

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (PENALTY FARES) REGULATIONS 2018
2018 No. 366

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes provision for the charging of rail penalty fares for travel or presence in a compulsory ticket area without a valid ticket. It sets out the circumstances in which a penalty fare can be charged and the appeals process that operators must put in place in order to charge penalty fares.

3. Matters of special interest to Parliament

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

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument revokes and replaces the Railways (Penalty Fares) Regulations 1994. This instrument updates the circumstances in which a penalty fare can be charged. In addition, this instrument provides that an operator may only charge penalty fares if it has in place an appeals process that complies with the regulations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland.
- 5.2 The territorial application of this instrument is England, Wales and Scotland.
- 5.3 However, this instrument does not apply to Transport for London railway passenger services, certain Scottish railway passenger services and stations served only by those services.

6. European Convention on Human Rights

- 6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Train operators charge penalty fares to deter people from travelling on railway passenger services without first purchasing a valid ticket for their journey. A penalty fare is a type of fare, as opposed to being a fine, and it is enforceable as a civil debt if it is not paid. A train operator cannot both charge a person a penalty fare and bring a criminal prosecution against them in respect of the same incident of ticketless travel.
- 7.2 This instrument replicates many of the aspects of the existing penalty fares regime but also introduces some additional passenger safeguards. The Department for Transport identified various ways in which the regime could be improved following its public consultation entitled *Changes to the Rail Penalty Fares appeals process*. This instrument will implement the proposals outlined in the Government's response to that consultation.
- 7.3 Where penalty fares apply, rail passengers must buy their tickets before they start their journey wherever there are facilities for them to do so. An operator who wants to charge penalty fares must display warning notices to make passengers aware of the potential consequences of ticketless travel. Passengers are obliged to produce their tickets at the request of an authorised collector acting on behalf of the relevant train or station operator. If a passenger is unable to produce a valid ticket, then an authorised collector can charge them a penalty fare.
- 7.4 This instrument provides for two situations in which a person can be charged a penalty fare. The first is where a person is present on, travelling by or leaving a train and they cannot produce a valid ticket for their journey. This includes a person present in or leaving a station (or a compulsory ticket area within a station), having disembarked from a train. The second situation is where a person is present in, or is leaving, a compulsory ticket area in a station. In these circumstances a person can be charged a penalty fare if they cannot produce a valid ticket either for the journey they are intending to make or, if they do not intend to travel, authorising their presence in that compulsory ticket area.
- 7.5 It is important that passengers are able to challenge a penalty fare if they believe that it was incorrect or unfair for it to have been charged in the circumstances of their case. Consequently, each operator is required to make an appeals procedure available at no cost to the passenger.
- 7.6 One of the principal changes made by this instrument is the introduction of a standardised appeal process. This instrument provides for a three stage appeal process, similar to that used by Transport for London. An appeal will be considered by an appeal body at the first and second stages of the process whilst a final appeal body will review the case at the third stage. An operator will only be able to charge penalty fares if it satisfies the appeals requirements, including the time limits, which are set out in the instrument.
- 7.7 Further, the instrument provides that all appeals bodies should be managerially and organisationally independent of operators. This will create a clear distinction for passengers between those who issue penalty fares and those who consider their case at the appeal stage.
- 7.8 The regulations also "stop the clock" on the time limit for the payment of a penalty fare if a passenger has lodged an appeal. This means that, pending the consideration

of their appeal, a passenger will not have to make payment of the penalty fare or incur administration fees for late payment.

- 7.9 Both the Strategic Rail Authority's Penalty Fares Rules and Penalty Fares Policy documents dating from 2002 will cease to apply upon the commencement of the new regulations.

Consolidation

- 7.10 This instrument replaces rather than amending the existing regulations and so consolidation is not required.

8. Consultation outcome

- 8.1 A consultation was launched in February 2015; it was held for 12 weeks and 47 responses were received. The consultation was open to the public, with specific targeted requests for responses going to particular organisations. We asked for responses from passenger groups, train operators, penalty fare appeals bodies, devolved transport bodies, and individual respondents. The consultation was publicised by social media. The consultation and government response are available on GOV.UK at: <https://www.gov.uk/government/consultations/rail-penalty-fares-changes-to-appeals-process>.
- 8.2 The Department proposed several new requirements in the penalty fares regime. These were generally well received by all consultees with the majority supporting the proposals. A more detailed analysis of the consultation outcome is available on GOV.UK.
- 8.3 There was unanimous agreement from consultees to take forward "stopping the clock" for payment of penalty fares. Therefore these Regulations provide that train operators cannot recover penalty fares as a civil debt until any appeal under the Regulations has been concluded.
- 8.4 There was mostly agreement from consultees on the requirements for all penalty fares appeals bodies to become independent of train operators and owning groups. There was some concern on the need to define financial and managerial independence from train operators. The Regulations provide that appeals bodies must be managerially and operationally independent of train operators and their affiliates.
- 8.5 The consultation proposed the introduction of a three stage appeal process for penalty fares, which has been provided for in the Regulations. This is broadly in line with what the consultation responses indicated, though there was some concern regarding adding a further stage of appeal. The third stage appeal has been accepted by the industry as necessary to bring them into line with the Transport for London model, which currently operates a full three stage process.
- 8.6 The consultation outlined the need for train operators to provide data on penalty fares appeals to the Department for Transport. The consultees were broadly content with the department having greater oversight. It is not necessary to include provisions in this instrument to achieve this objective, as it is already within the existing power of the government due to the nature of the rail franchise agreements, and so does not need further regulation.

9. Guidance

- 9.1 The Department for Transport does not intend to produce guidance (whether statutory or non-statutory) in connection with the regulations. However, the Rail Delivery Group (an industry body whose membership includes the major passenger and freight train operators and Network Rail) has informed the department that it intends to produce its own best practice guidance booklet for the benefit of collectors and passengers. The guidance will summarise some of the key aspects of the penalty fare regime in a user friendly format. The Rail Delivery Group is yet to publish its guidance but, once it has done so, the document will be made available on its website (<https://www.raildeliverygroup.com>). The Rail Delivery Group will ensure that its guidance is publicised.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies will be minimal. There will be a setup cost for the third stage appeal which will be paid for by train companies through their industry body, the Rail Delivery Group. Operators will need to pay a fee to the body appointed to undertake the third stage of the appeal process in respect of each appeal case. However these costs will be part of any future business modelling included in the operators' revenue protection schemes.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. However a regulatory triage assessment has been performed.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 A review provision has not been included in this instrument as its net economic impact on business is anticipated to be less than £5m.

13. Contact

- 13.1 Lee Jeffery at the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR, Telephone: 07795 883577 or email: Lee.Jeffery@dft.gsi.gov.uk can answer any queries regarding the instrument.