

ORR'S PROCEDURES FOR REVIEWING CLOSURE REFERENCES

Introduction

1. This document explains how we intend to carry out the ratification role which has been given to us under the network modification provisions of the Railways Act 2005 ("the Act"), and the procedures we intend to follow. For ease of understanding, network modifications are referred to as closures throughout this document. ORR has no role in respect of minor closures as defined in the Act.
2. In particular this document explains that we will not look at closure proposals from first principles. A rail funding authority – Department for Transport (DfT), the Transport Scotland (TS), the National Assembly for Wales (NAW), Passenger Transport Executives (PTEs) and the Mayor of London - will only make a reference to us once it has decided that the closure satisfies the criteria in statutory closures guidance and, having consulted on the proposal, has decided that the closure should be allowed.
3. What we have to do is decide, in the relevant circumstances, whether there has been failure in carrying out the consultation and whether there has been a failure in the assessment of the closure proposal against the criteria in the closures guidance. Our functions under the Act are explained in more detail in paragraphs 7 to 10 below.
4. ORR has consulted on the procedures set out in this document and considered the views expressed by respondents before publishing this final guidance.

Legislative Background

5. Sections 22 to 45 of the Act introduced the network modification procedure to replace the closure provisions of the Railways Act 1993. The new procedure covers the closure of passenger services, passenger network and stations. There is now no statutory process for closure of light maintenance depots.
6. Under the new system, closure proposals can be made, under the different circumstances set out in the legislation, by both service operators and funding authorities. In all cases, a closure proposal must be assessed against the criteria in statutory closures guidance and a notice must be sent to the relevant national authority (the Secretary of State or Scottish Ministers). Closures guidance must be prepared and published by the Secretary of State or Scottish Ministers, as

relevant, with input from the NAW when Welsh services are affected. It is a further requirement that consultation on the closure proposal is initiated in accordance with Schedule 7 of the Act and carried out in accordance with the closures guidance described in sections 42 and 43 of the Act.

Our functions under the Act

7. Sections 32 to 33 of the Act (set out in full at Annex A) cover references to ORR and require that the reference must set out the particulars of the proposal and be accompanied by:

- a report on the outcome of the consultation;
- a statement as to whether the proposal is a modified proposal and if so, what modifications have been made; and
- a full assessment of whether the proposal or modified proposal satisfies the criteria in the closures guidance.

8. We are required to consider whether the consultation has been carried out properly. Unless we are satisfied that there has been a failure or defect in carrying out the consultation and that failure or defect makes it inappropriate for us to go on to determine whether the proposal (or the proposal as modified) satisfies the criteria in the closures guidance, we must make that determination.

9. If we determine that the proposal (or the proposal as modified) fails to satisfy the criteria, we must issue a closure non-ratification notice. Otherwise, we must issue a closure ratification notice.

10. The Act also allows us to attach closure requirements to a closure ratification notice, which can be varied or revoked after consultation.

National Authority's Closures Guidance

11. DfT and TS published closures guidance¹ which came into effect on 1 December 2006

12. The closures guidance states that the national funding authority must consider that the closure proposal satisfies the following criteria:

¹ *Railways closures guidance*, Department for Transport and Transport Scotland, 18 October 2006 (http://www.dft.gov.uk/stellent/groups/dft_railways/documents/page/dft_railways_613452.pdf).

- the appraisal is consistent with the closure guidance; and
- retention does not represent good value for money compared with the option of closure.

13. The closures guidance describes in some detail how the appraisal should be carried out, including:

- the need for consistency with the criteria in the new approach to appraisal (NATA) - environmental, safety, economy, accessibility and integration;
- the approach to assessing user and non user impacts of the closure;
- the approach to assessing cost savings from closures, namely that they should be on an avoidable cost basis;
- changes of fare revenue should be included as part of the costs of closure; and
- value for money will be determined on the basis of the benefit cost ratio taking into account non monetised impacts.

14. The closures guidance goes on to set out how consultation on the closure proposal is to be carried out including:

- the organisations that should be considered for consultation beyond those specified in the Act; and
- the broad content of the consultation document including:
 - a clear summary of the results of the assessment;
 - a summary of the options considered as part of the initial review and the reasons why these were not followed;
 - a description of the likely effects on current passengers; and
 - a description of existing public transport in the area.

15. Other issues covered in the closures guidance include the need for the organisation conducting the consultation to consider:

- whether to hold a public hearing or meeting; and
- whether any amendments should be made to the proposal in the light of responses to the consultation.

16. A summary of consultation responses should be prepared and made publicly available confirming that all responses have been considered, whether the proposals submitted to us have been amended as a result and the reasons for so doing; or if not amended the reasons for not doing so.

17. The closures guidance also includes detailed annexes on the appraisal of a closure proposal, technical assessment issues, quality contracts schemes and examples of assessment for illustrative purposes.

Our general approach to ratification

18. As indicated in paragraph 2 above, it is not ORR's role to consider the closure proposal from first principles. We will issue a closure non-ratification notice if we are satisfied that the consultation was not properly carried out, or if the assessment was not carried out in accordance with the closures guidance. However, as the closures guidance also makes clear, it would not be consistent with the Act for us to become involved in second-guessing those carrying out the consultation or the assessment, or in substituting our judgement for theirs. We will simply be reviewing the report of the consultation, to see if it has been carried out properly, and the assessment to ascertain whether it has been carried out in accordance with the closures guidance.

19. The closures guidance also sets out in quite some detail the criteria for assessment and how consultation is to be carried out, as outlined in the previous paragraphs. In large part, therefore, it will be clear from the material accompanying a closure proposal that is referred to us whether the various actions required have been undertaken, and the necessary elements of the assessment have been carried out. On such elements, ours will be largely a checking role where we can tick off items against a checklist. Other elements may require some exercise of a discretionary judgement.

Submission of reference to ORR

20. The Act specifies the material that should accompany a reference to us once a decision has been made that a closure should be allowed (see paragraph 7 above). This is described in more detail in the closures guidance. The authority making the reference is required to provide us with the information we need to carry out our functions. It is important that the material sent to us represents a complete package. It is the submitting authority's responsibility to ensure that all the necessary information is included and is correct. Insufficient information may lead to time-consuming requests for additional information and could make it more likely that a non-ratification notice will be issued.

Summary of consultation

21. The summary of the consultation should be a full description of the consultation carried out including a complete list of the parties consulted and a full summary of individual responses from statutory consultees and others that have been consulted, in accordance with the closure guidance. In the case of responses from non-statutory consultees, for example if there has been a writing

campaign, it may be sufficient to summarise a group of responses but numbers of these responses and a summary of all relevant points must be included.

22. If, as a result of the consultation responses, any modifications have been made to the original proposal, the reasons should be set out in detail and include references to the consultation responses which led to the modification.

Report of assessment against closures guidance criteria

23. The report of the assessment should be as full as possible because this is what we will review: we do not intend to carry out our own assessment from first principles. Therefore, it will be helpful if the report broadly follows the order and content of the closures guidance so that we can identify clearly how each element of the assessment set out in the closures guidance has been carried out, including any calculations. Each element of the assessment should be as full as possible so that we can easily understand how the conclusions that the closure satisfies the criteria in the closures guidance have been reached.

Publication of reference

24. The summary of responses and the reasons for any modifications to the proposal made as a result, are required to be published by the submitting authority under the closures guidance. Time will be saved and there will be less risk of our issuing a non-ratification notice if these are published for a sufficient period (we would suggest four weeks) prior to a reference being made to us so that all interested parties are aware that a decision has been made that the closure should be allowed to proceed and will be referred to us for ratification. A summary of the assessment against the closure criteria will have been included in the consultation document but it would also be helpful if the full assessment report were published at the same time.

25. It is our normal practice, to which we attach great importance, to be as transparent as possible in carrying out all our functions. Although the decision by the submitting authority that the closure should be allowed to proceed, together with the consultation summary (and reasons for any modifications to the proposal), will already have been published (see paragraph 24 above), we will also place this material on our website as soon as practicable after receipt. It is also our intention to publish the assessment report against the closure criteria. The usual rules of confidentiality will apply, as set out in section 71(2) of the Railways Act 1993. At the same time we will notify all parties that have been consulted on the closure.

Further representations

26. Given that a full consultation will already have been carried out on the closure proposal, we will not usually seek any further views from the statutory or

non-statutory consultees prior to reviewing the reference, although they will have been notified (see paragraph 25 above).

27. Nevertheless, and particularly in any contentious cases, we may well receive representations on the case. If these raise new points not already made in consultation or raise concerns about how representations have been treated in the consultation summary or how the assessment has been carried out, then clearly we will have regard to these. Such correspondence will be relevant to us performing our statutory duties in deciding whether there has been a defect or failure in the consultation and in checking whether the closure satisfies the criteria in the closure guidance.

28. In such circumstances we would expect to provide the submitting authority with an opportunity to comment and may consult other interested parties. Having done this and considered the responses, we may take the view that no new material points have been raised that affect our view of either the adequacy of the consultation or the assessment of the closure criteria. Alternatively, we could take the view, for example, that consultees' responses have not been properly represented in the consultation summary or that there is insufficient information or some other problem in the assessment. We might then request further information, and if we believed that we had sufficient evidence to be satisfied that there had been a material omission or misrepresentation or error representing a defect or failure in carrying out the consultation or in making the assessment, we would expect to issue a non-ratification notice. This would not preclude resubmission of a closure proposal at a later date.

Framework for our assessment

29. The two key tests for a closure proposal set out in the closures guidance are that:

- the appraisal is consistent with the closures guidance; and
- retention of the rail service, station or network proposed for closure does not represent good value for money compared with the option of closure.

30. This is what we expect to see demonstrated in the report of the assessment. However, it is important to reiterate here that we are carrying out a review of the assessment that has already been done: we will not be carrying out our own assessment or substituting our judgements for the judgements of the submitting authority. We will be checking to see that the assessment contains all the elements, and has followed the assessment methodology, that are required by the closures guidance. We will also draw on comments made in response to the consultation on the closure proposals. If we are satisfied that the assessment has not been carried out in accordance with the closures guidance or has

demonstrated that the proposal provides poor or low value for money by comparison with retention, we would expect to issue a closure non-ratification notice. In all other cases, we would expect to issue a closure ratification notice.

31. The closures guidance requires a NATA based approach as the basis for assessment of closure appraisals although a simplified approach and methodological shortcuts are provided in the closures guidance for the quantification and monetisation of costs and benefits and for dealing with the five objectives of environment, safety, economy, accessibility and integration.

32. We believe that the closures guidance will be sufficiently detailed that, if it is followed and the results of the assessment are reported fully, we will be able to check whether or not we agree with the submitting authority that the closure meets the closure criteria without having to redo the assessment.

Value for Money

33. The criteria for assessing value for money are different in England and Wales, and in Scotland although similar principles apply.

34. Here too, we believe that what is required is made clear in the closures guidance. We do not intend to substitute our own assumptions.

Consultation

35. Checking whether there has been a defect or failure in consultation should be a more straightforward process. We will judge the adequacy of consultation against the requirements of the Act and in accordance with the closures guidance.

36. While we will not see the consultation responses themselves, we said earlier in this document that we expect the report of consultation to contain a full summary of responses. Publication of the report of the consultation prior to submission to us will provide every incentive to the authority to provide as full and as accurate a summary of the responses made as is possible. Failure to do so is likely to affect our assessment of the proposal.

Closure Requirements

37. The closure reference to us should include any proposed closure requirements, for example, the provision of substitute road transport services for a specified period. We would expect to see a full description of the particular requirements and the reasons why these should be attached to any closure ratification notice. We will then consider whether these are appropriate. In the normal course of events (unless, for example, the proposer had failed to take proper account of information contained in consultation responses) we would not

expect to impose any closure requirements in a closure ratification notice that have not been put forward as part of the closure reference.

Timing

38. Neither the Act nor the closure guidance specify timescales within which we must issue a ratification or non-ratification notice following receipt of a closure reference. Clearly the time taken will depend on the complexity of the case including the extent of consultation and responses received, and the complexity and length of the report of the assessment of the closure against the closure criteria. Until we have some experience of dealing with closure references, it is difficult to establish firm target timescales for the work we have to carry out. We will aim initially to complete the process in 8 to 10 weeks. We will keep these timescales under review, as we will these procedures, and publish firm target timescales and revise this guidance as appropriate and necessary.

Our decision and issue of the relevant notice

39. When we have completed our consideration of the reports of the consultation on the closure and the assessment of the closure against the criteria set out in the closures guidance, we will issue either a closure ratification (which may impose requirements relevant to the proposal) or a closure non-ratification notice.

40. That notice will set out our decision with our reasons. The submitting authority and all consultees will be notified and a copy will be placed on our website and on the Public Register.

Office of Rail Regulation

1 December 2006

Sections 32-33 Railways Act 2005

“32 References to the ORR

(1) This section applies to a reference of a proposal to the Office of Rail Regulation under any provision of this Part.

(2) The reference may be made only if the person making it considers that the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.

(3) The reference must set out particulars of the proposal including, in particular-

(a) the services or the network or station, or part of a network or station, to which the proposal relates; and

(b) the proposal date.

(4) The reference must be accompanied by-

(a) a report by the person making the reference on the outcome of the consultation carried out by that person;

(b) a statement by that person as to whether the proposal that is referred is a modified proposal;

(c) a statement, if it is a modified proposal, setting out what modifications have been made; and

(d) a full assessment of whether the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.

(5) The duty of the Office of Rail Regulation on the reference is-

(a) to consider whether the person making the reference properly carried out the consultation he was required to carry out in accordance with this Part; and

(b) unless it is satisfied that-

(i) there has been a failure or other defect in the carrying out of the consultation, and

(ii) the failure or defect makes it inappropriate for the Office to make

the determination required by this paragraph,

to determine whether the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.

(6) The person making the reference must provide the Office of Rail Regulation with all such information as it may require for the purpose of carrying out its functions under this section.

(7) If the Office of Rail Regulation is satisfied-

(a) that the proposal, or (as the case may be) the proposal as modified, fails to satisfy the criteria set out in the relevant part of the closures guidance, or

(b) that there has been a failure or other defect in the carrying out of the consultation that makes it inappropriate for that Office to make a determination of whether the proposal, or (as the case may be) the proposal as modified, satisfies those criteria,

it must issue a notice to that effect (a "closure non-ratification notice").

(8) If, on completing its functions under subsection (5), the Office of Rail Regulation is not so satisfied, it must issue a notice to that effect (a "closure ratification notice").

(9) Where, on a reference, the Office of Rail Regulation issues a closure non-ratification notice or a closure ratification notice it must-

(a) give a copy of that notice to every person mentioned in subsection (10); and

(b) require every operator of a station in the area affected by the proposal, or (as the case may be) the proposal as modified, to whom it gives a copy of the notice to secure that a copy of the notice is published by being displayed at that station until the end of the interim period.

(10) The persons to whom a copy of the closure ratification notice or closure non-ratification notice must be given under subsection (9) are-

(a) the person who made the reference;

(b) every person to whom a notice was required to be sent under paragraph 3 of Schedule 7 in the consultation relating to the proposal;

(c) every person otherwise consulted under that paragraph in that consultation; and

(d) such other persons as the Office of Rail Regulation consider appropriate.

(11) In subsection (9) "the area affected", in relation to a proposal, means-

(a) in the case of a proposal for the discontinuance of services on a particular line or from a particular station, the area in which the line or station is situated;

(b) in the case of a proposal relating to a network, or part of a network, the area in which the network, or part of a network, is situated;

(c) in the case of a proposal relating to a station, or part of a station, the area served by the station, or that part.

(12) The issue of a closure ratification notice does not authorise anything which (but for that notice) would constitute a contravention of any franchise agreement or other arrangements under or in accordance with which-

(a) any franchised service or secured service or other railway passenger service is being provided or is being funded (whether in whole or in part); or

(b) any network or station or part of a network or station is being operated or is being funded (whether in whole or in part);

and in the carrying out of any functions conferred on that Office under or in relation to any such agreement or arrangements that Office may have regard to the issue of the closure ratification notice but is not required to secure that the closure takes place.

33 Closure requirements

(1) This section applies where, following a reference under this Part, the Office of Rail Regulation issues a closure ratification notice.

(2) The Office of Rail Regulation may, when it issues the closure ratification notice, impose such requirements relevant to the proposal as it considers appropriate on such one or more of the following as it thinks fit, namely-

(a) the Secretary of State;

(b) the Scottish Ministers;

(c) the National Assembly for Wales;

(d) a Passenger Transport Authority;

(e) a Passenger Transport Executive;

(f) the Mayor of London;

(g) Transport for London;

(h) a person designated as a railway funding authority by an order under section 45(4);

(i) a relevant operator.

(3) For the purposes of subsection (2), a requirement is relevant to a proposal if it relates to any matter which fell to be taken into account in making an assessment whether the proposal or (as the case may be) the proposal as modified satisfied the criteria set out in the relevant part of the closures guidance.

(4) In subsection (2)(i) "relevant operator" means-

(a) in the case of a proposal to which section 22 or 25 applies, the service operator within the meaning of the section in question;

(b) in the case of a proposal to which section 26 or 29 applies, the operator of the network or station, or part of a network or station, in question; and

(c) in the case of a proposal to which section 37(2) applies, the person providing the experimental passenger service in question.

(5) A person on whom a requirement is imposed under this section must comply with it.

(6) The Office of Rail Regulation may from time to time vary or revoke a requirement imposed under this section.

(7) Before exercising its power under this section to vary or revoke a requirement, the Office of Rail Regulation must consult such persons as it thinks appropriate.

(8) Where the Office of Rail Regulation exercises its power under this section to impose, vary or revoke a requirement, it must-

(a) give notice of that requirement, variation or revocation to every person to whom a copy of the closure ratification notice relating to the reference was given under section 32(9); and

(b) require every operator of a station in the area affected by the requirement, variation or revocation to whom it gives notice of the requirement, variation or revocation to secure that a copy of the notice is published by being displayed at that station-

(i) in the case of the imposition of a requirement, until the end of the interim period;

(ii) in the case of the variation or revocation of a requirement, for such period as the Office of Rail Regulation may specify at the time of giving notice under paragraph (a).

(9) In subsection (8) "the area affected", in relation to a requirement imposed under this section in relation to a closure, means-

(a) in the case of a closure consisting in the discontinuance of services on a particular line, or from a particular station, the area in which the line or station is situated;

(b) in the case of a closure relating to a network, or part of a network, the area in which the network, or part of a network, is situated;

(c) in the case of a closure relating to a station, or part of a station, the area served by the station, or that part;

and "the area affected", in relation to the variation or revocation of such a requirement, is to be construed accordingly."