

**EXPLANATORY MEMORANDUM TO THE
RAILWAYS (PENALTY FARES) (AMENDMENT) REGULATIONS 2005**

2005 No. 1095

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations raise the default amount of a penalty fare on the national rail network from £10 to £20.

2.2 The Regulations also provide that a person who is prosecuted under bye-laws made under the Transport Act 2000 for a failure to produce a valid ticket or other authority to travel on the national rail network when required to do so shall not be liable for any penalty fare charged in respect of that same failure.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Secretary of State has power to make Regulations governing railway penalty fares under section 130 of the Railways Act 1993. The Railways (Penalty Fares) Regulations 1994 (SI 1994/576) (“the 1994 Regulations”) were made under that section. These Regulations, also made under that section, amend the 1994 Regulations.

4.2 The Secretary of State has consulted the Mayor of London in advance of making these Regulations, in accordance with section 130(9A).

4.3 The Regulations are being made to implement the policy proposal to raise the default penalty fare, following a public consultation exercise.

5. Extent

5.1 This instrument applies to Great Britain

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The total amount of revenue lost from fare evasion is estimated to be over £200m across the whole of the national rail network. The operation of a penalty fares scheme is one effective means by which train operators can tackle ticketless travel. It not only affects fare-dodgers who are charged penalty fares, but also offers a visible deterrent to others. Section 130 of the Railways Act 1993 provided authority for the Secretary of State to establish, through regulations, arrangements for the charging of penalty fares, and this power was exercised with the making of the 1994 Regulations.

7.2 The amount of the default penalty fare has remained unchanged for 10 years. During this period inflation and real growth in travellers' incomes has reduced its effectiveness as a deterrent. It is likely that an increase in the penalty fare to take account of inflation since 1994 (i.e. to £15) would not significantly increase the deterrent effect. Raising the penalty fare to £20 is likely to act as a greater deterrent, as it will represent an increase in real terms in the penalty fare. This will raise income from both penalty fares and ticket revenue. Although no further increases are planned, the penalty fare regime will be monitored and reviewed as necessary in the future.

7.3 The specific objectives in updating the 1994 Regulations are to ensure that the penalty fare:

- acts as a deterrent to fare evasion
- continues to allow train operators an effective mechanism to use as part of their revenue protection strategy;
- is fair, reasonable and enforceable.

7.4 Although there has been considerable media interest in the policy proposals the consultation only elicited 43 responses. Of these, 13 were from Train Operating Companies or groups of them, 9 were from members of the public, 5 were from Passenger Transport Executives and Local Government bodies, 4 were from passenger representative bodies, 3 were from regional Government Offices. In addition, the following bodies responded: the Associated Society of Locomotive Engineers and Firemen (ASLEF), the British Transport Police, the Independent Penalty Fares Appeal Service, the Strategic Rail Authority, Transport for London, the Mayor of London and the Office of Rail Regulation. Some of these bodies did not have any comments on the proposals. The responses may be summarised as follows:

- 38 supported the proposal to increase the default penalty fare amount. Only 2 respondents did not agree with the proposal to increase the default penalty fare amount (both were members of the public - one felt that it should remain at £10, and the other felt that the penalty fare regime should be withdrawn)
- 5 respondents felt that the increase should be to a sum significantly higher than the £20 proposed (the Government's detailed reasons for not doing so are discussed in the appended RIA (paragraphs 5 and 12) but principally were that larger increases would involve additional administrative costs and may increase conflicts with railway staff)

- 7 respondents felt that there should be a mechanism for increasing the default penalty fare in future, through for example index-linking it
- 6 respondents felt that more money should be required if payment was not forthcoming within a certain number of days (eg 21)

Therefore a majority of the respondents supported the proposal to increase the present default amount of the penalty fare. Nevertheless all of the above comments have been noted and the Government has given assurances that it intends to keep the system under review.

7.5 The Mayor of London is a statutory consultee in respect of these Regulations and he confirmed that he does not object to the proposed rise in the default penalty fare amount. The Mayor of London has functions in respect of penalty fares in London pursuant to section 245 and Schedule 17 of the Greater London Authority Act 1999.

7.6 The amendment to Regulation 10 of the 1994 Regulations, which avoids double liability for a failure to produce a ticket or other authority to travel when required to do so, updates that Regulation so that it covers offences under railways bye-laws made pursuant to the Transport Act 2000. Regulation 10 already covers offences under railways bye-laws made pursuant to the Railways Act 1993 and the Transport Act 1962.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum

8.2 No impact on the public sector is foreseen.

9. Contact

9.1 Joseph Odiari at the Department for Transport - Tel: 0207 944 6986 or e-mail: joseph.odiari@dft.gsi.gov.uk - can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Railways (Penalty Fares) (Amendment) Regulations 2005

2. Purpose and intended effect of measure

(i) The objective

The review of the statutory cash element of the penalty fare is intended to ensure that there is an effective deterrent to fare evasion and that train operators are able to protect their fare revenue.

The specific objectives in updating the regulation are to ensure that the penalty fare:

- acts as a deterrent to fare evasion
- continues to allow train operators an effective mechanism to use as part of their revenue protection strategy;
- is fair, reasonable and enforceable.

(ii) The background

The Railways (Penalty Fares) Regulations 1994 (made by the Secretary of State, under section 130 of the Railways Act 1993) – make provision for the charging of penalty fares and empower the Strategic Rail Authority to make rules governing the charging and imposition of penalty fares. The 1994 Regulations set out the amount of penalty fare; this is currently £10.00 or twice the full single fare to the next stop, whichever is the greater. It is for the train operating companies to apply to the SRA to introduce a scheme and the SRA to approve such an application. There are currently 12 penalty fares schemes operated by train operating companies.

(iii) Risk assessment

The penalty fare has remained unchanged for 10 years. During this period inflation and real growth in traveller's incomes has reduced the effectiveness of the £10 penalty fare. Its deterrent and revenue raising effects have been weakened.

If the penalty fare is increased too much there is a risk that it will prove difficult and costly to enforce. A higher penalty fare will increase the incentive for fare evaders to avoid being detected. This could possibly reduce penalty fare revenue, although the exact relationship is unknown.

3. Options

1. Base Case – Do nothing and make no changes to the current system or penalty level.
2. Increase the cash element of the penalty fare to £15 to restore the real value of the penalty fare to 1994 levels - all other aspects of the system to remain the same.
3. Increase the cash element of the penalty fare to £20 - all other aspects of the system to remain the same.
4. Increase the cash element of the penalty fare to an amount above £20, for example £50 - all other aspects of the system to remain the same.

4. Benefits

- Economic

The deterrent effect is the most important benefit of the penalty fare. This is because it is difficult to catch the great majority of passengers not paying their fare without incurring costs that are in excess of the lost revenue. Therefore we can assume that the majority of passengers who do not pay the fare do not get caught. This is evidenced by the fact that revenue from penalty fares is only £3.7m a year, less than 0.1% of total passenger revenue. Train operators will receive little additional revenue directly from an increase in penalty fares. Its real value will be in the extra revenue received as more people choose to pay their fare rather than attempt to evade paying their fare.

Evidence from Train Operating Companies

Evidence from a regional train operating company suggests that the operation of a penalty fares scheme provides a reasonable deterrent. A regional train operator monitored the percentage of passengers travelling without a ticket while a penalty fare scheme was in operation. They compared this evasion rate with the one observed when no penalty fare was in place. The average evasion rate with the penalty fare in place was 3% and with no penalty it was 8%. Evidence from TOCs operating in London and the South-East suggests that the evasion rate is between 3 and 4%, where penalty fare schemes are in operation.

Network wide calculation of possible benefits

It is not possible to accurately quantify the benefits from increasing the penalty fare under any of the options, as we do not have sufficient evidence. However it is possible to provide an estimate of the potential benefits. In order to do this we can apply the evasion rates observed in the previous examples to all train operators. However this is a very simplistic analysis. Train operators vary considerably in terms of the price of tickets, their method of revenue protection and the characteristics of their passengers and it is

unlikely that evasion rates will be uniform across train operators. However in the absence of more detailed data this is a reasonable assumption.

Annual passenger revenue was approximately £3.9bn in 2003/04. For simplicity we assume that this revenue is shared equally between the group of 12 train operators with a penalty fare scheme and the group of 12 train operators that do not operate a penalty fare scheme - i.e. £1.95bn each.

For those 12 operators that have a penalty fare scheme we assume that 3% of passenger revenue has been lost. Revenue lost to fare evasion is approximately equal to £60m per annum.

For those 12 operators that do not have a penalty fare we assume that 8% of passenger revenue has been lost. Revenue lost to fare evasion is approximately equal to £170m per annum.

Total revenue lost from fare evasion is likely to be around £230m per annum. However, this proposal will only affect the group of TOCs which operate a penalty fares scheme. Although the exact relationship between the level of the penalty fare and the rate of fare evasion is unknown, it is certain that there would be a reduction in this lost revenue if penalty fares were increased. For the reasons already explained, it is unlikely that the full £60m of possible benefits will be realised but there is plenty of scope for significant benefits.

Benefits are assessed against option 1; the base case.

Option 2

It is likely that an increase in the penalty fare to take account of inflation would be unlikely to significantly increase the deterrent effect, as a rise to £15 does not take any account of rising real incomes. We would expect that the benefits would be less than the £60m per annum identified above.

Option 3

Raising the penalty fare to £20 is likely to act as a greater deterrent, as it will represent a real terms increase in the penalty fare. This will raise income from both penalty fines and ticket revenue. This view was supported by the majority of respondents. A London and the South East TOC estimates that as a result of raising the penalty fine to £20, it would raise £1m in additional ticket revenue and £200k in fines. We would expect that the benefits would be less than the £60m per annum identified above.

Option 4

Raising the penalty fare to £50 would result in a significantly increased deterrent effect. There would also be an increase in ticket revenue and penalty fares, if they could be successfully collected. We would expect that the benefits would be less than the £60m per annum identified above.

- Environmental

No environmental benefits have been identified.

- Social

No Social benefits have been identified.

5. Costs

- Economic

Option 2

Raising the penalty fare to £15 will not introduce any significant costs to industry. There will be a small one-off cost for reprinting posters and leaflets. This cost is estimated by one TOC to be in the region of £15k. It is likely these costs will be recovered from the additional penalty fare revenue and the reduction in ticketless travel.

Option 3

Raising the penalty fare to £20 will not introduce any significant costs to industry. Any costs are likely to be similar to those for option 2.

Option 4

Raising the penalty fare to £50 is likely to introduce additional cost to the industry. Passengers are less likely to be able to pay on the spot so the TOC will have to spend more on administration and the recovery of penalty fares. There may also be a greater risk of conflict with staff. Passengers will also try harder to evade getting caught.

- Environmental

No Environmental costs have been identified.

- Social

No social costs have been identified.

6. Equity and Fairness

The proposal would not be expected to have a disproportionate impact on any group.

7. Consultation with small business: the Small Firms' Impact Test

No small businesses are likely to be affected directly by this proposal.

8. Competition Assessment

The proposal would affect those TOCs with a scheme equally, and completion of the competition filter test has indicated that there would be no impact on competition.

9. Enforcement and Sanctions

The raising of the cash element of the penalty fare would have no impact on the rest of the existing regime. A relatively limited rise from £10 to £15 or £20 would not be expected to lead to difficulties for train operating company staff enforcing the penalty fare. A more significant increase in the penalty fare up to £50 would increase the administrative costs of TOCs, as fewer passengers would be able to pay on the spot and they would have to allocate more time to chasing penalty fare payments.

10. Monitoring and Review

The penalty fare system will be monitored and reviewed as necessary in the future.

11. Consultation

The Department invited comments on the proposal to increase the current statutory cash element of the penalty fare that may be charged to those passengers found without a valid ticket on the UK rail network - proposal to raise from the current £10 level to £20. The consultation period commenced on 2 August 2004 and the closing date for responses was 26 October 2004 - (12 weeks). We received 40 responses in total, (from Train Operating Companies, rail industry, Passenger Transport Executives, the Government Offices and from members of the public). Generally the respondents were broadly in support of the proposal.

12. Summary and Recommendation

Raising the cash element of the penalty fare would be expected to increase the deterrent effect of the penalty system, cut fare evasion, and could lead to increased revenues for train operating companies of up to, but probably less than, £60m per annum. No significant extra costs are currently expected.

Option 1 does nothing to address the key concern that the £10 fine no longer acts as an effective deterrent to fare evasion. Option 2 accounts for the effects of inflation, improving the penalty fare's deterrent value but it does not address the issue of rising real incomes. Option 3 represents an increase in the real value of the penalty fare and will likely restore and possibly exceed the deterrent effect of the penalty fare when it was first introduced. Option 4 would further improve the deterrent effect but the Department is not aware of any evidence to suggest that fare evasion has greatly increased. Without this

evidence it is not clear that a largely increased penalty fare is necessary. There are also likely to be more significant costs to industry under option 4.

Option 3 is recommended, the penalty fare should be raised to £20.

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1	None	None
2	No significant additional costs	Not possible to accurately quantify
3	No significant additional costs	Not possible to accurately quantify
4	Likely to lead to additional administrative costs for TOCs	Not possible to accurately quantify

13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed : Tony McNulty

Date: 4th April 2005

Tony McNulty, Minister of State, Department for Transport

Contact point

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