



Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Enforcement by the Regulator and the [F1 Authority]

Textual Amendments

- F1** Words in the heading before section 55 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))

55 Orders for securing compliance.

- (1) Subject to subsections (2) to [F2(5B)] and section 56 below, where the appropriate [F3 authority] is satisfied that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, [F3 it] shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to [F4 subsections (5) to (5B)] below, where it appears to the appropriate [F3 authority]—
 - (a) that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, and
 - (b) that it is requisite that a provisional order be made,[F3 it] shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to [F3 it] requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the appropriate [F3 authority] shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence

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of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made.

- (4) Subject to [^{F4}subsections (5) to (5B)] and section 56 below, the appropriate [^{F3}authority] shall confirm a provisional order, with or without modifications, if—
 - (a) [^{F3}it] is satisfied that the relevant operator to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) The appropriate [^{F3}authority] shall not make a final order, or make or confirm a provisional order, in relation to a relevant operator if [^{F3}it] is satisfied—
 - (a) that the duties imposed on [^{F3}it] by section 4 [^{F5}above or, as the case may be, section 207 of the Transport Act 2000] preclude the making or, as the case may be, the confirmation of the order;
 - ^{F6}(b)
 - ^{F6}(c)

[^{F7}(5ZA) The Authority shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions unless—

- (a) it has given notice to the Regulator specifying a period within which he may give notice to it if he considers that the most appropriate way of proceeding is under the ^{M1}Competition Act 1998;
- (b) that period has expired; and
- (c) the Regulator has not given notice to the Authority within that period that he so considers (or, if he has, he has withdrawn it).]

[^{F8}(5A) The Regulator shall not make a final order, or make or confirm a provisional order, ^{F9}. . . if [^{F3}it] is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.]

[^{F10}(5B) If the appropriate authority is satisfied—

- (a) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question, or
- (b) that the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure,

it shall only make a final order, or make or confirm a provisional order, if it considers it appropriate to do so.]

- (6) Where the appropriate [^{F3}authority][^{F11} does not make a final order, or make or confirm a provisional order, because of any provision contained in any of subsections (5) to (5B) above, it shall—
 - (a) serve notice of that fact] on the relevant operator; and
 - (b) publish the notice in such manner as [^{F3}it] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) A final or provisional order—

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- (a) shall require the relevant operator to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the appropriate [^{F3}authority].
- [^{F12}(7A) The provision that may be made in a final or provisional order includes, in particular, provision requiring the relevant operator to pay to the Authority in the event of any specified contravention of the order such reasonable sum in respect of the contravention as is specified in, or determined in accordance with, the order in such manner, at such place and by such date as is so specified or determined.
- (7B) The amount of the sum may not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (7C) If the whole or any part of the sum is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the ^{M2}Judgments Act 1838.]
- (9) Without prejudice to section 50 above, nothing in this section or in sections 56 to 58 below shall exclude the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement.
- (10) In this Part—
- “the appropriate [^{F13}authority]” means—
 - (a) in relation to any relevant condition or requirement in the case of a licence holder [^{F14}, apart from a condition which relates to consumer protection,]. . . the Regulator;
 - (b) in relation to [^{F14}any condition relating to consumer protection in the case of a licence holder or to]any relevant condition or requirement in the case of a franchisee [^{F15}, a franchise operator, a person under closure restrictions or a person (other than the Authority) who is required to comply with closure conditions or has agreed to comply with conditions under section 37(1), 39(1) or 41(1) above] the [^{F13}Authority];
 - “final order” means an order under this section, other than a provisional order;
 - “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;
 - “relevant condition or requirement” means—
 - (a) in the case of a licence holder, any condition of his licence;
 - (b) in the case of a franchisee, or any franchise operator who is a party to the franchise agreement, any term of the franchise agreement;
 - (c) in the case of a person under closure restrictions—
 - (i) the duty under section 37(1), 39(1) or 41(1) above not to discontinue a railway passenger service, or the operation of the whole or any part of

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- a network, station or light maintenance depot, before the date stated by him in accordance with section 37(3), 39(4) or 41(3) above; and
- (ii) the duty under section 48(3) above not to discontinue an experimental passenger service before the expiry of the notice period;
- ^{F16}(d) in the case of a person (other than the Authority) who is required to comply with closure conditions or has agreed to comply with conditions under section 37(1), 39(1) or 41(1) above, any of those conditions;]

“relevant operator” means any licence holder, franchisee, franchise operator who is a party to the franchise agreement [^{F17}, person under closure restrictions or person who is required to comply with closure conditions or has agreed to comply with conditions under section 37(1), 39(1) or 41(1) above].

- (11) In [^{F18}subsections [^{F19}(5ZA)]and (10)]above, “person under closure restrictions” means a person—
- (a) who proposes a closure in circumstances such that he is required by any provision of this Part to give notice of the proposal to the [^{F20}Authority]; or
- (b) who proposes to discontinue an experimental passenger service in circumstances such that he is required by section 48 above to give due notice of the proposal.

^{F21}(12)

Textual Amendments

- F2** Words in s. 55(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 30(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F3** Words in s. 55(1)-(7) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F4** Words in s. 55(2)(4) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 30(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F5** Words in s. 55(5)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 30(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F6** S. 55(5)(b)(c) repealed (1.2.2001) by 2000 c. 38, ss. 226(1)(a), 274, **Sch. 31 Pt. IV** (with Sch. 28 paras. 9, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F7** S. 55(5ZA) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 11(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F8** S. 55(5A) inserted (1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 15(6)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F9** Words in s. 55(5A) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F10** S. 55(5B) inserted (1.2.2001) by 2000 c. 38, s. 226(1)(b) (with Sch. 28 paras. 9, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F11** Words in s. 55(6) substituted (1.2.2001) by 2000 c. 38, s. 226(1)(c); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F12** S. 55(7A)(7B)(7C) substituted (1.2.2001) for s. 55(8) by 2000 c. 38, s. 225(2); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F13** Words in s. 55(10) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

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- F14** Words in s. 55(10) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 11(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F15** Words in s. 55(10) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 26(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F16** S. 55(10): definition of “relevant condition or requirement”
para. (d) inserted (1.2.2001) by 2000 c. 38, s. 236(3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F17** S. 55(10): words in definition of “relevant operator”
substituted (1.2.2001) by 2000 c. 38, s. 236(3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F18** Words in s. 55(11) substituted (1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 15(7)(b)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F19** Word in s. 55(11) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 11(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F20** Words in s. 55(11) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))
- F21** S. 55(12) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 30(5), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

- M1** 1998 c. 41.
M2 1838 c. 110.

56 Procedural requirements [F22 for section 55 orders].

- (1) Before [F23 it] makes a final order or confirms a provisional order, the appropriate [F24 authority] shall give notice—
- stating that [F23 it] proposes to make or confirm the order and setting out its effect,
 - setting out—
 - the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed,
 - the acts or omissions which, in [F25 its] opinion, constitute or would constitute contraventions of that condition or requirement, and
 - the other facts which, in [F25 its] opinion, justify the making or confirmation of the order, and
 - specifying the period (not being less than [F26 21] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
- by publishing the notice in such manner as the appropriate [F24 authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

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- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the relevant operator to whom the order relates.
- [^{F27}(2A) Where the Regulator serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the Authority; and where the Authority so serves a copy of such a notice, it shall also serve a copy on the Regulator.]
- (3) The appropriate [^{F24}authority] shall not make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the relevant operator to whom the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the appropriate [^{F24}authority] shall—
- (a) serve on the relevant operator to whom the order relates such notice as appears to him requisite of [^{F25}its] proposal to make or confirm the order with modifications;
 - (b) [^{F28}unless the proposed modifications are trivial, in that notice specify a period (not being less than seven] from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the appropriate [^{F24}authority] shall—
- (a) serve a copy of the order on the relevant operator to whom the order relates; and
 - (b) publish the order in such manner as [^{F23}it] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the appropriate [^{F24}authority] shall give notice—
- (a) stating that [^{F23}it] proposes to revoke the order and setting out the effect of its revocation, and
 - (b) specifying the period (not being less than [^{F29}21] days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving notice under subsection (6) above, the appropriate [^{F24}authority] decides not to revoke the order to which the notice relates, [^{F23}it] shall give notice of [^{F25}its] decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the appropriate [^{F24}authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the relevant operator to whom the order relates.

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Textual Amendments

- F22** Words in s. 56 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 31**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F23** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F24** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F25** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F26** Word in s. 56(1)(c) substituted (1.2.2001) by 2000 c. 38, s. 226(2)(a); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F27** S. 56(2A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 12** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F28** Words in s. 56(4)(b) substituted (1.2.2001) by 2000 c. 38, s. 226(2)(b); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F29** Words in s. 56(6)(b) substituted (1.2.2001) by 2000 c. 38, s. 226(2)(c); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

57 Validity and effect of [^{F30}section 55] orders.

(1) If the relevant operator to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

- (a) that its making or confirmation was not within the powers of section 55 above, or
- (b) that any of the requirements of section 56 above have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.

(2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the relevant operator have been substantially prejudiced by a failure to comply with those requirements—

- (a) may quash the order or any provision of the order; ^{F31} . . .
- ^{F32}(b)

[^{F33}(2A) If such an application is made in relation to a provision of an order requiring the payment of a sum in the event of a contravention and the sum would be payable before the time when the application is determined, it need not be paid until that time.

(2B) Where such an application is so made the court, if satisfied as mentioned in subsection (2) above, may (instead of quashing the order or the provision of the order) make provision under either or both of paragraphs (a) and (b) of subsection (2C) below.

(2C) The provision referred to in subsection (2B) above is—

- (a) provision substituting for the sum, or provision for determining a sum, specified in the order such lesser sum, or such other provision for determining a sum, as the court considers appropriate in all the circumstances of the case; and

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- (b) provision substituting for the date by which the sum is to be paid specified in or determined in accordance with the order such later date as the court considers appropriate in all the circumstances of the case.
- (2D) Where the court substitutes a lesser sum, or different provision for determining a sum, it may require the payment of interest on the new sum at such rate, and from such date, as it determines; and where it specifies as the date by which the sum is to be paid a date before the determination of the application it may require the payment of interest on the sum from that date at such rate as it determines.]
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against a relevant operator in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the appropriate [^{F34}authority] for an injunction or for interdict or for any other appropriate relief or remedy.
- (8) Where a relevant operator to whom a final or provisional order relates has made an application pursuant to subsection (1) above questioning the validity of that order, the making of that application shall not affect—
- (a) his obligation to comply with the order, or
 - (b) the right which any person may have to bring civil proceedings against him in pursuance of subsection (5) or (7) above.
- (9) In this section and [^{F35}sections 57F and 58] below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

Textual Amendments

- F30** Words in s. 57 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F31** S. 57(2)(b) and word “or” immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F32** S. 57(2)(b) omitted (1.2.2001) by virtue of 2000 c. 38, s. 252, **Sch. 27 para. 32(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F33** S. 57(2A)-(2D) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F34** Word in s. 57(7) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 37**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

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F35 Words in s. 57(9) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

Modifications etc. (not altering text)

C1 S. 57 applied (with modifications) (28.11.2005) by **The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050)**, reg. 14, **Sch. 3 para. 1(c)**

[^{F36}**57A Penalties.**

- (1) If the appropriate authority is satisfied that a relevant operator has contravened or is contravening—
 - (a) a relevant condition or requirement, or
 - (b) a final or provisional order made by the appropriate authority,the appropriate authority may impose on the relevant operator a penalty of such amount as is reasonable.
- (2) A penalty is payable to the Authority.
- (3) The amount of a penalty imposed on a relevant operator may not exceed 10 per cent. of his turnover determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (4) No penalty may be imposed in respect of any contravention of a final or provisional order if provision was made in the order by virtue of section 55(7A) above in relation to the contravention.
- (5) The Authority shall not impose a penalty on a licence holder or person under closure restrictions unless—
 - (a) it has given notice to the Regulator specifying a period within which he may give notice to it if he considers that the most appropriate way of proceeding is under the ^{M3}Competition Act 1998;
 - (b) that period has expired; and
 - (c) the Regulator has not given notice to the Authority within that period that he so considers (or, if he has, he has withdrawn it).
- (6) The Regulator shall not impose a penalty if he is satisfied that the most appropriate way of proceeding is under the ^{M4}Competition Act 1998.]

Textual Amendments

F36 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with **Sch. 28 paras. 6-8, 17**); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

Marginal Citations

M3 1998 c. 41.
M4 1998 c. 41.

Status: Point in time view as at 01/02/2001.

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993,
 Cross Heading: Enforcement by the Regulator and the Authority. (See end of Document for details)*

F37 57B Statement of policy.

- (1) The Authority and the Regulator shall each prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) A statement of policy may include provision for a decision whether to impose a penalty, or the determination of the amount of any penalty, in respect of the contravention of any relevant condition or requirement or order to be influenced by—
 - (a) the desirability of securing compliance with that relevant condition or requirement or order;
 - (b) the consequences or likely consequences of anything which has been or is being done or omitted to be done in contravention of that relevant condition or requirement or order; and
 - (c) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional orders.
- (3) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the Authority and Regulator shall have regard to any statement of its or his policy published at the time when the contravention occurred.
- (4) The Authority and Regulator—
 - (a) may at any time alter or replace a statement of his or its policy; and
 - (b) shall publish the altered or replacement statement.
- (5) The Authority and Regulator shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.
- (6) The Authority and Regulator shall publish a statement of policy in the manner that appears most suitable for bringing it to the attention of those likely to be affected by it.
- (7) This section applies in relation to sums required to be paid by virtue of section 55(7A) above as to penalties, but as if—
 - (a) references to the imposition of penalties were to the inclusion in an order of a requirement to pay a sum;
 - (b) references to relevant conditions or requirements were omitted; and
 - (c) the reference in subsection (2)(b) above to anything which has been or is being done or omitted to be done included a reference to anything which is likely to be done or omitted to be done.

Textual Amendments

F37 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

F38 57C Procedural requirements for penalties.

- (1) Before it imposes a penalty on a relevant operator, the appropriate authority shall give notice—
 - (a) stating that it proposes to impose a penalty on the relevant operator and the amount of the penalty proposed,
 - (b) setting out the relevant condition or requirement or order in question,

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- (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of a penalty and the amount of the penalty proposed,
 - (d) specifying the manner in which, and place at which, it is proposed to require the penalty to be paid, and
 - (e) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
 - (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
 - (b) by serving a copy of the notice on the relevant operator.
 - (3) Where the Regulator serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the Authority; and where the Authority so serves a copy of such a notice, it shall also serve a copy on the Regulator.
 - (4) The appropriate authority shall not modify a proposal to impose a penalty except—
 - (a) with the consent of the relevant operator;
 - (b) where the modifications consist of a reduction of the amount of the penalty or a deferral of the date by which it is to be paid; or
 - (c) after complying with the requirements of subsection (5) below.
 - (5) The requirements mentioned in subsection (4)(c) above are that the appropriate authority shall—
 - (a) give to the relevant operator such notice as appears to it requisite of its modified proposal;
 - (b) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
 - (6) As soon as practicable after imposing a penalty, the appropriate authority shall give notice—
 - (a) stating that it has imposed a penalty on the relevant operator and its amount;
 - (b) setting out the relevant condition or requirement or order in question;
 - (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of the penalty and its amount;
 - (d) specifying the manner in which, and place at which, the penalty is to be paid; and
 - (e) specifying the date (not being less than fourteen days from the date of publication of the notice) by which the penalty is to be paid.
 - (7) A notice under subsection (6) above shall be given—

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- (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
 - (b) by serving a copy of the notice on the relevant operator.
- (8) The relevant operator may, within 21 days of the date of service on him of the notice under subsection (6) above, make an application to the appropriate authority for it to specify different dates by which different portions of the penalty are to be paid.

Textual Amendments

F38 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

^{F39}57D Time limits.

- (1) No penalty may be imposed in respect of a contravention by a relevant operator—
- (a) by virtue of paragraph (a) of subsection (1) of section 57A above in a case where no final or provisional order has been made in relation to the contravention, or
 - (b) by virtue of paragraph (b) of that subsection,
- unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator within two years of the time of the contravention.
- (2) No penalty may be imposed in respect of a contravention by a relevant operator by virtue of section 57A(1)(a) above in a case where a final or provisional order has been made in relation to the contravention unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator—
- (a) within three months of the confirmation of the provisional order or the making of the final order; or
 - (b) where the provisional order is not confirmed, within six months of the making of the provisional order.

Textual Amendments

F39 S. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C2 S. 57D applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, Sch. 3 para. 1(c)

^{F40}57E Interest and payment of instalments.

- (1) If the whole or any part of a penalty is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the ^{M5}Judgments Act 1838.
- (2) If an application is made under subsection (8) of section 57C above in relation to a penalty, the penalty need not be paid until the application has been determined.

Status: Point in time view as at 01/02/2001.

Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Cross Heading: Enforcement by the Regulator and the Authority. (See end of Document for details)

- (3) If the appropriate authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the appropriate authority under that subsection, so much of the penalty as has not already been paid is to be paid immediately.

Textual Amendments

F40 S. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C3 S. 57E applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, Sch. 3 para. 1(c)

Marginal Citations

M5 1838 c. 110.

^{F41}57F Validity and effect of penalties.

- (1) If the relevant operator to whom a penalty order relates is aggrieved by a penalty and desires to question its validity on the ground—
- that it was not within the powers of section 57A above,
 - that any of the requirements of section 57C above have not been complied with in relation to it and his interests have been substantially prejudiced by the non-compliance, or
 - that it was unreasonable of the appropriate authority not to grant an application under section 57C(8) above;
- he may make an application to the court under this section.
- (2) An application under this section by a person shall be made—
- where it is on the ground mentioned in subsection (1)(c) above, within 42 days from the date on which he is notified of the decision not to grant the application under section 57C(8) above, and
 - in any other case, within 42 days from the date of service on him of the notice under section 57C(6) above.
- (3) If an application is made under this section in relation to a penalty, the penalty need not be paid until the application has been determined.
- (4) On an application under this section on the ground mentioned in subsection (1)(a) or (b) above the court, if satisfied that the ground is established, may quash the penalty or (instead of quashing it) make provision under either or both of paragraphs (a) and (b) of subsection (5) below.
- (5) The provision referred to in subsection (4) above is—
- provision substituting a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; and
 - provision substituting as the date by which the penalty, or any portion of the penalty, is to be paid a date later than that specified in the notice under section 57C(6) above.

Status: Point in time view as at 01/02/2001.

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993,
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- (6) On an application under this section on the ground mentioned in subsection (1)(c) above the court, if satisfied that the ground is established, may specify different dates by which different portions of the penalty are to be paid.
- (7) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it determines; and where it specifies as the date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application it may require the payment of interest on the penalty, or portion, from that date at such rate as it determines.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

Textual Amendments

F41 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, s. 225(1) (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

58 Power to require information etc^[F42] for purposes of sections 55 and 57A].

- (1) Where it appears to the appropriate ^[F43]authority that a relevant operator ^[F44]may have contravened or be contravening—
 - (a) a relevant condition or requirement, or
 - (b) a final or provisional order made by the appropriate authority,
 the] appropriate ^[F43]authority may, for any purpose connected with such of ^[F43]its functions under section 55 ^[F45]or 57A] above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice signed by the appropriate ^[F46]authority and—
 - (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate ^[F46]authority or to any person appointed by the appropriate ^[F46]authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
 - (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the appropriate ^[F46]authority such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce is guilty of an offence and shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Status: Point in time view as at 01/02/2001.

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- (6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the appropriate [^{F46}authority], make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Textual Amendments

- F42** Words in s. 58 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F43** Word in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F44** Words in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F45** Words in s. 58(1) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F46** Word in s. 58(2)(6) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

Modifications etc. (not altering text)

- C4** S. 58 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

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