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STATUTORY INSTRUMENTS

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**2018 No. 366**

**The Railways (Penalty Fares) Regulations 2018**

**PART 3**

**Appeals**

**Operator requirements**

**14.**—(1) Where, at any time, an operator does not satisfy the appeals requirements the operator must ensure that a collector authorised by the operator does not charge a penalty fare on the operator's behalf.

(2) Where a penalty fare is charged to a person on behalf of an operator and paragraph (4) applies, the person is not liable to pay the penalty fare.

(3) If the person referred to in paragraph (2) has paid the penalty fare, or part of it, the operator must refund that person the amount paid within the period of 10 working days, beginning with the day on which the operator knows that paragraph (4) applies.

(4) This paragraph applies if—

- (a) the operator did not satisfy the appeals requirements at the time the penalty fare was charged; or
- (b) there is a time at which the person could appeal under regulation 16, 17 or 18, and at that time the operator does not satisfy the appeals requirements.

(5) An operator “satisfies the appeals requirements” for the purposes of this regulation if the operator has—

- (a) made arrangements for—
  - (i) an Appeal Panel to consider any appeal under regulations 16 and 17 against a penalty fare charged on its behalf, and
  - (ii) a Final Appeal Panel to consider any appeal under regulation 18 against a penalty fare charged on its behalf; and
- (b) established and maintained a financial arrangement with the relevant Appeal Panel and the relevant Final Appeal Panel to ensure that all of the costs associated with appeals under regulations 16, 17 and 18 against penalty fares charged on behalf of the operator are paid for by the operator.

**Appeal Panel and Final Appeal Panel requirements**

**15.**—(1) To comply with the requirements in this paragraph a body must—

- (a) be managerially and organisationally independent of any operator and any affiliate of an operator; and
- (b) have arrangements to ensure that any appeal under regulation 17 can be considered by a different person to the person who decided not to allow the appeal under regulation 16.

- (2) To comply with the requirements in this paragraph a body must be—
- (a) managerially and organisationally independent of any operator and any affiliate of an operator; and
  - (b) independent of the panels which considered the appeal under regulations 16 and 17 in the appeal concerned.
- (3) In this regulation—
- (a) “affiliate of an operator” means a subsidiary or holding company of that operator and any subsidiary or holding company of such holding company (and, for the purposes of this definition, “subsidiary” and “holding company” have the meanings ascribed to them in section 1261(1) of the Companies Act 2006<sup>(1)</sup>); and
  - (b) a body is “independent of the panels which considered the appeal under regulations 16 and 17 in the appeal concerned” if it has arrangements in place to ensure that the requirement in paragraph 15(b) of Schedule 2 can be complied with.

### Appeals – stage one

**16.—**(1) A person (“the appellant”) charged a penalty fare under regulation 5(1) may appeal against that penalty fare to the relevant Appeal Panel—

- (a) before the end of the period of 21 days beginning with the day after the day on which the penalty fare is charged; or
  - (b) within such longer period as the relevant Appeal Panel may allow.
- (2) An appeal under this regulation must be made—
- (a) in accordance with the Appeal Procedure; and
  - (b) on one or more of the grounds specified in paragraph (3).
- (3) The grounds on which an appeal under this regulation may be made are that—
- (a) the penalty fare was not charged in accordance with the requirements of these Regulations;
  - (b) the appellant is not the person liable for the payment of the penalty fare;
  - (c) the appellant owns a season ticket valid for the journey in question but was not in possession of the season ticket at the time the penalty fare was charged; or
  - (d) there are compelling reasons why, in the particular circumstances of the case, the appellant should not be liable to pay the penalty fare.
- (4) Where the appellant makes representations as part of an appeal under this regulation in relation to any of the matters specified in paragraph (5), it is for the operator on whose behalf the penalty fare was charged to provide evidence that reasonably demonstrates that any fact described by the appellant in relation to any of those matters is not true.
- (5) The matters referred to in paragraph (4) are—
- (a) in circumstances where the appellant was charged a penalty fare in relation to travelling by, being present on, or leaving a train—
    - (i) by which train and preceding train or trains, if any, the appellant was travelling or had travelled or on which train the appellant was present or had been present;
    - (ii) at which station the appellant boarded the train and any preceding train or trains and at which station the appellant intended to leave that train;
    - (iii) whether any of the circumstances mentioned in regulations 6(2) applied;

(1) 2006 c. 46. There are amendments to section 1261(1) not relevant to these Regulations.

- (b) in circumstances where, being a person present in or leaving a compulsory ticket area, other than as a result of leaving a train that arrived at that compulsory ticket area, the appellant was charged a penalty fare in respect of being present in or leaving that compulsory ticket area—
  - (i) whether the appellant intended to travel by train, and if so, by which train and to which station, and if not, the appellant’s reason for being in the compulsory ticket area;
  - (ii) whether any of the circumstances mentioned in regulation 7 applied.
- (6) The relevant Appeal Panel must consider an appeal under this regulation in accordance with the Appeal Procedure.
- (7) If the relevant Appeal Panel, after considering an appeal under this regulation, concludes that any ground specified in paragraph (3) applies, it must, subject to paragraph (10), allow the appeal.
- (8) If the relevant Appeal Panel, after considering an appeal under this regulation, concludes that no ground specified in paragraph (3) applies, it must not allow the appeal.
- (9) The relevant Appeal Panel must, in accordance with the Appeal Procedure, notify the operator concerned and the appellant of any decision made under paragraph (7) or (8).
- (10) Where the relevant Appeal Panel concludes that the ground in paragraph (3)(c) applies, the Panel may decide to not allow the appeal if the operator has provided evidence that the appellant has made a journey on at least two occasions previously where the ground in paragraph (3)(c) applied.
- (11) Where the relevant Appeal Panel—
  - (a) notifies the operator that an appeal has been allowed; or
  - (b) fails to adhere to the time period specified in paragraph 6 of Schedule 2,the appellant is not liable to pay the penalty fare in question.
- (12) If the appellant referred to in paragraph (11) has paid the penalty fare, or part of it, the operator on whose behalf the penalty fare was charged must repay to the appellant the amount paid within the period of 10 working days, beginning with whichever is the earlier of—
  - (a) the day on which that operator receives notification that the appeal has been allowed; or
  - (b) the day on which the time period specified in paragraph 6 of Schedule 2 expires.
- (13) In this regulation “season ticket” means a ticket which entitles the person to whom it is issued to make an unlimited number of journeys in any direction between the stations, or within the zones, for which the ticket is valid during a specified period whether or not the entitlement is subject to further restrictions.

### **Appeals – stage two**

- 17.**—(1) Where an Appeal Panel has notified an appellant that it has not allowed an appeal made under regulation 16, the appellant may appeal to the relevant Appeal Panel against that decision—
- (a) before the end of the period of 14 days beginning with the day on which the notice of such decision is received; or
  - (b) within such longer period as the relevant Appeal Panel may allow.
- (2) An appeal under this regulation must be made—
- (a) in accordance with the Appeal Procedure; and
  - (b) on one or more of the grounds specified in regulation 16(3).
- (3) The relevant Appeal Panel must consider an appeal under this regulation in accordance with the Appeal Procedure.

(4) If the relevant Appeal Panel, after considering an appeal under this regulation, concludes that any ground specified in regulation 16(3) applies, it must, subject to paragraph (7), allow the appeal.

(5) If the relevant Appeal Panel, after considering an appeal under this regulation, concludes that no ground specified in regulation 16(3) applies, it must not allow the appeal.

(6) The relevant Appeal Panel must, in accordance with the Appeal Procedure, notify the operator concerned and the appellant of any decision made under paragraph (4) or (5).

(7) Where the relevant Appeal Panel concludes that the ground in regulation 16(3)(c) applies, the Panel may decide to not allow the appeal if the operator has provided evidence that the appellant has made a journey on at least two occasions previously where the ground in regulation 16(3)(c) applied.

(8) Where the relevant Appeal Panel—

(a) notifies the operator that an appeal has been allowed; or

(b) fails to adhere to the time period specified in paragraph 6 of Schedule 2,

the appellant is not liable to pay the penalty fare in question.

(9) If the appellant referred to in paragraph (8) has paid the penalty fare, or part of it, the operator on whose behalf the penalty fare was charged must repay to the person the amount paid within the period of 10 working days, beginning with whichever is the earlier of—

(a) the day on which that operator receives notification that the appeal has been allowed; or

(b) the day on which the time period specified in paragraph 6 of Schedule 2 expires.

### **Appeals – final stage**

**18.**—(1) Where an Appeal Panel has notified an appellant that it has not allowed an appeal under regulation 17 the appellant may appeal to the relevant Final Appeal Panel against that decision—

(a) before the end of the period of 14 days beginning with the day on which the notice of such decision is received; or

(b) within such longer period as the relevant Final Appeal Panel may allow.

(2) An appeal under this regulation must be made—

(a) in accordance with the Appeal Procedure; and

(b) on one or more of the grounds specified in regulation 16(3).

(3) The relevant Final Appeal Panel must consider an appeal under this regulation in accordance with the Appeal Procedure.

(4) If the relevant Final Appeal Panel, after considering an appeal under this regulation, concludes that any ground specified in regulation 16(3) applies, it must, subject to paragraph (7), allow the appeal.

(5) If the relevant Final Appeal Panel, after considering an appeal under this regulation, concludes that no ground specified in regulation 16(3) applies, it must not allow the appeal.

(6) The relevant Final Appeal Panel must, in accordance with the Appeal Procedure, notify the operator concerned and the appellant of any decision under paragraph (4) or (5).

(7) Where the relevant Final Appeal Panel concludes that the ground in regulation 16(3)(c) applies, the Panel may decide to not allow the appeal if the operator has provided evidence that the appellant has made a journey on at least two occasions previously where the ground in regulation 16(3)(c) applied.

(8) Where the relevant Final Appeal Panel—

(a) notifies the operator that an appeal has been allowed; or

(b) fails to adhere to the time period specified in paragraph 15(d) of Schedule 2,

the appellant is not liable to pay the penalty fare in question.

(9) If the appellant referred to in paragraph (8) has paid the penalty fare, or part of it, the operator on whose behalf the penalty fare was charged must repay to the person the amount paid within the period of 10 working days, beginning with whichever is the earlier of—

- (a) the day on which that operator receives notification that the appeal has been allowed; or
- (b) the day on which the time period specified in paragraph 6 of Schedule 2 expires.