

# **NOTICE IMPOSING A PENALTY PURSUANT TO SECTION 57A OF THE RAILWAYS ACT 1993 (AS AMENDED) (“the Act”)**

## **THE CHILTERN RAILWAY COMPANY LIMITED**

1. The Chiltern Railway Company Limited (“Chiltern Railways”), whose company registration number is 03007939, is the Franchise Operator under a Franchise Agreement dated 1 March 2002 made between the Strategic Rail Authority, M40 Trains Limited and Chiltern Railways (“the Franchise Agreement”).
2. Words and expressions defined in the Franchise Agreement have the same meaning when used in this Notice. References to “the Department” are references to the Department for Transport.
3. With effect from 8 June 2005 the franchising functions of the Strategic Rail Authority were transferred to the Secretary of State and, pursuant to a transfer scheme made on 22 July 2005 under Section 1(2) of and Schedule 2 to the Railways Act 2005, the property, rights and liabilities of the Strategic Rail Authority used exclusively or primarily in or for the purposes of the Designated Undertaking (as defined by the transfer scheme) were transferred to the Secretary of State.
4. Under Section 57A(1) of the Act, if the Secretary of State, being the appropriate authority, is satisfied that a relevant operator has contravened a relevant condition or requirement, he may impose on the relevant operator a Penalty of such amount as is reasonable. Section 57A(2) of the Act provides that the Penalty is payable to the Secretary of State.
5. In accordance with Section 57A(3) of the Act, the amount of a Penalty imposed on a relevant operator may not exceed 10 per cent of its turnover determined in accordance with an order made by the Secretary of State. An order was made on 2 August 2005 (The Railways Act 1993 (Determination of Turnover) Order 2005, S.I. 2005 No. 2185). Chiltern Railways’ turnover for the financial year to January 2011, determined in accordance with the said Order, was £123.08 million.
6. Pursuant to Section 57A(5) of the Act, the Secretary of State gave notice to the Office of Rail Regulation that it had 21 days within which to give notice to the Secretary of State if it considered that the most appropriate way of proceeding was under the Competition Act 1998. That

period has expired, and no such notice has been given to the Secretary of State by the Office of Rail Regulation.

7. Pursuant to Section 57C(1) of the Act, the Secretary of State further gave notice, in the manner prescribed by Section 57C(2) of the Act:

- (a) stating that he proposed to impose a Penalty on Chiltern Railways of £500,000 (five hundred thousand pounds sterling);
- (b) setting out the relevant conditions or requirements in question;
- (c) specifying the acts or omissions which, in his opinion, constituted contraventions of those conditions or requirements and the other facts which, in his opinion, justified the imposition of a Penalty and the amount of the Penalty proposed;
- (d) specifying the manner in which, and place at which, it was proposed to require the Penalty to be paid; and
- (e) specifying the period within which representations or objections with respect to the proposed Penalty might be made.

8. In accordance with Section 57C(1) of the Act, the Secretary of State has considered all representations and objections which were duly made and not withdrawn.

9. Pursuant to Section 57C(4) of the Act, the Secretary of State has now modified the proposal by reducing the amount of the Penalty.

10. Pursuant to Section 57C(6), the Secretary of State hereby gives notice that a **Penalty of £350,000** (three hundred and fifty thousand pounds sterling) is imposed on Chiltern Railways.

11. The relevant conditions or requirements in question, together with details of the acts or omissions which, in the opinion of the Secretary of State, constitute contraventions of those conditions or requirements, and the other facts which, in his opinion, justify the imposition of the penalty and its amount, are set out below.

## **Conditions and requirements**

### **(I) Timetable Change authorisation**

Prior to each timetable, Chiltern Railways must provide the Department with a set of plans providing assurance that it will meet the requirements of its PSR set out in the Franchise Agreement. The plan should address the train paths and service levels it bid for to ensure that it would be able to operate

the train services predicted, securing the level of revenue anticipated and ensuring that key paths would not be lost.

**Contraventions:** Chiltern Railways secured approval from the Department for an amended leaf fall timetable. Following the introduction of the amended timetable, it came to light that Chiltern had made further, unapproved changes to the timetable, to accommodate services offered by the open access operator, Wrexham, Shropshire and Marylebone Railway Company Limited (“WSMR”).

#### (II) Passenger Service Requirement

Under the terms of the Franchise Agreement, Chiltern Railways is required to deliver a minimum set level of services; anything which it chooses to operate above that, it is free to do so.

**Contraventions:** By integrating the timetable with WSMR, Chiltern Railways was, in effect, subcontracting a number of PSR services to an open access operator, something which it is prevented from doing under the Franchise Agreement. The Department insisted that the situation be remedied immediately, with Chiltern Railways delivering the services wholly itself. For operational reasons, the services could not be operated wholly by Chiltern Railways again until the May 2010 timetable change date.

#### (III) Northolt Park

As part of an agreement for an approved late delivery of the Aylesbury Vale Parkway Passenger Service Requirement (“PSR”) for December 2008, Chiltern Railways agreed a passenger benefit, which included installing waiting shelters at three locations: Bicester North, Beaconsfield and Northolt Park.

**Contraventions:** Two waiting shelters, at Bicester North and Beaconsfield, were completed as agreed but the third, at Northolt Park, was not. This shelter was in addition to an existing shelter and therefore there were already facilities available at the station. The shelter was delivered one month late (30 November 2009). Chiltern Railways has admitted that the late installation was due to late acquisition of materials.

#### (IV) Aylesbury Lifts

Following a previous contravention - which concerned the late delivery of three franchise obligations - as part of the Capital Investment Scheme of the Franchise Agreement, in 2008 Chiltern Railways had agreed to part fund the installation of a lift at Aylesbury Station, as a committed obligation.

**Contraventions:** Chiltern had requested a derogation for installation of the lift until 31 March 2010 because the original expected delivery date of 30 November 2009 looked uncertain. Following a review of Chiltern's plans and procedures to install the lifts, deficiencies were identified with the project management, where Chiltern had not planned sufficiently to deliver the obligation within the contracted timescales. The lifts were not delivered within the contracted time.

## **Other Facts**

The Secretary of State's decision whether and in what amount to impose a Penalty has been taken in the light of the Department's Enforcement Policy (Enforcement Policy: Rail Franchise Agreements and Closures – July 2008). The Secretary of State's overarching objective in imposing financial penalties is to incentivise compliance with franchise agreements without introducing unwarranted risk to operators. Chiltern Railways has demonstrated a failure to give sufficient regard to complying with the Franchise Agreement. The imposition of a Penalty will not introduce unwarranted risk.

In deciding whether to impose a Penalty, the Secretary of State has taken into account all relevant facts and circumstances, including all representations and objections that were duly made and not withdrawn, following the issue of the notice of intention to impose a Penalty. The Secretary of State has also considered whether other enforcement action would be more appropriate. He has decided that the sum of £350,000 is reasonable and proportionate in this case.

12. The Penalty is to be paid by means of settlement of the enclosed payment letter.

13. The Penalty is to be paid by 1 July 2011.

Copies of this Notice are being sent to Chiltern Railways, M40 Trains Limited, Arriva UK Trains, the Office of Rail Regulation, and to other key stakeholders, including all those persons who responded to the notice of intention to impose a Penalty.

**Andrew Murray, Deputy Director, Rail Performance and Operations,  
Department for Transport, 16 June, 2011**