
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

**The Railways Infrastructure (Access, Management
and Licensing of Railway Undertakings)
Regulations (Northern Ireland) 2016**

PART 7

ENFORCEMENT BY THE REGULATORY BODY

Enforcement of decisions, directions and notices

38.—(1) If the Office of Rail and Road or the Department, in respect of its function under regulation 6(10), is satisfied that a relevant operator has contravened, or is contravening, a relevant decision, direction or notice, the authority may impose on the relevant operator a penalty of such amount as is reasonable.

(2) A penalty is payable to the Department.

(3) The amount of a penalty imposed on a relevant operator may not exceed 10 per cent. of his turnover in accordance with a direction made by the Department.

(4) In this regulation—

(a) “relevant decision, direction or notice” means—

(i) a decision made, or direction issued, by the Office of Rail and Road under regulation 31, 32, 33 or 34; or

(ii) a notice served by the Office of Rail and Road under regulation 36.

(b) “relevant operator” means—

(i) a person issued with a decision or direction under regulations 31, 32, 33, or 34; or

(ii) a person on whom a notice is served under regulation 36.

Statement of policy

39.—(1) The Office of Rail and Road, in consultation with the Department and other interested parties, shall 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 direction to be influenced by—

(a) the desirability of securing compliance with that relevant condition or requirement or direction;

(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 direction; and

- (c) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional directions.
- (3) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the Office of Rail and Road shall have regard to any statement of his, their or its policy published at the time when the contravention occurred.
- (4) The Office of Rail and Road —
 - (a) may at any time alter or replace a statement of their policy; and
 - (b) shall publish the altered or replacement statement.
- (5) The Office of Rail and Road shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.
- (6) Office of Rail and Road 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 regulation applies in relation to sums required to be paid by virtue of regulation 41 above as to penalties, but as if—
 - (a) references to the imposition of penalties were to the inclusion in a direction of a requirement to pay a sum;
 - (b) references to relevant conditions or requirements were omitted; and
 - (c) the reference in subparagraph (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.

Procedural requirements for penalties

40.—(1) Before it imposes a penalty on a relevant operator, the Office of Rail and Road 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 direction in question,
- (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or direction 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 paragraph (1) above shall be given—
 - (a) by publishing the notice in such manner as the Office of Rail and Road considers appropriate; and
 - (b) by serving a copy of the notice on the relevant operator.
- (3) Where the Office of Rail and Road serves a copy of a notice under paragraph (1) above on a licence holder, he shall also serve a copy on the Department.
- (4) The Office of Rail and Road 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 paragraph (5) below.
- (5) The requirements mentioned in subparagraph (4)(c) above are that the Office of Rail and Road 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 Office of Rail and Road 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 direction in question;
 - (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or direction 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 paragraph (6) above shall be given—
- (a) by publishing the notice in such manner as the Office of Rail and Road 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 paragraph (6) above, make an application to the Office of Rail and Road for it to specify different dates by which different portions of the penalty are to be paid.

Interest and payment of instalments

41. 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 Article 127 of the Rules of the Court of Judicature (Northern Ireland) 1980(1).

Validity and effect of penalties

42.—(1) If the relevant operator to whom a penalty notice relates is aggrieved by a penalty and desires to question its validity on the ground—

- (a) that it was not within the powers of regulation 38 above,
- (b) that any of the requirements of regulation 38 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 regulation 40(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—

(1) The Rules of the Supreme Court were renamed the Rules of the Court of Judicature under para 3(3) of Schedule 11 to the Constitutional Reform Act 2005

- (a) where it is on the ground mentioned in subparagraph (1)(c) above, within 42 days from the date on which he is notified of the decision not to grant the application under regulation 40(8) above, and
 - (b) in any other case, within 42 days from the date of service on him of the notice under regulation 40(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 paragraph (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 subparagraphs (a) and (b) of paragraph (5) below.
- (5) The provision referred to in paragraph (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 regulation 40(6) above.
- (6) On an application under this section on the ground mentioned in subparagraph (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.