ELIZABETH II

1989 CHAPTER xvii

An Act to empower the charging of a penalty fare for persons using passenger transport services under the control of the British Railways Board without a valid ticket for such use; and for related purposes.

[16th November 1989]

WHEREAS—

(1) By the Transport Act 1962 the British Railways Board (hereinafter referred to as "the Board") were established: 1962 c. 46.

(2) It is the duty of the Board under the said Act of 1962 (inter alia) to provide railway services in Great Britain and, in connection with the provision of railway services, to provide such other services and facilities as appear to the Board to be expedient, and to have due regard, as respects all those railway and other services and facilities, to efficiency, economy and safety of operation:

(3) It is expedient that for the purposes aforesaid and for discouraging persons from travelling without having paid the proper fare the provisions of this Act should be enacted:

(4) The purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the British Railways (Penalty Fares) Act 1989. Short title.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

"another train service" means a train service to which this Act does not apply;

"authorised person" means, in relation to any purpose, a person authorised for that purpose by the Board or by the person providing the service;

"the Board" means the British Railways Board;

"compulsory ticket area" means that part of a station which, under the byelaws of the person providing a train service to which this Act applies, passengers are not permitted to enter without a fare ticket, general travel authority, deferred fare authority or platform ticket;

"conductor train service" means a train service to which this Act applies on which fare tickets are issued in return for fares paid by persons travelling on that service;

"deferred fare authority" means an authority to travel on a train service to which this Act applies subject to a condition requiring payment of the fare applicable in the case of the person using that authority for the whole or any part of a journey on which it is used at the conclusion of that journey or otherwise as provided by any terms applicable to its use;

"fare ticket" means a ticket (including one issued by a person providing another train service) showing payment of a fare and authorising the person in respect of whom it is issued to make a single journey covered by that fare on a train service to which this Act applies, or to make that journey and a return journey (whether or not it also authorises him to make a journey on another train service);

"general travel authority" means any permit, other than a fare ticket or deferred fare authority, authorising the person in respect of whom it is issued to travel on a train service to which this Act applies (whether or not it also authorises him to travel on another train service);

"non-ticket station" means a station on a conductor train service at which there is no provision at any time for the sale of fare tickets;

"penalty fare" means a penalty fare payable pursuant to section 4 or 5 of this Act;

"the penalty fare provisions" means sections 4 to 9 of this Act;

"person providing the service" means the operator of the train service;

"platform ticket" means a ticket authorising a person to enter a compulsory ticket area but not to make a journey;

"station" means a station serving a train service to which this Act applies;

"subsidiary" has the same meaning as in section 92 of the Transport Act 1962; and

1962 c. 46.

"train service" means a service for the carriage of passengers by rail.

(2) (*a*) Subject to paragraph (*b*) below, a person is travelling on a train service to which this Act applies at any time when he is on a train forming part of that service or is in a compulsory ticket area.

(*b*) A person at a station is not to be taken as travelling by reason only of being in a compulsory ticket area or boarding a train at that station if he has entered that area or boards that train otherwise than for the purpose of making a journey and produces a valid platform ticket on being required to do so by an authorised person.

(3) Any reference in this Act to a person producing a fare ticket or general travel authority on being required to do so by an authorised person is a

reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other fare ticket or general travel authority produced by that person at the same time, is valid for the journey he has made.

(4) (*a*) For the purposes of subsection (3) above—

(i) a person who has entered a compulsory ticket area otherwise than by transferring from another train service but has not boarded a train shall be taken to have made a journey for which the minimum fare is payable;

(ii) a person who is on a train shall be taken to have made a journey ending at the next station at which the train is scheduled to stop.

(*b*) In paragraph (*a*) above "minimum fare" means the minimum fare for which a journey from the station in question could validly be made by the person in question.

(5) For the purposes of this Act a person is to be taken as transferring from another train service to a service to which this Act applies if, but only if, having travelled on a train forming part of another train service, he—

(*a*) goes from that train into a compulsory ticket area and finishes his journey at the station of which that area forms part; or

(*b*) goes from that train into a compulsory ticket area and from that area boards a train forming part of a service to which this Act applies;

and for the purposes of paragraph (*b*) above, in a case where the transfer takes place at a station controlled by a person providing another train service, "compulsory ticket area" means such area at that station as corresponds with a compulsory ticket area within the meaning of this Act.

Operation of Act.

3.—(1) This Act applies to any train service provided by the Board or any subsidiary of the Board and references in the following provisions of this Act to a train service are, unless the context otherwise requires, references to a train service to which this Act applies.

(2) The penalty fare provisions have effect in relation to travel on any train service or any part of such a service if an order under subsection (3) below is for the time being in force in respect of such service or part of a service.

(3) The Secretary of State may by order (referred to in subsections (4) to (6) below as "an activating order") provide that the penalty fare provisions shall have effect, as from such day as may be specified in the order, with respect to any train service or any part of any train service, and different days may be specified in any such order with respect to different services or different parts of any service.

(4) The revocation by the Secretary of State of an activating order shall be without prejudice to the power of the Secretary of State to make further activating orders as respects any service or part of a service dealt with by the order.

(5) Any activating order, and any order revoking an activating order, may contain such supplementary, incidental and consequential provisions (including transitional provisions) as may appear to the Secretary of State to be necessary or expedient.

(6) No activating order may be made except at the request of the Board.

Penalty fares on trains.

4.—(1) Subject to subsections (2) to (4) and section 5 below, if a person travelling on a train service fails to produce a fare ticket or a general travel

authority on being required to do so by an authorised person, he shall be liable to pay a penalty fare if required to do so by an authorised person.

(2) (*a*) A person shall not be liable to pay a penalty fare under this section if on being required to produce a fare ticket or general travel authority he produces a valid deferred fare authority.

(*b*) A deferred fare authority is valid for the purposes of this subsection if it authorises a person in possession of it to begin a journey at the time when and the station where the person producing it began his journey.

(3) (*a*) A person shall not be liable to pay a penalty fare under this section if—

(i) at the time when and the station where he began to travel on the train service; or

(ii) in a case where he began to travel on that service when he transferred from another train service, at the time when and the station where he began to travel on the latter service;

there were no facilities for either the sale of the necessary fare ticket for his journey or the sale of deferred fare authorities.

(*b*) Without prejudice to paragraph (*a*) above, a person shall not be liable to pay a penalty fare under this section if at the time when and the station where his journey began—

(i) there was displayed a notice, however expressed, indicating that it was permissible for passengers beginning a journey at that time at that station to do so without having a fare ticket, general travel authority or deferred fare authority; or

(ii) a person in the uniform of the person controlling that station gave permission to the same effect.

(4) Subsection (3) above shall not apply to a person on a train service who has changed trains, if he began his journey on a conductor train service, but such a person shall not be liable to pay a penalty fare under this section if—

(*a*) at the time when and the station where he began his journey on the conductor train service—

(i) there were no such facilities as are mentioned in subsection (3) (*a*) above; or

(ii) there was displayed such a notice as is mentioned in subsection (3) (*b*) (i) above; or

(iii) a person in the uniform of the person controlling that station gave him permission to begin his journey without having a fare ticket, general travel authority or deferred fare authority; and

(*b*) he had no opportunity to obtain a fare ticket while on the conductor train service.

(5) Subsections (6) and (7) below have effect with respect to the burden of proof in any action for the recovery of a penalty fare under this section, so far as concerns the question whether the facts of the case fall within subsection (3) or (4) above.

(6) In any case where the defendant has provided the plaintiff with a relevant statement in due time it shall be for the plaintiff to show that the facts of the case do not fall within subsection (3) or (4) above and in any other case it shall be for the defendant to show that the facts of the case fall within that subsection.

(7) For the purposes of subsection (6) above—

(*a*) a relevant statement is a statement giving an explanation of the defendant's failure to produce a fare ticket, general travel authority or deferred fare authority, together with any information as to his journey relevant to that explanation (including, in every case, an indication of the time when and the station where he started to travel on the train service and also, if he started so to travel when he transferred from another train service, the time when and the station where he started to travel on that service); and

(*b*) a statement is provided in due time if it is provided when the defendant is required to produce a fare ticket, general travel authority or deferred fare authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

Special provision for conductor trains.

5. Section 4 above shall not apply to a person travelling on a conductor train service whose journey begins at a non-ticket station; but where such a person has had an opportunity while so travelling to obtain a fare ticket he shall, if he fails to produce a fare ticket or general travel authority on being required to do so by an authorised person, be liable to pay a penalty fare if required to do so by an authorised person.

Amount of penalty fare.

6.—(1) Subject to subsection (2) below, a penalty fare shall be £10 or the full single fare for the journey the person has made, whichever is the greater, and shall be payable to the person providing the service on which the requirement to pay the penalty fare is made before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

(2) The Secretary of State may by order prescribe that the amount of the penalty fare mentioned in subsection (1) above shall be different (whether higher or lower) and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Document to be issued in connection with penalty fare requirement.

7.—(1) An authorised person who requires a person (referred to below as "the passenger") to pay a penalty fare shall give him either a receipt for the payment of the amount of the penalty fare (where the passenger makes that payment to the authorised person) or a notice stating that the requirement has been made.

(2) A receipt or notice given under subsection (1) above—

(*a*) if the passenger is on a train, shall operate as an authority to him to travel to such station as may be specified in accordance with subsection (3) below;

(*b*) if the passenger is in a compulsory ticket area, shall operate as an authority to him to leave that area (otherwise than by train).

(3) The station to be specified for the purposes of subsection (2) (*a*) above shall be either—

(*a*) the next station at which the train is scheduled to stop; or

(*b*) some other station requested by the passenger, if in all the circumstances of the case the authorised person is satisfied that it is reasonable to specify that other station.

Supplementary provisions with respect to penalty fares.

8.—(1) A person who is required to pay a penalty fare shall, unless he pays, immediately and in cash, the amount of the penalty fare to an authorised person requiring such payment, give to that authorised person, if that person requires him to do so, his name and address; and any person failing to do so

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be the duty of the Board to secure that the requirements of subsection (3) below with respect to warning notices are met in the case of a train service in relation to travel on which the penalty fare provisions have effect.

(3) A warning notice stating the amount of the penalty fare shall be posted at every station at which persons may start to travel on a train service, in such a position as to be readily visible to prospective passengers and shall (however expressed) indicate the circumstances (as provided in section 4 (1) or, as the case may be, 5 of this Act) in which they may be liable to pay a penalty fare.

(4) Where an authorised person requires any person to do anything pursuant to any provision of this Act he shall, if so requested by the person concerned, produce to that person a duly authenticated document showing his authority; and a requirement by an authorised person shall be of no effect if, as respects that requirement, he fails to comply with this subsection.

Exclusion of double liability.

9.—(1) Where a person has become liable under section 4 or 5 of this Act to pay a penalty fare in respect of any train journey (referred to below as "the relevant journey"), no proceedings may be brought against him for any of the offences specified in subsection (2) below before the end of the period mentioned in section 6 (1) of this Act; and no such proceedings may be brought after the end of that period if—

(*a*) he has paid the penalty fare to the person providing the service on which the requirement to pay that fare was made before the end of that period; or

(*b*) an action has been brought against him for the recovery of that fare.

(2) The offences mentioned in subsection (1) above are—

(*a*) any offence under section 5 (3) (*a*) or (*b*) of the Regulation of Railways Act 1889 (travelling without paying the correct fare with intent to avoid payment) arising from the relevant journey; and

1889 c. 57.

(*b*) any offence under byelaws made under section 67 of the Transport Act 1962 (byelaws for railways, etc.) involving a failure to obtain or produce a fare ticket, general travel authority or deferred fare authority for the relevant journey.

1962 c. 46.

(3) If proceedings are brought against any such person for any such offence, he shall cease to be liable to pay the penalty fare and, if he has paid it, the person to whom it was paid shall be liable to repay to him an amount equal to the amount of that fare.

Orders.

10. Any power to make an order conferred on the Secretary of State by this Act shall be exercisable by statutory instrument.

Application to Scotland.

11.—(1) This Act extends to Scotland.

(2) In its application to Scotland section 4 (6) and (7) of this Act shall be construed as if "defendant" means a defender and "plaintiff" means a pursuer.

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