

Guidance on filing complaints

According to the Administrative Act, the authorities are obliged to provide written guidance on the right to appeal in connection with decisions that can be appealed to the Danish Rail Regulatory Body.

Below follows a supplement to this guide, and in addition it refers to the current notice on the Danish Rail Regulatory Body.

In connection with the processing of a complaint in the Danish Rail Regulatory Body, the board must request that mail, if possible, is sent per e-mail to the board's main mailbox: info@jernbanenaevnet.dk.

If private parties do not want correspondence to take place via e-mail, please inform the board of this.

Material sent electronically does not need to be sent by regular mail as well.

Which complaints does the Danish Rail Regulatory Body process?

The Danish Rail Regulatory Body process, as administrative appeals authority, cases where, by or according to law, access to appeal to the board has been established, including among other things:

- Complaints about verdicts and decisions pursuant to §§ 4-8, §§ 17-18 and § 21 of the Railway Act as well as rules established pursuant to this, or when, according to law, rules have been established on the right to appeal to the Danish Rail Regulatory Body.
- complaints regarding the regulation on passengers' rights and obligations that fall outside the jurisdiction of the Appeal Board for Bus, Train and Metro, and
- complaints regarding Article 5 (6-6a), of the PSO Regulation (Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail, etc.).
- Complaints about decisions and resolutions made pursuant to § 2 (1), no. 1 and 2 in the notice on Banedanmark's tasks and powers.
- Complaints about decisions and resolutions made pursuant to §§ 3 – 25 of the notice on the independence and impartiality of the infrastructure manager.

Who can file a complaint to the Danish Rail Regulatory Body?

The addressee of a decision which is subject to appeal to the board is as a starting point entitled to appeal. The same applies to others who have a significant individual interest in the decision.

The complaint must concern a decision taken by either a public authority, an infrastructure manager, a railway undertaker, or an operator of a service facility. It will typically appear from the decision that an appeal can be made to the board.

The Danish Rail Regulatory Body will consider the issue regarding right of appeal before the case is dealt with on merits.

What is the deadline of an appeal?

A complaint must be submitted to the Danish rail Regulatory Body no later than 4 weeks after the decision complained of has been notified to the person entitled to complain, cf. on the notice of the Danish Rail Regulatory Body § 17 (2).

The appeal period normally runs from the time the decision has reached the person entitled to appeal. Typically, it is at the time when the decision has been delivered to the recipient's address. If the decision is sent by mail, it is assumed to have arrived in accordance with ordinary mail.

If a person entitled to appeal is represented by a lawyer or other representative, the decision is considered to have been notified when the representative has received it.

A complaint must have reached the Danish Rail Regulatory Body before the end of office hours (4 PM) on the last day on which the complaint period of 4 weeks runs, if sent per mail. If sent per e-mail, a complaint must have reached the Danish Rail Regulatory Body before the end of the day (11.59 PM) instead. However, the complaint deadline of 4 weeks is extended to the next working day if the deadline falls on a weekend or a public holiday.

The requirements for receiving the complaint also apply if a complaint is sent to the board per e-mail, i.e. the complaint must have reached the board before the end of office hours. Here too, the complainant bears the risk of a possible delay along the way.

A complaint that has not reached the Danish Rail Regulatory Body in time must, as a general rule, be rejected. However, the Danish Rail Regulatory Body can disregard the exceeding of the appeal deadline if special circumstances warrant this.

Does a complaint have suspensive effect?

Complaints that are processed by the Danish Rail Regulatory Body generally do not have suspensory effect. However, when there are special circumstances, the Danish Rail Regulatory Body can decide that a complaint is given suspensive effect.

How does the case processing take place in the Danish Rail Regulatory Body?

In order to have a complaint processed by the Danish Rail Regulatory Body, it is a condition that the complaint is sent in writing. In this connection, the committee recommends that all documents relevant to the complaint is sent with it.

The case is typically processed in the following way:

1. Admission of complaints

When a complaint has been sent to the Danish Rail Regulatory Body, the board decides whether:

- The complaint is submitted no later than 4 weeks after the decision complained of has been notified. If the complaint is submitted later, it will be rejected,
- the complaint is submitted by someone who is entitled to complain,
- the complaint relates to matters where, according to current legislation, the Danish Rail Regulatory Body has competence as an appeals authority.

If the Danish Rail Regulatory Body does not have competence to deal with the complaint, the board decides to reject the complaint.

In such a case, the Danish Rail Regulatory Body forwards the complaint to the appropriate authority, if one can be identified.

2. The case information and party hearing

When a complaint concerns a decision made by an administrative authority, the authority that made the decision is notified of this. At the same time, the Danish Rail Regulatory Body asks the authority to forward all the case files and a legal opinion typically within 3 weeks.

It is the Danish Rail Regulatory Body's responsibility that the case is sufficiently informed. Therefore, the board assesses whether the files received are sufficient for a decision to be made. If not, the board may contact the first instance and/or the parties to the case with a request for further information, just as the board may independently arrange for further information on the case.

During the processing of the case, the Danish Rail Regulatory Body hears the parties to the case about the factual information of the case in accordance with the Administrative Act § 19 (1). In connection with these party hearings, the Railway Board typically sets a deadline of 2-3 weeks for comments. If the parties' comments are not received, the board will, depending on the case, be able to make a decision on the basis available.

The Railway Board can decide that there is a need for further assistance from specific experts to clarify the matter. The board can also carry out inspections if it is deemed to be of importance to the case.

In addition, the parties to the case may, if deemed necessary for the case information, be summoned to a meeting at the board. This is done in order for the parties to have the opportunity to explain themselves in more detail and in addition to the aspects of the case.

3. The decision

When the complaint has been sufficiently informed, a decision is made in the case at a board meeting with the participation of the board members. The chairman decides the participants who can participate. The Danish Rail Regulatory Body holds at least one meeting every quarter.

The Danish Rail Regulatory Body has the option to confirm, amend, cancel or return decisions that have been appealed to the board. The board's decisions are in writing and will be sent to the parties to the case. The decision is always accompanied by a justification. Decisions from the board in cases of appeal are immediately binding.

A decision made by the Danish Rail Regulatory Body is published on the board's website after the parties to the case have been made aware of the decision itself.

The Danish Rail Regulatory Body aims to deal with appeals in such a way that the processing time does not exceed 2 months from the time when the Danish Rail Regulatory Body has received all the necessary information in the case.

If the Danish Rail Regulatory Body has not made a decision in a complaint no later than 2 months after receiving all the necessary information, the board informs the complainant of the reason for this, as well as when the complainant can expect a decision to be made in the case.

Possibility of examination by the Danish Rail Regulatory Body's decision

The Danish Rail Regulatory Body makes decisions in cases as the last administrative appeal body, and it is therefore not possible to appeal a decision from the Danish Rail Regulatory Body to another administrative authority, such as The Ministry of Transport or the Danish Transport Agency.

The board's decisions can be appealed to the courts according to the general rules on this. The Danish Rail Regulatory Body's verdicts or decision must be submitted no later than 8 weeks after verdicts or the decision have been notified, cf. § 17 in the notice about the Danish Rail Regulatory Body. If the deadline is not met, the Danish Rail Regulatory Body's verdicts or decision is final.

Appeal fee

A fee of DKK 4,000 must be paid to have a complaint processed by the Danish Rail Regulatory Body, cf. § 21 (1), in the notice about the Danish Rail Regulatory Body.

However, no fee must be paid for complaints regarding the passenger rights regulation, cf. § 21 (4) of the notice about the Danish Rail Regulatory Body.

Please deposit the fee in Danske Bank, reg. No. 0216, account no. 4069164110. Name and information that states that the deposited amount is an appeal fee to the Danish Rail Regulatory Body must appear on the payment.

If the fee is not included with the complaint when it is sent to the Danish Rail Regulatory Body or is paid within the deadline set by the Chairman of the Danish Rail Regulatory Body, the complaint will be rejected. The fee is refunded if the Railway Board refuses to process a complaint, or if the complainant is successful, cf. § 21 (2-3) in the notice about the Danish Rail Regulatory Body.

The Danish Rail Regulatory Body
Carsten Niebuhrs Gade 43
1577 København V

Telephone: +45 41 78 03 86

info@jernbanenaevnet.dk
www.en.jernbanenaevnet.dk

December 2022