

2005 No. 2185

TRANSPORT

**The Railways Act 1993 (Determination of Turnover)
Order 2005**

Made - - - - - *2nd August 2005*

Coming into force - - - *3rd August 2005*

Whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament pursuant to sections 55(7B) and 57A(3) of the Railways Act 1993(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 55(7B) and 57A(3) of the Railways Act 1993, hereby makes the following Order:

Citation and Commencement

1. This Order may be cited as the Railways Act 1993 (Determination of Turnover) Order 2005 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

“the Act” means the Railways Act 1993;

“applicable turnover” means the turnover of the relevant operator derived from its railway business activities in Great Britain during a business year after deduction of trade discounts, value added tax and other taxes directly related to turnover, and where a business year does not equal 12 months, the applicable turnover shall be the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that year;

“business year” means a period of more than six months in respect of which a relevant operator publishes accounts or, if no such accounts have been published for the period, prepares accounts; and

“railway business activities” means so much of any business carried on by a relevant operator as consists in either or both of the following:

- (a) the provision of railway services; and
- (b) the ownership or operation of a railway asset;

together with any business carried on incidental to that business.

(2) In this Order, turnover derived from railway business activities includes (without limitation) amounts derived from:

- (a) aid granted to the relevant operator by a public sector operator, if the aid facilitates or promotes the relevant operator’s railway business activities;
- (b) fares paid in respect of railway passenger services;
- (c) fees paid in respect of services for the carriage of goods by railway;
- (d) catering services provided at stations or on trains;

(a) 1993 c. 43; sections 55(7B) and 57A(3) were inserted by the Transport Act 2000 (c. 38), sections 225(2) and 225(1) respectively.

- (e) car parking facilities at stations;
- (f) the sale of land forming part of a station; and
- (g) leases and licences granted in respect of land forming part of a station.

Determination of Turnover for the purposes of section 55(7B)

- 3.—(1) The turnover of a relevant operator, for the purposes of section 55(7B), is—
- (a) the applicable turnover for the business year preceding the date on which the relevant operator first made a specified contravention of the final or provisional order to which it was subject; and
 - (b) where the length of the infringement is more than 12 months, in addition the amount of the applicable turnover for the business year preceding that identified under sub-paragraph (a) which bears the same proportion to the applicable turnover for that business year as the period by which the length of infringement exceeds 12 months bears to 12 months;

save that the amount added under sub-paragraph (b) shall not exceed the amount of the applicable turnover for the previous business year in question.

(2) For the purposes of this article, “length of the infringement” means the period of the specified contravention of a final or provisional order by the relevant operator.

Determination of Turnover for the purposes of section 57A(3)

- 4.—(1) The turnover of a relevant operator, for the purposes of section 57A(3), is—
- (a) the applicable turnover for the business year preceding the date on which a notice pursuant to section 57C(1)(a) of the Act was served on the relevant operator; and
 - (b) where the length of the infringement is more than 12 months, in addition the amount of the applicable turnover for the business year preceding that identified under sub-paragraph (a) which bears the same proportion to the applicable turnover for that business year as the period by which the length of the infringement exceeds 12 months bears to 12 months;

save that the amount added under sub-paragraph (b) shall not exceed the amount of the applicable turnover for the preceding business year in question.

(2) For the purposes of this article, “length of the infringement” means the period of the contravention of the relevant condition or requirement or final or provisional order by the relevant operator.

No preceding business year

5. Where in the application of article 3 or 4 there is a date in respect of which there is no preceding business year then the applicable turnover shall be the turnover derived by the relevant operator from railway business activities in Great Britain during the business year in which that date falls.

Signed by authority of the Secretary of State for Transport

Derek Twigg
Parliamentary Under Secretary of State
Department for Transport

2nd August 2005

(a) Section 57C(1) was inserted by the Transport Act 2000, section 225(1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the determination of the turnover of a relevant operator for the purposes of sections 55(7B) and 57A(3) of the Railways Act 1993 (“the Act”).

Section 55(1) and (2) provides that certain bodies have power to make final and provisional orders in order to secure compliance by relevant operators with relevant conditions or requirements (as such terms are defined in section 55(10)). Section 55(7A) provides that such power includes a power to require the relevant operator to pay a reasonable sum as is specified in, or determined in accordance with, the final or provisional order in the event of any specified contravention of the terms of the order.

Section 55(7B) provides that the amount of that reasonable sum shall not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State.

Until the provisions amending section 55 of the Act set out in paragraph 21 of Schedule 1 to the Railways Act 2005 are commenced, the bodies with power to make final and provisional orders under that section are the Strategic Rail Authority and the Office of Rail Regulation. Following commencement of these provisions, the relevant bodies will be the Secretary of State, the Scottish Ministers and the Office of Rail Regulation.

Section 57A(1) provides that certain bodies have power to impose a penalty on relevant operators where they are satisfied that a relevant operator has contravened or is contravening either a relevant condition or requirement or a final or provisional order.

Section 57A(3) provides that the amount of that penalty shall not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State.

Until the provisions amending section 57A of the Act set out in paragraph 23 of Schedule 1 to the Railways Act 2005 are commenced, the bodies with power to impose penalties under that section are the Strategic Rail Authority and the Office for Rail Regulation. Following commencement of those provisions, the relevant bodies will be the Secretary of State, the Scottish Ministers and the Office of Rail Regulation.

The term “public sector operator”, used in article 2(2)(a), is defined in section 25(1) of the Act, as amended by section 202 of the Greater London Authority Act 1999.

A full Regulatory Impact Assessment has been prepared on the effect of this Order on the costs of business. A copy of that assessment has been placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR. The assessment may also be accessed by visiting the website of the Office of Public Sector Information at www.opsi.gov.uk.

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