

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (PENALTY FARES) (AMENDMENT) REGULATIONS 2022

2022 No. 1094

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends the Railways (Penalty Fares) Regulations 2018 (S.I. 2018/366) which makes provision for the charging of rail penalty fares for travel or presence in a compulsory ticket area without a valid ticket. This instrument increases the amount of the penalty fare to a higher baseline, while also allowing an element to be reduced if the penalty fare is paid within a certain period of time. The new penalty fare also authorises the person (to whom a penalty fare has been issued) to travel to a destination on that train service without having to purchase an additional ticket. If the passenger must change trains during their journey, they will have to purchase an additional ticket before boarding their next train.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 An explanatory memorandum on this subject was originally laid on 26 October 2022. This explanatory memorandum contained an inadvertent error in paragraph 12.3. This amended explanatory memorandum is being laid to correct that error. This explanatory memorandum is identical to the version previously laid in all other respects.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England, Wales, and Scotland.
- 4.2 The territorial application of this instrument is England, Wales, and Scotland. However, this instrument does not apply to Transport for London railway passenger services, certain Scottish and certain Welsh railway passenger services and stations served only by those services. For the purposes of these Regulations “In respect of England” drafting is used to introduce the new rules in the appropriate circumstances, while leaving the previous rules unamended elsewhere. The new penalty fare Regulations would apply in relation to trains in England but travel into Wales and Scotland as long as the penalty fare is issued for a journey within England. Therefore, if a passenger is travelling within England on a rail journey which is entirely within England a penalty fare with an authority to travel can be issued to cover the entire journey on that train. If a passenger is travelling on a train in England but is travelling to Wales or Scotland then the penalty fare of £100 reduced to £50 if paid within 21 days can be issued and an authority to travel for the section of the journey within England only. Penalty fares issued within Scotland and Wales are a matter for those devolved administrations to determine. Where a penalty fare is issued within England and the passenger wishes to travel to the next station which the train calls at and this is

within Scotland or Wales, they should be issued with the penalty fare of £100 reduced to £50 if paid within 21 days but not an authority to travel as part of the penalty fare.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument amends the Railways (Penalty Fares) Regulations 2018. These Regulations are made under sections 130 and 143 of the Railways Act 1993 which allows the Secretary of State (and in some cases, devolved bodies) to make provision for penalty fares on the relevant rail network. In particular, under section 130(1)(b) the Secretary of State has the power to make Regulations imposing penalty fares subject to such conditions as may be prescribed. Likewise, section 130(2)(f) sets out that Regulations may make provision for the manner in which penalty fares may be imposed by collectors, including conditions that collectors have to comply with. Other relevant provisions include section 130(2)(d) (Regulations may make provision for the amount that a person may be charged by way of penalty fare) and section 130(2)(j) (Regulations may make provision for the manner / period within which the penalty fare charged to a person is to be paid). As the Regulations also make provision for updating the notices relating to penalty fares, section 130(4)(d) is also relevant.

7. Policy background

What is being done and why?

- 7.1 This instrument makes provision for the implementation of a revised calculation for a penalty fare. The penalty fare is currently either £20 or twice the full applicable single fare to the next station which the train calls, whichever is greater. From the commencement date set out in the Regulations, the penalty fare (in respect of England) will be £100 plus the price of the single fare to the person's intended destination on that train, which will be reduced to £50 plus the price of the single fare if it is paid within 21 days beginning with the day following the day on which the penalty fare is charged. If a person appeals, then this 21 days to pay the lesser penalty fare is paused.
- 7.2 This instrument also ensures that penalty fares now provide authority to travel to the person's intended destination on that train, rather than just to the next stop, if the collector thinks that intended destination is reasonable. This provision of authority to travel will be the case whether the person given the penalty fare is on a train or in a compulsory ticket area and intends to travel to ensure consistency with the definition of 'full single fare'. If the passenger must change trains during their journey, they will have to purchase an additional ticket before boarding their next train. If the person does not intend to travel, they will be issued with the £100 penalty fare which will reduce to £50 if paid within 21 days.
- 7.3 This instrument also ensures that when a passenger appeals against the penalty fare and is successful, they will still be responsible for paying the full single fare to their destination if this formed part of the penalty fare issued. This is to ensure that the passenger pays the fare for their journey in all circumstances where the passenger intends to travel.

- 7.4 This instrument updates the information that a collector must give when charging a penalty fare. The instrument also updates the wording required to be included on the notices train companies are required to display.
- 7.5 This instrument will introduce new rules in England and Wales except to the extent that the power to make penalty fares has been devolved to Wales. “In respect of England” drafting is used to set out the rules that apply under the new Regulations as distinguished from the unamended previous rules that will continue to apply where the Secretary of State does not have power to make amendments. Therefore, if penalty fares are issued in devolved areas the update to this legislation will not apply without an amendment to the legal drafting using a subsequent Statutory Instrument.
- 7.6 In general, train operators operate penalty fare schemes 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.
- 7.7 The Department for Transport are implementing these changes following a public consultation entitled Rail Penalty Fare value reform, please see paragraph 10.1 below for more information on the consultation. This instrument will implement the proposals outlined in the Government’s response to this consultation. In particular this instrument changes the penalty fare calculation for the first time since 2005. It was felt by the industry that the current value was too low to be an effective deterrent and should be increased and this was confirmed as part of the consultation outcome. The Rail Delivery Group estimated that in a normal year around £240 million is lost through fare evasion on Great Britain’s railways.
- 7.8 This change brings the penalty fares charged as part of this legislation better into line with penalty fares charged in Western Europe and by Transport for London (TfL) and Manchester Metrolink.
- 7.9 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.
- 7.10 When a penalty fare is issued the collector issuing the penalty fare has the right to issue the passenger with an authority to travel only to the next station the train stops at, if the collector does not think this station specified as the intended destination is reasonable. The collector may also issue a penalty fare that provides authority to travel to the next station only if the person issued with the penalty fare does not specify an intended destination or otherwise does not comply with the collector.
- 7.11 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. This appeals procedure is set out under the 2018 Regulations and there are no substantive amendments introduced to this area by this instrument, only that if a person successfully appeals against a penalty fare, they will still be

required to pay the appropriate single fare for their journey on the train they travelled on.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends the existing Regulations and so consolidation is not required.

10. Consultation outcome

10.1 The consultation ran for 12 weeks between 11th March 2021 and 3rd June 2021. There were 173 applicable responses to the consultation of which: 158 were received through the online portal, 15 were email responses. Breaking this down by respondent type, there were: 148 individuals and 25 organisations. The Department 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-fare-value-reform>

10.2 Most of the respondents (69%) indicated that the current value of the penalty fare was too low to be an effective deterrent and should be increased. The most popular option among respondents was to 'Replace the current penalty of £20 or twice the full single fare to the next station at which the train calls, with a surcharge that's charged in addition to the value of the ticket that should have been purchased at the start of the journey'.

10.3 In addition, when asked to suggest the new value of the penalty fare the most popular suggestion was £50 with the average being £67. Therefore, the Department for Transport intends to adopt £100 or £50 if paid within 21 days. This will align the value of the rail penalty fare to that of the Manchester Metrolink.

10.4 It will also broadly align the value of the rail penalty fare with the one charged by Transport for London. By increasing the value of the rail penalty fare above the current £80/£40 charged by Transport for London, this national rail penalty fare is not in danger of becoming out of date again the next time Transport for London increases its penalty fare.

10.5 The Department for Transport believes that by reducing the value of a penalty fare if paid within a set number of days, it can introduce an effective, proportionate deterrent that also encourages the timely payment of penalty fares. This would be more closely in line with Transport for London's penalty fare procedure and that of other operators. Most respondents agreed with this approach.

10.6 To align with Transport for London, passengers will have 21 days in which to pay their penalty fare and benefit from a reduced rate. Passengers who choose to appeal under this new system will be able to 'stop the clock' on the 21-day period while their appeal is being considered, so passengers do not have to make a choice between appealing or securing a lower penalty fare.

10.7 Respondents were also asked if the scheme name should be changed and the majority were happy with the current name.

11. Guidance

- 11.1 The Department for Transport does not intend to produce guidance (whether statutory or non-statutory) in connection with these Regulations. However, the industry will update guidance both for operators who issue penalty fare schemes and for passengers. These Regulations also require operators to update their signage and update the information that collectors give to passengers to take account of the new penalty fare rules.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal. There will be a cost to the train operating companies to amend the value of the penalty fare in their retail systems and at stations, this cost will be paid for by train companies.
- 12.2 The impact on the public sector is minimal. The money utilised to pay for this change will be provided to the train operating companies by His Majesty's Treasury.
- 12.3 A full impact assessment has not been prepared for this instrument because of the small number of businesses affected and the low level of impact on those businesses.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to the monitoring of this legislation is that the Department for Transport will provide His Majesty's Treasury with an analysis of the revenue impacts of this change.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Matthew Barker at the Department for Transport, Telephone: 07814068513 or email: Matthew.Barker@dft.gov.uk can answer any queries regarding the instrument.
- 15.2 Deborah Lewis, Deputy Director for Passenger Experience, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mark Harper MP, Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.