



OFFICE *of the*
RAIL REGULATOR

PENALTY FARES A POLICY STATEMENT

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1. *Regulator's foreword*

1. Throughout 1996 I have been examining the new rules which govern the operation of the new railway in Great Britain. My aim is to work with the industry to produce a better railway for passengers and users. This policy statement on penalty fares follows close on my consultation document on accuracy and impartiality in selling tickets to passengers¹. The two are connected: to secure improvements for passengers where rules are needed and standards need to be set for the protection of passengers, and for the promotion of the use of the railway network. This is a continuing process - not the burden of bureaucratic rules that serve no purpose, but a good and pragmatic framework in which operators and passengers can have confidence that the rules achieve a mutual benefit.

2. 'Penalty Fares' has an ominous ring to it. It signals an ability to impose a penalty or a fine on a passenger who is travelling on a train without a ticket - and the penalty element is the excess over the fare which the passenger would have paid if the ticket had been bought before travelling. That is why Parliament has been concerned that train operators who wish to impose penalty fares for ticketless travel should be subject to regulation. The Secretary of State is responsible for the overall framework set out in regulations. Within that framework the Regulator makes the detailed rules and is responsible for securing compliance with them. Over the past two years, including the issue of a consultation document in 1995², I have been concerned to ensure the rules are fit for purpose.

3. I have concluded that the present system, while broadly acceptable, does not give sufficient protection to the honest passenger and could discourage access to the railway network. I have therefore decided that all existing schemes will need to be altered in some important ways to secure this objective. In particular I want to see back-up facilities to buy a ticket when the station ticket office is closed; an end to confusion as to whether 'conductors' in penalty fares areas can or cannot issue tickets; an appeals process which is manifestly independent and consistent in its approach; and sustained efforts on the part of train operators to train Revenue Protection Inspectors and to maintain staff competence.

¹ *Accurate and impartial retailing: meeting the needs of passengers. A consultation document* – August 1996.

² *Penalty fares: a consultation in document* – October 1995.

Penalty fares

2. Regulator's policy conclusions

- 2.1 Train operators need to protect their revenue by minimising ticketless travel. With income from ticket sales running at around £2 billion a year substantial sums of money are at risk if only a small percentage of passengers travel without a valid ticket. The great majority of passengers are also disadvantaged, as well as train operators, by ticketless travel.
- 2.2 Respondents to the consultation document did not disagree with the importance of effective revenue protection systems and many respondents agreed that penalty fares systems can be an effective means of revenue protection. However, as the Regulator noted, penalty fares are only one of a number of possible approaches to the problem, and revenue protection has to be viewed as one facet of the overall approach by train operators to customer service and customer care. The Regulator believes that the approach to adopt to revenue protection is not a matter for him in the first instance but a commercial judgment for operators.

General criteria

- 2.3 It is a particular characteristic of penalty fares schemes that the burden of proof which would normally apply in a prosecution is reversed. Passengers without a valid ticket or permit to travel are assumed to have avoided paying the correct fare deliberately. Because of this, Parliament was particularly concerned, when the original penalty fares legislation was being debated, that the innocent passenger should be given every protection against being charged a penalty fare improperly.
- 2.4 With this overriding objective in mind the Regulator proposed in the consultation document that schemes should be evaluated according to the following criteria:
- (a) Passengers must be fully informed before entering a penalty fares area or boarding a train subject to penalty fares about what represents a valid ticket or permit to travel, and what liability will be incurred by passengers who do not have one.
 - (b) For the liability to take effect there must be a high degree of assurance of the passenger's ability to purchase a valid ticket or permit to travel before entering a penalty fares area or boarding a train subject to penalty fares.

- (c) Passengers must not be penalised if there was no adequate opportunity to purchase a valid ticket or permit to travel at the time at which they entered a penalty Fares area or boarded a train subject to penalty fares.

2.5 These criteria were generally accepted as appropriate by respondents to the consultation document and the Regulator therefore intends to continue following them in considering new schemes and amendments to existing schemes. However, in looking at the practical application of these criteria, a number of issues have come to light about the way in which schemes operate at present, as well as the approach to be followed in evaluating new schemes. These are discussed below.

Opportunities to purchase tickets at stations

2.6 The main purpose of all penalty fares schemes is to encourage passengers to buy their ticket before boarding a train. Detecting passengers who fail to do so and charging a penalty fare is not the primary purpose of such schemes - they are intended to act as an incentive to passengers to buy a ticket before their journey commences. The criteria which the Regulator has adopted, that passengers must be fully informed about their responsibility to buy a valid ticket and have a high degree of assurance of an ability to purchase a ticket, are consistent with and support the primary purpose of penalty fares schemes.

2.7 To ensure that his criteria are satisfied, the Regulator has normally insisted that staffed stations in penalty fares areas should have a secondary means of purchase available for use when the ticket office is closed. The Regulator has generally discouraged the inclusion in schemes of stations which are not normally staffed but, when such stations have been included, they too have been expected to have self-service machines as well as effective means of checking that the machines are operating. Operators following this approach therefore need to have systems in place for reporting promptly to revenue protection staff if a ticket office closes on an unplanned basis, or if the self-service machines are out of order. Since the machines are not on line to operational control, this may not always be a straightforward task.

Existing and proposed exceptions

- 2.8 Some respondents have argued that rigid insistence on self-service machines to provide the back-up facility at stations may not give practical recognition to the diversity of railway operation. Two examples have been highlighted:
- stations with levels of passenger demand too low to justify the cost of installation of Permit to Travel (PEIRTIS) machines; and
 - stations prone to vandalism where continuous operation of PERTIS machines cannot be relied upon.
- 2.9 The first of these examples only applies to schemes introduced by British Rail before 1994. About 80 stations are affected out of a total of some 1,100 covered by penalty fares schemes. They are in outlying areas and staffed only for part of the day or not at all. Passengers boarding trains at those stations are allowed to buy their ticket on the train when the ticket office is shut. In the second example, an operator has recently withdrawn a group of stations from its penalty fares scheme because persistent vandalism to the PERTIS machines has prevented him from providing a reliable back-up facility there.
- 2.10 In the Regulator's view, the purpose of a penalty fares scheme is defeated if the passenger's responsibility to buy a ticket starts before boarding the train when the ticket office is open, and after boarding when it is closed. Passengers are likely to get into the habit of buying the ticket from the conductor on the train even when the ticket office is open. The presumption of intent to avoid payment, on which penalty fares schemes are based, cannot be sustained because there is no single clear rule about when a ticket must be purchased, and an implication that on train purchase is acceptable. The Regulator therefore believes, as in the case of the operator suffering from persistent vandalism, that the right course of action where an operator is not prepared to provide back-up machines at stations, is to withdraw those stations from the scheme. To do so would not prejudice the integrity of the scheme and would avoid giving passengers confusing messages about when the liability to buy a ticket arises.
- 2.11 Another operator has suggested a different approach to the problem of vandalism. That operator's policy on a particular line of route is to staff the ticket office for all the hours of operation, but he is nevertheless concerned that vandalism is likely to render self-service machines at stations frequently inoperable. The Operator would therefore prefer to use

conductors on board trains to provide the secondary means of purchase. The services in question start outside the proposed penalty fares area and normally use conductors on trains to sell tickets. The Regulator would be prepared to consider the introduction of a scheme using conductors as back-up where the policy is to staff all the ticket offices for all the hours of operation since it would be possible for such a scheme always to direct passengers to buy their tickets before boarding as the normal practice. However, use of conductors to sell tickets on trains in penalty fares areas raises other questions which are discussed below.

Conductors in penalty fares areas

- 2.12 An important feature of all penalty fares schemes is that penalty fares notices should be issued and penalty fares charged only by specially authorised Revenue Protection Inspectors (RPIs). RPIs receive specialist training for the job, have to carry individual means of identification and normally wear a distinctive uniform which singles them out from other railway staff. Conductors may often sell tickets as part of their normal duties but are not allowed to charge penalty fares.
- 2.13 In the Regulator's view, allowing conductors to sell tickets on trains in penalty fares areas tends to undermine the integrity of penalty fares schemes and the two should not normally be mixed. As in the case of stations with no back-up facilities, the presence of conductors selling tickets on trains in penalty fares areas will tend to encourage the belief that on train purchase is acceptable. Occasional use of conductors on services which do not normally have them is, in the Regulator's view, not compatible with the operation of penalty fares schemes. If operators want to devote more resources to revenue protection under those schemes they should train more staff to be RPIs.
- 2.14 On some services, however, which usually start outside a penalty fares area, conductors are employed as a matter of course to check and sell tickets. If the stopping intervals are long enough to enable a conductor to complete a tour of the train between each station, the need for penalty fares becomes questionable. If the conductor is not able to complete a tour, because of closely spaced stops or crowding, then the first task of the operator is to get the retailing arrangements right, so that everybody has the opportunity to buy a ticket. Only when that has been sorted out should the question of using penalty fares as a form of revenue protection arise.

2.15 Because of the risk of confusion among passengers if conductors are used to sell tickets in penalty fares areas, the Regulator's current view is that this risk can best be minimised if conductors are themselves trained as, and operate as, RPIs while the train is in a penalty fares area. RPIs, like conductors, are able to exercise discretion in appropriate circumstances, and, for example, can sell tickets if they are advised that the planned facilities at stations are not in operation. However, implementing this suggestion would have cost and operational implications for the industry, and the Regulator would therefore welcome further discussions on it with interested parties.

2.16 In summary, therefore, the Regulator's current conclusions on these matters are that:

- since the purpose of penalty fares schemes is to encourage passengers to buy tickets at stations, back-up facilities should be provided at stations to cover times when the ticket office is closed;
- he would, however, be prepared to consider on an exceptional basis the back-up being provided by on board staff in cases where the operator plans to keep ticket offices open in the penalty fares area for all the normal hours of train operation, and risks of vandalism would be likely to render self-service machines an ineffective back-up; and
- use of conductors selling tickets in penalty fares areas undermines the integrity of those schemes. Occasional use of conductors as an alternative to RPIs is a practice which should be discontinued. Where conductors are routinely employed on particular services, they should be trained as, and should act as, RPIs when the services in question are in penalty fares areas. The Regulator would welcome further discussion about the practical implications of this approach.

Queuing times at ticket offices

2.17 Many respondents were of the view that the industry needed to ensure that there were sufficient customer friendly machines available during peak business hours to take the load off ticket office retailing staff, thus reducing queuing times. Where services are infrequent, or connections have to be met, or ticket retailing facilities are poor, passengers are likely to place more weight on catching the train rather than meeting their legal obligations to have a valid ticket.

2.18 The Regulator recognises that there is clearly a tension between maintaining the attraction of rail as a walk on service and educating passengers to allow enough time to buy a ticket. The Regulator's approval of the Ticketing and Settlement Agreement (TSA), requiring every staffed station to display a poster telling their customers exactly what services they can expect at what hours, should go some way to help. But the Regulator believes that the industry needs to introduce more innovative concepts. of ticket retailing, for example making ticket machines more user friendly and capable of accepting credit/debit cards. Operators have queuing time targets as one of their Passenger's Charter objectives, and it is there as a requirement of franchise agreements. The Regulator does not therefore regard it as appropriate to introduce a second sanction on this in the Penalty Fares Rules.

Interchange stations

2.19 Concerns were expressed by respondents that passengers starting a journey outside a penalty fares area, but interchanging within one, might miss a scheduled connection if they were unable to buy the proper ticket at the start of their journey. This would be a particular problem at larger interchange stations such as Birmingham New Street, where extra time has to be allowed to make a connection anyway and the ticket office is a long way from the platforms. This is an issue which the Regulator considers may require greater operator discipline than may currently be the practice. In such circumstances the operator wishing to charge penalty fares must ensure that:

- appropriate publicity is in place at the interchange station;
- arrangements are in place to sell tickets at the start of a journey, or to notify the retail operations control if the planned facilities are not available; and
- arrangements are in place with other operators serving the station to ensure that they, too, can advise the penalty fares operator of their ticket selling arrangements and notify the retail operations control promptly of any interruption to those arrangements.

2.20 The third general criterion adopted by the Regulator and set out in para 2.4(c) above is that passengers must not be penalised if there is no adequate opportunity to purchase a ticket. The Regulator considers that the onus should be on the penalty fares operators to ensure that their schemes are sufficiently tightly drawn to enable this

criterion to be satisfied, or, alternatively, never to charge penalty fares to passengers whose journey started outside the area of the scheme. Indeed, this alternative may well turn out to be the only practical solution in many cases.

Complex and restricted use tickets

2.21 Some respondents commented that passengers may not always understand the specific restrictions applying to particular types of tickets and in those cases they should only be requested to pay the excess fare. The restrictions tend to be most complex with various types of advance purchase ticket and it is in these cases that misunderstanding rather than a deliberate attempt to defraud is most likely to arise. Condition 12 of the National Conditions of Carriage specifies the appropriate excess fare to be charged in such circumstances³. The revised Penalty Fares Rules at Appendix 1 take account of this Condition.

Compulsory ticket areas

2.22 'Open stations' and compulsory ticket areas caused some confusion amongst respondents. It is apparent that some operators have not clearly publicised their compulsory ticket areas, and this is an area which they need to address. Concern was expressed by train enthusiasts, and by those wishing to meet friends and relatives, about how they could pursue their legitimate interests in compulsory ticket areas. The Regulator considers that, in order to meet the requirements of train enthusiasts and people meeting friends or relations, train operators should continue to ensure that platform tickets are available where there are compulsory ticket areas.

³ Condition 12 of the *National Conditions of Carriage* states:

“Reduced and discounted fare tickets (including those bought with a railcard) are usually subject to restrictions as to the dates, days, times within a day and trains on which they can be used. These restrictions are set out in the notices and other publications of the Train Companies whose trains you are entitled to use.

“If you travel on a train with a ticket which is not valid on that train because of such a published restriction, you will have to pay the difference between the price of that ticket and the price and the price of the cheapest ticket(s) available for which no pre-booking is required that would have entitled you to travel on that train for the journey shown on your ticket. In the case of some types of discounted ticket, however, you will have to pay more than this. If so, this will be stated in the notices and other publications of the relevant Train Companies.”

Disabled people

2.23 The issues raised by disabled groups particularly related to the height of ticket machines for those in wheelchairs, printed publicity which could not be seen by the visually impaired, and the need for staff training which includes disability awareness. The Regulator considers that operators could do a number of things which would make journeys easier for the disabled passenger - particularly the wheelchair bound. Operators should ensure that they follow the Regulator's Code of Practice on meeting the needs of disabled passengers⁴ when installing self-service machines, but, given the substantial number already installed, this may only be possible to address when reinvestment is due. Operators should also make greater use of the Disabled Persons Transport Advisory Committee (DPTAC), a statutory organisation established by the Secretary of State for Transport, as a clearing house for liaison with organisations for the disabled.

Those whose first language is not English

2.24 A small number of respondents expressed concern about the difficulties experienced by tourists and people whose first language is not English. Although the problem with foreign visitors and people whose first language is not English does not appear to be an acute one, the Regulator believes that operators should post notices in other appropriate languages at stations serving ports and airports, and at stations with extensive use by ethnic communities. The Regulator will wish to keep this issue under review.

Interface with other penalty fares schemes

2.25 Penalty fares schemes which interface with other operators, but in particular with Metro systems or London Underground Ltd (LUL), must have clarity about when liability changes from a scheme operated under the Regulator's Penalty Fares Rules, to one which is operated, under different legislation. Therefore, in order to avoid passenger confusion, publicity must make clear whose scheme applies. In cases where schemes are likely to have an interface with LUL or another operator, the operator introducing the scheme must consult with those parties at an early stage of planning its scheme. The Regulator also wishes to make his rules less restrictive by allowing those exempted from the licensing regime to introduce schemes under his rules.

⁴ *Meeting the needs of disabled passengers: a code of practice* – August 1994

Publicity arrangements

2.26 Many respondents stated that a common poster with a distinctive logo would have a greater impact than a plethora of different posters currently on display. Some felt that announcements on trains would be helpful. The Regulator agrees that operators should consider a distinctive poster with a common logo, and whether timetables should include publicity about penalty fares. The Regulator does not consider that announcements on trains generally would be helpful since passengers should have bought their tickets already. However, there may be a case for doing so in cases where a conductor takes on the responsibility of an RPI on a train when it enters a penalty fares area.

Staff training

2.27 Some respondents expressed concern that RPIs do not always approach the job with the level of tact that is appropriate. Clearly this has the potential to be a problem, although the operators feel that the RPIs have a difficult task to perform, particularly when abuse or aggressive behaviour is directed at them. At present, after initial training, no refresher courses are provided to RPIs - although operators have indicated that regular team meetings are a good substitute. Standards of accomplishment of staff, and their maintenance, remain an issue, and the Regulator will wish to discuss further with operators their approach to training and in general how standards should best be improved.

Penalty fares

3. Appeals mechanism

3.1 The Regulator's consultation document emphasised the importance he attached to incorporating appeals arrangements as an essential feature of penalty fares schemes. The two criteria which he proposed in the consultation document were that appeals arrangements should be:

- (a) independent of the day-to-day commercial operation of revenue protection and seen to be so; and
- (b) consistent in their treatment of passengers affected by penalty fares.

3.2 The document reviewed various possible management arrangements against these criteria, allowing for the prospect that management of RPSS by South Eastern Trains might not be a long term option in the restructured rail industry. The importance of appeals arrangements being independent and consistent was widely accepted by respondents to the consultation exercise. But there was no consensus about the appropriate longer term management arrangements, with some respondents questioning the need to change what is currently in place.

3.3 The Regulator has concluded that he needs to have the power to require suitable appeals arrangements to be incorporated in penalty fares schemes. Accordingly, the Penalty Fares Rules are to be amended to make it explicit that appeals arrangements must be incorporated and be approved by him. The Regulator has also concluded that, in the absence of widespread pressure within the industry for an immediate change, and with no clearly preferred alternative, he should not himself impose a complete change in management arrangements if the criteria of independence and consistency can be achieved, by other means. He believes that if more detailed criteria are established for the handling of appeals, and the current arrangements can be developed to meet them, he would not himself wish to insist upon a change in management arrangements. Such criteria would, however, be helpful in evaluating alternative arrangements if either South Eastern Trains or the other operators collectively wished to substitute alternative arrangements.

3.4 The Regulator therefore considers that in order to meet with his approval, appeals arrangements will have to satisfy the following criteria:

- ***Consistency of Approach.*** It is important both to passengers and to operators to know that any appeal will be dealt with on a consistent basis. The Regulator believes that this assurance can best be delivered by a single appeals body, and is unlikely to be achieved if, for example, each operator handles its own appeals.
- ***Independence.*** The appeals body has to be, and be seen to be, independent of the day-to-day commercial management of individual operators. The costs of such a body should, however, be met by participating operators, since the Regulator considers that this is a necessary consequence of using penalty fares as a form of revenue protection. This has a number of implications. On the one hand the appeals body will be in the position of being a monopoly supplier. On the other hand, the operators as collective paymasters might so starve it of resources that it is unable to achieve acceptable standards of delivery. These issues are elaborated further in the criteria which follow.
- ***Grounds of Appeal.*** The Regulator believes that appeals are likely to be upheld only if one or the other of the following conditions is satisfied:
 - ***failure by the operator to satisfy the requirements of its scheme, the Rules or the Regulations.*** This is likely to be a matter of fact and operators will need to keep records and supply them to the appeals body to enable it to form a view about the facts in dispute. Such records are likely to include the actual opening hours of ticket offices, the availability of back-up methods of retailing, and the availability and prominence of posters and other publicity material; or
 - ***inappropriate exercise of discretion.*** This will involve re-examining the exercise of judgment by the RPI on the spot. In this connection it will be necessary for individual schemes to give as much guidance as possible to RPIs in instruction manuals about circumstances in which they should exercise discretion. Arrangements will also need to be made for the RPI to provide his account of events to the appeals body whenever an incident becomes the subject of an appeal.
- ***Transparency of Process.*** Every passenger who appeals should be sent a simple summary of the process which describes how the appeals body will establish the facts, the timescale for consideration, how and to whom the decision will be

issued, and what happens subsequently to records of the case. Operators will want to understand these arrangements in considerably more detail so that they can understand the links between processes for handling cases, timescales for completing consideration of cases, the costs of the operation and how these are charged out. The Regulator therefore suggests that the appeals office should develop office instructions for handling cases, and arrangements for agreeing quality standards, resourcing levels and charging for them to be agreed with the train operators to be put to him for approval.

- *Staffing.* Staff dealing with appeals will need to have appropriate experience and training. As part of their contract with the appeals body, operators will want to agree appropriate standards, for inclusion in the arrangements to be submitted to the Regulator for approval.
- *Management Control.* So long as the appeals body remains RPSS, managed by South Eastern Trains, RPSS should be managed as a separate unit with separate accounts, and a line management chain which does not report to the Commercial Director. Separate accounts will be needed to establish a proper basis of charging to South Eastern Trains as well as to other operators. If properly constituted on this basis, it would facilitate transfer of control to another body in the future if that became appropriate.
- *Change of Management.* Either South Eastern Trains or other operators collectively should be able to procure the withdrawal of South Eastern Trains from its current management responsibility. However, such a withdrawal should not be permitted unless and until alternative management arrangements are in place which meet with the Regulator's approval.
- *Audit.* Train operators who are buying the service should have the right to have it independently audited.

3.5 Implementation of these criteria imply the establishment of a contract between the operators and the appeals body and a detailed set of operating procedures for the body - both of them requiring the Regulator's approval. The Regulator looks to the industry to develop these arrangements and will do what he can to facilitate them.

- 3.6 Finally, it should be noted that the Regulator's criteria relate specifically to appeals. RPSS currently carry out other services for operators including address verification, collection of delayed payments and assistance with prosecutions. There may well be synergies and economies of scale in dealing with these other matters alongside appeals. But the Regulator considers that these are matters for the industry to decide, not for him. However, to the extent that the appeals body is involved in collecting revenue from penalty fares on behalf of operators, the Regulator will want to be satisfied that appropriate cash handling and accounting arrangements are in place. To the extent that operators undertake these related activities themselves, they will need to explain to the Regulator how these are incorporated in their penalty fares schemes, and the steps taken to safeguard legitimate passenger interests.

Appendix 1: Revised Penalty Fares Rules

1. The revised rules which follow are in draft, because some of the changes set out in this policy statement will require time to implement. The Regulator will therefore want to discuss them with interested parties and be satisfied that the timescales and other changes are appropriate before finalising these rules.

2. The main changes of substance compared with the previous rules are the following:

Rule 2 incorporates a reference to the National Conditions of Carriage;

Rule 2 permits any train operator - not just a licensed operator - to implement an approved scheme;

Rule 5 confirms the circumstances in which the excess fare rules in the National Conditions of Carriage apply;

Rules 8, 9 and 11 deal with appeals arrangements;

Rule 11 requires the Regulator's approval for schemes;

Rule 11 extends the period of formal notice to the Regulator and the relevant Rail Users' Consultative Committee (RUCC) from six to ten weeks. It should however be emphasised that an operator should discuss proposals in draft well before the formal notice period starts;

Rule 12 enables the Regulator to ask a RUCC to investigate a complaint; and

Rule 14 sets out transitional arrangements. These will require, *inter-alia*, that all existing schemes, having been amended to reflect the changes in this policy statement, are resubmitted to the Regulator for approval. It is suggested that amended schemes are submitted within three months of the rules coming into effect, with up to a further six months allowed for the approval process.

3. The Office will discuss with operators the practical consequences of implementing this policy statement before deciding the date on which the new rules should come into effect.

1. **The Rules**

1. These rules (the "Rules") are made by the Regulator pursuant to regulation 11 of the Railways (Penalty Fares) Regulations 1994 made under section 130 of the Railways Act 1993.

2. The Rules shall come into effect on xx.xx.xx.

2. **Interpretation**

In these Rules:

- (a) the "Act" means the Railways Act 1993;
- (b) the "Regulations" means The Railways (Penalty Fares) Regulations 1994 (S.I. 1994/576);
- (c) unless the context otherwise requires:
 - (i) "Authorised Collector" means a collector authorised to impose penalty fares pursuant to Rule 6;
 - (ii) "Compulsory Ticket Area" means any area at a station identified by a notice which indicates that persons may not enter that area without being able to produce a ticket or other authority authorising travel on a train arriving or departing from that area or otherwise authorising entry into that area;
 - (iii) "Operator", in relation to any train or station, means the person who is required to hold a licence or an exemption in respect of the operation of such train or station by virtue of section 6 of the Act and "Train Operator" and "Station Operator " shall be construed accordingly;

- (iv) "National Conditions of Carriage" means the National Conditions of Carriage approved by the Regulator on 23 July 1995 as amended from time to time with the approval of the Regulator;
- (v) any reference to a person leaving a train includes a person present in or leaving a Compulsory Ticket Area having left a train arriving at that Compulsory Ticket Area;
- (vi) where the terms on which a ticket or other authority is issued require the user to produce on request any other document when using that ticket or other authority, any reference to a ticket or other authority shall include such a document;
- (vii) any reference to a "passenger" shall include a person in a Compulsory Ticket Area other than for the purpose of himself travelling on a train;
- (viii) "Preceding Train" means a train:
 - (a) by which a person travelled before changing to the train by which he is travelling, on which he is present or which he is leaving; and
 - (b) which was operated by the Operator of the train to which that person changed in providing a railway passenger service in respect of which such Operator is authorised to charge penalty fares under Rule 10(3); and
- (ix) a ticket or other authority shall not be treated as authorising any journey if it is not valid for the class of travel used or being used on that journey.
- (d) unless otherwise defined pursuant to this Rule 2 or the context otherwise requires, words and expressions defined or construed in the Act or in the Regulations shall bear the same meanings in these Rules; and
- (e) headings are for convenience only and shall not be used for the purpose of interpretation of the Rules.

3. Persons who may charge penalty fares

Subject to the Act, the Regulations and these Rules, penalty fares may be charged by or on behalf of the Operator of any train.

4. Persons who may be charged penalty fares

1. Subject to the Regulations and the other provisions of these Rules:

(a) any person travelling by, present on or leaving a train shall, if required to do so by an Authorised Collector in respect of that train, produce to that Authorised Collector a ticket or other authority authorising the journey made or being made by that person on that train and any Preceding Train;

(b) any person present in a Compulsory Ticket Area of any station proposing to board a train shall, if required to do so by an Authorised Collector in respect of that train, produce to that Authorised Collector a ticket or other authority authorising the journey proposed to be made by that person on that train; and

(c) any person present in or leaving a Compulsory Ticket Area, other than a person referred to in paragraphs (a) or (b) of this Rule 4, shall, if required to do so by an Authorised Collector in respect of any train scheduled to arrive at or depart from that Compulsory Ticket Area, produce to that Authorised Collector a ticket or other authority authorising that person to be present in that Compulsory Ticket Area.

2. Subject to the Regulations and the other provisions of these Rules, where any person fails to comply with paragraphs (a), (b) or (c) of Rule 4(1) the Authorised Collector referred to in that paragraph may impose upon that person a charge to a penalty fare.

3. The amount of any penalty fare to be charged shall be as specified in the Regulations.

5. Circumstances in which a penalty fare may not be imposed

1. An Authorised Collector shall not impose on any person a charge to a penalty fare in respect of that person's failure to comply with paragraph (a) of Rule 4(1) if at the time when and at the station at which that person boarded the relevant train or, where that

person transferred to the relevant train after travelling on a Preceding Train, at the time when and at the station at which that person boarded the Preceding Train:

- (a) there were no facilities in operation for the sale of the appropriate ticket or other authority to make the journey being, or having been, made by that person;
 - (b) the requirements of Rule 7 in respect of the display of notices were not satisfied;
 - (c) a notice was displayed indicating that such person was, or passengers generally were, permitted to travel on that train without having a ticket or other authority to travel;
 - (d) a person acting or purporting to act on behalf of the Operator of that train or station indicated that that person was, or passengers generally were, permitted to travel on that train or, as the case may be, any Preceding Train, without having a ticket or other authority to travel;
 - (e) the person was not in possession of a valid ticket or other authority to travel by reason only of such ticket or other authority to travel being subject to a published restriction, as such term is defined in condition 12 of the National Conditions of Carriage; or
 - (f) the Operator was not authorised to charge a penalty fare under the terms of the conditions of carriage which applied to the journey being made by that person.
2. An Authorised Collector shall not impose on any person a charge to a penalty fare in respect of that person's failure to comply with either paragraph (b) or paragraph (c) of Rule 4(1) if, at the time when such person entered the Compulsory Ticket Area at the relevant station:
- (a) there were no facilities in operation at that station for the sale of the appropriate ticket or other authority to make the journey proposed to be made by that person or to enter that Compulsory Ticket Area;
 - (b) the requirements of Rule 7 in respect of the display of notices were not satisfied in respect of that Compulsory Ticket Area;

- (c) a notice was displayed at the relevant station indicating that that person was, or passengers generally were, permitted to travel on the relevant train or to enter that Compulsory Ticket Area without having a ticket or other authority to travel or so to enter; or
- (d) a person acting or purporting to act on behalf of the Operator of the relevant train or that station indicated that that person was, or passengers generally were, permitted to travel on that train or enter that Compulsory Ticket Area without having a ticket or other authority to travel or so to enter.

6. Authorised Collectors

- 1. No person other than an Authorised Collector shall be permitted to impose charges to penalty fares on behalf of any Operator.
- 2. A person shall be an Authorised Collector in respect of any train if that person has been expressly and individually authorised by or on behalf of the Operator of that train to impose charges to penalty fares in accordance with a scheme approved by the Regulator pursuant to Rule 11 and such authorisation has not been withdrawn or ceased to have effect.
- 3. If at any time the Regulator shall not be satisfied that an Authorised Collector is a fit and proper person to be so authorised the Regulator may by notice to the Operator by or on whose behalf such Authorised Collector was so authorised require such Authorised Collector to cease to be an Authorised Collector.

7. Display of Notices

- 1. Any Operator wishing to charge penalty fares in respect of any train shall ensure that at every station at which any passenger may board that train (including at the entrance to any Compulsory Ticket Area at such station and in such other parts of such station as shall ensure that such notices shall be capable of being seen by passengers transferring to such train from any other train, whether or not such train was a Preceding Train) there shall be displayed notices complying with Rule 7(2) below.
- 2. Any notice displayed pursuant to Rule 7(1) shall:

- (i) be prominent, easily readable and easily distinguishable from other notices and the general surroundings;
 - (ii) state clearly the circumstances in which a penalty fare may be charged and the amount or maximum amount of any such penalty fare; and
 - (iii) conform with any requirement contained in the scheme approved pursuant to Rule 11 below.
3. Every Station Operator shall provide upon request and at the expense of any Train Operator facilities for the display of notices at such station of such a nature and at such places as shall be necessary to enable such Train Operator to comply with this Rule 7.
8. Requirements Relating to Charging and Payment of Penalty Fares
 1. Any penalty fare charged in accordance with the Regulations and these Rules shall be payable within 21 days commencing with the day on which such penalty fare is charged and, if not paid immediately, shall be payable in any manner permitted by the notice referred to in Rule 8(4)..
 2. Each Authorised Collector must at all times while on duty carry and produce on request, as proof of his authority, a form of identification indicating that he is authorised to collect penalty fares on behalf of a specified Operator and must allow passengers promptly on request to make a note of his name and the relevant details of his authorisation.
 3. Any person to be charged a penalty fare must be informed by an Authorised Collector, either orally or by written notice:
 - (a) that a penalty fare is being charged;
 - (b) the grounds on which the penalty fare is charged;
 - (c) the amount of the penalty fare; and
 - (d) that the person being charged a penalty fare has the right to appeal, within 21 days, against the decision of the Authorised Collector to charge the penalty fare.

4. If a person wishes to appeal against the decision to charge a penalty fare or otherwise does not pay the penalty fare in full immediately he shall be given a written notice by an Authorised Collector setting out:
 - (a) identification details of the Authorised Collector and the Train Operator on whose behalf he is acting;
 - (b) the amount of the penalty fare which has been demanded and the grounds upon which it is payable;
 - (c) the address or addresses to which payment may be made;
 - (d) a statement that payment must be made within 21 days of the person's receipt of that notice;
 - (e) the methods of payment available;
 - (f) a statement that such person shall be entitled upon request to receive from the Operator, on whose behalf he is acting, a copy of these Rules, together with the address to which any such request should be made; and
 - (g) a statement that such person is entitled to appeal against the decision of the Authorised Collector to charge a penalty fare by providing a written statement to a specified address, within 21 days commencing on the day on which the penalty fare is charged, explaining the reason or reasons why the penalty fare should not be payable.
5. Any Operator shall forthwith upon request being made of it pursuant to Rule 8 (4) (f) deliver a complete and up to date copy of these Rules to the person making such request.
6. A person who pays all or part of a penalty fare shall forthwith be given by an Authorised Collector a receipt for the amount of such payment, which receipt shall bear the name and identification number of that Authorised Collector and shall set out each of the matters specified in paragraphs (a) to (d) of Rule 8(3).
7. A receipt given under Rule 8(6) or a notice given under Rule 8(4) shall constitute an authority for the person to whom it is given to continue the train- journey to which it

relates to its next scheduled stop or to such other stop as shall be indicated on that receipt or notice or to leave the Compulsory Ticket Area to which it relates.

9. Appeals

Every scheme approved pursuant to Rule 11 shall provide for the processing and determination of appeals made against the decision to charge a penalty fare in accordance with these Rules in accordance with a Code of Practice approved by the Regulator.

10. Retention of Penalty Fares

Subject to the Regulations, any Operator by or on whose behalf penalty fares are collected may retain the amounts collected.

11. Approval of Penalty Fares Schemes

1. Subject to Rule 14(2), no Operator shall be entitled to charge penalty fares pursuant to the Regulations or these Rules except in accordance with a scheme approved by the Regulator pursuant to Rule 11(3).

2. A Train Operator who proposes to charge penalty fares must:

(a) not less than three months before the date on which such Operator proposes to begin charging penalty fares serve a notice on

(i) the Regulator;

(ii) the Consultative Committee for any area in which the proposed scheme is to have effect;

(iii) the Passenger Transport Authority and the Passenger Transport Executive for that area, where the Operator proposes to charge penalty fares within the passenger transport area of a Passenger Transport Executive; and

(iv) the Franchising Director, where that Operator is a franchise operator.

(b) the notice shall be accompanied by a description of the scheme:

- (i) specifying the railway passenger services and/or stations in respect of which such penalty fares will be charged;
- (ii) specifying the ticket facilities available at each station at which may be boarded any train in respect of which such penalty fares may be charged;
- (iii) specifying any arrangements made or proposed to be made between such Operator and any other Operator relating to the designation of Compulsory Ticket Areas and the collection of penalty fares at stations served by trains operated by more than one Operator;
- (iv) specifying the arrangements for publicity for such charging and the display of warning notices in compliance with Rule 7;
- (v) specifying the systems and procedures to be adopted for checking the availability of ticket facilities and the display of notices at relevant stations for the purpose of Rule 5;
- (vi) specifying the procedures to be adopted for the selection and training of persons who are to be appointed as Authorised Collectors;
- (vii) enclosing a copy of written instructions and information to be given to each Authorised Collector of such Operator containing guidance for such Authorised Collectors and imposing rules in relation to their appearance, behaviour and exercise of discretion; and
- (viii) specifying the arrangements for the processing and determination of appeals.

3. The Regulator may, after consulting:

- (a) any Consultative Committee, Passenger Transport Authority and Passenger Transport Executive referred to in Rule 11 (2)(a); and
- (b) the Franchising Director, where that Operator is a franchise operator, approve or reject the scheme by notice in writing to the Train Operator and shall send a copy

of such notice to each of the persons on whom the notice referred to in Rule 11(2) was served.

4. If the Regulator shall have approved the scheme the Operator shall for a period of not less than three weeks prior to the introduction of the scheme prominently display or cause to be displayed, at each station at which any train to which such scheme shall apply may be boarded, notices notifying the persons liable to be affected by the introduction of penalty fares and complying with the provisions of Rule 7(2).
5. Subject to Rule 14(2), no Operator shall charge penalty fares other than in relation to the railway passenger services and/or stations notified to the Regulator pursuant to Rule 11(2)(b)(i).
6. Any Operator by or on whose behalf penalty fares are charged shall, not less than six weeks in advance of any proposed change, give to the Regulator, any Consultative Committee, Passenger Transport Authority and Passenger Transport Executive referred to in Rule 11(2)(a) and, where that Operator is a franchise operator; the Franchising Director full details in writing of such proposed change to any of the matters set out in Rule 11(2)(6). Where a change is proposed to any of the matters set out in sub paragraphs (i) to (vii) of Rule 11(2)(6) the Regulator may object to such change within 28 days of the receipt of notice of the change in which case it shall not have effect, but no change shall be made to the matters set out in sub paragraph (viii) of such Rule without the prior written approval of the Regulator.

12. Provision of Information

1. Any Train Operator or Station Operator (the "Relevant Operator") shall promptly upon request by any Operator charging penalty fares pursuant to the Regulations and these Rules supply to the requesting Operator such information as shall be available to the Relevant Operator and shall be necessary to enable the requesting Operator to charge penalty fares fairly, efficiently and in compliance with the Regulations and these Rules.
2. The information which may be requested pursuant to Rule 12(1) shall include (without limitation) information about the display of warning notices at stations, ticket facilities available at stations and any other information necessary to verify facts in circumstances where a person charged a penalty fare is disputing his liability to pay.

3. Every Train Operator or Station Operator shall supply to the Regulator promptly upon request all information and explanations required by the Regulator in connection with the charging or proposal to charge penalty fares and/or in connection with his considering whether to exercise his powers under Rule 13, including, without limitation, in connection with the investigation of complaints and/or establishing compliance with any of the Regulations or these Rules. If the Regulator requests any Consultative Committee to assist him in carrying out any such investigation as to whether to exercise his powers under Rule 13 it may request the Train Operator or Station Operator to provide it with any information that such operator could have been required to supply to the Regulator pursuant to this Rule 12(3) and the Operator shall comply with such request.
4. Any Train Operator or Station Operator (whether or not itself charging penalty fares) shall promptly comply with such requirements as may be imposed on it by the Regulator relating to the display of warning notices, provision of ticket facilities or supply of information as the Regulator shall consider necessary, in order to facilitate the charging of penalty fares by any other Operator. The Regulator may impose such requirements subject to a condition that the reasonable costs of the person complying with such requirements be met by the Operator for whose benefit such requirements are imposed.

13. Prohibition on Charging Penalty Fares

1. If the Regulator has reasonable grounds for suspecting that any Operator shall have failed to comply with any of the provisions of the Regulations or these Rules he may issue a notice to such Operator prohibiting him from charging penalty fares, whereupon such Operator shall forthwith cease to charge penalty fares until such time as the notice shall be revoked by the Regulator.
2. The Regulator shall deliver a copy of any notice issued pursuant to Rule 13 to:
 - (a) the Secretary of State;
 - (b) the Consultative Committee for any area in which the Operator to whom such notice is given operates a service for the carriage of passengers by railway;
 - (c) the Passenger Transport Authority and the Passenger Transport Executive for that area, where the Operator operates a service for the carriage of passengers by

railway within the passenger transport area of a Passenger Transport Executive;
and

- (d) the Franchising Director, if the Operator to whom such notice is given is a franchise operator.

14. Commencement and Transitional Provisions

1. These Rules shall come into force on xx.xx.xx and, subject to Rule 14(2), the rules made on 1 April 1994 (the "former rules") shall cease to have effect from that date.
2. Any Train Operator charging penalty fares pursuant to the former rules immediately before the coming into effect of these Rules may continue to charge penalty fares to the same extent under these Rules as it was able to do pursuant to the former rules without first complying with Rule 11(2) provided that:
 - (a) within three months of the date of coming into effect of these Rules the Operator shall have delivered to the Regulator the documents referred to in Rule 11(2)(b);
and
 - (b) the Regulator shall no later than six months after the date of the delivery of the documents referred to in paragraph (a) above have approved the Train Operator's arrangements pursuant to Rule 11(3).
3. The Regulator may, as a condition of any approval under Rule 14(2) (b), require the Operator to make such arrangements for publicising any changes to such Operator's scheme as he considers appropriate.

JOHN SWIFT QC
Rail Regulator

Appendix 2: List of respondents

LOCAL AUTHORITIES

Essex County Council	Rushmoor Borough Council
Hampshire County Council	Shropshire County Council
Hereford & Worcester County Council	Strathclyde PTE
Histon Parish Council	Surrey County Council
London Borough of Lambeth	Tendering District Council
Merseytravel PTE	Tyne and Wear PTE
Royal County of Berkshire	West Sussex County Council

RAIL USERS' ORGANISATIONS

Bishop's Stortford Season Ticket Holders'	Railway Development Society Association
Central Rail Users' Consultative Committee	Railway Development Society (South West Branch)
Glamorgan Rail Users' Federation	Stourbridge Line User Group
Hatfield Peverel Rail Users' Association	Sudbury-Marks Tey Rail Users' Association
London Regional Passengers' Committee	Transport 2000 (Cambs & W Suffolk Branch)
Marlow-Maidenhead Passengers' Association	Transport 2000 (West Midlands and Staffordshire Branch)
Rail Users' Consultative Committee for North Eastern England	

TRAIN OPERATORS

Anglia Railways Train Services Ltd	North London Railways Ltd
British Railways Board	North West Regional Railways Ltd
Central Trains Ltd	The South Eastern Train Company Ltd
Gatwick Express Ltd	South West Trains Ltd
Great Eastern Railway Ltd	Thames Trains Ltd
London Underground Ltd	West Anglia Great Northern Railway Ltd

MEMBERS OF PARLIAMENT

Ashdown, The Rt Hon Paddy

MEMBERS OF THE PUBLIC

Barnard, JP

Beckett, Dennis

Belben, GJ

Brundell, Ben

Cairns, JL

Cameron, AR

Chown, Dr PH

Cley, C

Colley, David

Cook, GJ

Crawford, AJB

Daniells, Peter

Feasby, L

Fennell, Robert

Flinders, TG

Fortey, PJ

Foster, Richard

Freeman, P

Fryer, Denis

Grey, Alistair

Hall, M

Handford, PT

Harley, CJ

Hattie (Ms)

Johnson, Stuart

Jowsey M

King, Stuart

Law, Gary

Lester, M R

Lowe, Alan

Mccombie, SR

McGregor, G

McKinnon, Andrew

Mear, P

Nettleship, Mr

Parkin, DJ

Potter, A

Powell, DJ, OBE

Richardson, JF

Rodway, Chris, FRGS

Rounthwaite, Douglas

Royle, AC

Russell, JV

Shaw, A

Shaw, MD

Shaw, T

Sleightholm, Jeremy

Stafford, Roy

Steven, John

Sullivan, AJ

Taylor, David

Tuffs, CJ

Walker, S

White, Arthur

Witt, CP

Woodward, Peter

ORGANISATIONS REPRESENTING PEOPLE WITH DISABILITIES

Arthritis Care	Joint Committee on Mobility of Blind & Partially Sighted People
Disability Action North East	Partially Sighted People
Disability Scotland	National Information Forum
Disabled Persons Transport Advisory Committee (DPTAC)	The Royal Association for Disability and Rehabilitation (RADAR)

OTHERS

Ashstead Residents' Association	Office of Passenger Rail Franchising (OPRAF)*
Association of Train Operating Companies (ATOC)	Passenger Transport Executive Group
Association of District Councils	Prism Developments Ltd
Convention of Scottish Local Authorities	Rail Magazine
General Utilities Plc	Railtrack PLC
Institute of Travel Management	Transport Salaried Staffs' Association
National Council of Women of Great Britain	Travadvice
National Trust	Thorn Transit Systems International Ltd
Petition Signed by 59 people	

* *requested confidentiality.*

Appendix 3: List of ORR Publications

The following publications are available free of charge from ORR Library:

General authority to the Rail Regulator under section 8 of the Railways Act 1993 *March 1994 [1]*

Guidance to the Rail Regulator *March 1994 [2]*

Penalty fares rules *April 1994 [4]*

Competition for railway passenger services: a consultation document *July 1994 [5]*

Framework for the approval of Railtrack's track access charges for franchised passenger services: a consultation document *July 1994 [6]*

Railway operations and the environment: environmental guidance: a consultation document *July 1994 [11]*

Meeting the needs of disabled passengers: a code of practice *August 1994 [13]*

Framework for the approval of Railtrack's track access charges for freight services: a consultation document *October 1994 [15]*

Railtrack's track access charges for franchised passenger services: developing the structure of charges: a policy statement *November 1994 [16]*

Competition for railway passenger services: a policy statement *December 1994 [17]*

Criteria and procedures for the approval of freight track access agreements *December 1994 [18]*

Retailing of tickets at stations: a consultation document *January 1995 [19]*

Railtrack's access charges for franchised passenger services: the future level of charges: a policy statement *January 1995 [20]*

Framework for the approval of Railtrack's track access charges for freight services: a policy statement *February 1995 [21]*

Criteria for the approval of passenger track access agreements 2nd ed. *March 1995 [14]*

Ticket retailing: a policy statement *April 1995 [22]*

Annual report 1994/95 July *1995 [23]*

Penalty fares: a consultation document *October 1995 [24]*

Criteria and procedures for the approval of moderation of competition proposals from passenger train operating companies *December 1995 [25]*

Charter train services: a consultation document *December 1995 [26]*

Guidance on licensing of operators of railway assets *February 1996[27]*

Investment in the enhancement of the rail network *March 1996 [28]*

Railway operations and the environment: environmental guidance *March 1996 [29]*

Charter train services: a report on the Regulator's consultation exercise *April 1996 [30]*

Rail Regulator's statement for the Railtrack prospectus *April 1996 [31]*

Annual Report 1995/96 July *1996[32]*

Accurate and impartial retailing: meeting the needs of passengers: a consultation document *August 1996 [33]*