



# Transport Act 2000

## 2000 CHAPTER 38

### PART IV

#### RAILWAYS

### CHAPTER II

#### OTHER PROVISIONS ABOUT RAILWAYS

#### *Enforcement regime*

#### 225 Penalties

(1) In the Railways Act 1993, after section 57 insert—

#### **“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.

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- (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 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(c) the Regulator has not given notice to the Authority within that period that he so considers (or, if he has, he has withdrawn it).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 Competition Act 1998.

#### **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—

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- (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.

### **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,
  - (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

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- (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—
- (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.

#### **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.

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### **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 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.
- (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.

### **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—
  - (a) that it was not within the powers of section 57A above,
  - (b) 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
  - (c) 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—
  - (a) 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
  - (b) 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—
  - (a) provision substituting a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; and
  - (b) 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.
- (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.

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- (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.”
- (2) In section 55 of that Act (orders for securing compliance), for subsection (8) substitute—
- “(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 Judgments Act 1838.”