



Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Enforcement by the Regulator and the Franchising Director

55 Orders for securing compliance

- (1) Subject to subsections (2) to (5) and section 56 below, where the appropriate officer is satisfied that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, he 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 subsection (5) below, where it appears to the appropriate officer—
 - (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,he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him 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 officer shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence 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 subsection (5) and section 56 below, the appropriate officer shall confirm a provisional order, with or without modifications, if—
 - (a) he is satisfied that the relevant operator to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

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- (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 officer shall not make a final order, or make or confirm a provisional order, in relation to a relevant operator if he is satisfied—
 - (a) that the duties imposed on him by section 4 or, as the case may be, section 5 above preclude the making or, as the case may be, the confirmation of the order;
 - (b) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate officer 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
 - (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the appropriate officer is satisfied as mentioned in subsection (5) above, he shall—
 - (a) serve notice that he is so satisfied on the relevant operator; and
 - (b) publish the notice in such manner as he 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—
 - (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 officer.
- (8) Without prejudice to the generality of the power conferred by subsection (1) above, the provision that may be made in a final order includes, in particular, the imposition by the appropriate officer on the relevant operator to whom the order relates of a requirement to pay to the appropriate officer a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.
- (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 officer” means—
 - (a) in relation to any relevant condition or requirement in the case of a licence holder or a person under closure restrictions, the Regulator;
 - (b) in relation to any relevant condition or requirement in the case of a franchisee or a franchise operator, the Franchising Director;
 - “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

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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—
- (d) 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 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;

“relevant operator” means any licence holder, franchisee, franchise operator who is a party to the franchise agreement or person under closure restrictions.

(11) In subsection (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 Franchising Director; 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.

(12) Any sums received by the appropriate officer by way of monetary penalty under this section shall be paid into the Consolidated Fund.

56 Procedural requirements

(1) Before he makes a final order or confirms a provisional order, the appropriate officer shall give notice—

- (a) stating that he proposes to make or confirm the order and setting out its effect,
- (b) setting out—
 - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed,
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement, and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order, and
- (c) specifying the period (not being less than 28 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—

- (a) by publishing the notice in such manner as the appropriate officer 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.
- (3) The appropriate officer 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 officer shall—
- (a) serve on the relevant operator to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than 28 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.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the appropriate officer 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 he 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 officer shall give notice—
- (a) stating that he proposes to revoke the order and setting out the effect of its revocation, and
 - (b) specifying the period (not being less than 28 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 officer decides not to revoke the order to which the notice relates, he shall give notice of his decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the appropriate officer 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.

57 Validity and effect of 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—

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- (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; or
 - (b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the court considers appropriate in all the circumstances of the case.
- (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 officer 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 section 58 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

58 Power to require information etc

- (1) Where it appears to the appropriate officer that a relevant operator may be contravening, or may have contravened, any relevant condition or requirement, the appropriate officer may, for any purpose connected with such of his functions under section 55 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 officer and—

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- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate officer or to any person appointed by the appropriate officer 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 officer 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.
- (6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the appropriate officer, 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.