’s case, include that provision.”.

(2) In section 49 of the 1995 Act (Part V—public transport: offences), after subsection (4) insert—

“(5) A person who falsely pretends to be a person authorised to exercise power under section 47G is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

and, in the section’s heading, after “Forgery and false statements” insert “, and impersonation”.