

RAILWAYS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 4: Network Modifications etc.

106. The main content of this Part sets out the procedures which must be followed for proposals to close certain railway services, networks or stations of specified descriptions. Generally such proposals require a public consultation and an assessment by the person carrying out the consultation whether the proposal meets criteria set out in government guidance. Such a proposal must be referred to the ORR who must issue a notice, a “closure ratification notice” before the closure is allowed to proceed. If certain conditions are not met the ORR must issue a “closure non- ratification notice” and the closure will not be allowed to proceed. The Secretary of State or Scottish Ministers are generally under duties to ensure the continued operation of services, networks or stations if the operator ceases provision before the ORR has issued a notice or if the ORR issues a notice that does not allow a closure to proceed.
107. Proposals to which the consultation procedures do not apply include minor closures of specified descriptions, closures relating to experimental passenger services and services through the Channel Tunnel. Closure procedures for Light Maintenance Depots (LMDs) that were subject to the closure procedures under the equivalent sections of the 1993 Act are no longer subject to the statutory closure procedures.

Discontinuance of railway passenger services

Section 22: Proposal by operator to discontinue non-franchised services

108. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a service operator proposes to close all non-franchised services on a line or from a station.
109. It sets out the information an operator proposing a closure must provide to the appropriate National Authority (NA - the Secretary of State or the Scottish Ministers). This must include a summary of the assessment of the proposal carried out by the operator, following guidance provided by the Secretary of State or the Scottish Ministers or joint guidance provided by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The content of the guidance is not on the face of the Act, but is likely to include criteria that cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.
110. The NA must carry out a public consultation on any proposal that it thinks should proceed, following the approach set out in Schedule 7 to the Act. This includes a number of statutory consultees, with a minimum 12 week consultation period.
111. Following the consultation, the NA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

Section 23: Proposals by funding authority to discontinue non-franchised services

112. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all non-franchised services on a line or from a station.
113. It sets out the steps a railway funding authority (RFA) making a proposal needs to take. RFAs include the Secretary of State, the Scottish Ministers, the NAW, Passenger Transport Executives and Transport for London and the Mayor. Generally, RFAs can only initiate proposals for closures if they are parties to an agreement that provides financial assistance in support of the rail service (or network or facility) in question. The exceptions are PTEs, the Mayor and Transport for London who can initiate proposals for closures for services, networks or stations wholly within their areas, or for other services, networks or stations for which they are the only public funding body.
114. The RFA must carry out an assessment of the proposal in accordance with the guidance provided by the Secretary of State or the Scottish Ministers or joint guidance produced by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The RFA must also consult on the proposal, again as described in the Explanatory Note for section 22.
115. Following the consultation, the RFA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

Section 24: Proposals to discontinue franchised or secured services

116. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all franchised or secured services on a particular line or from a particular station. 'Secured services' are those which an NA has a duty to provide. These are duties that arise under Part 4 of the Act or where the NA acts as 'operator of last resort' under section 30 of the 1993 Act.
117. The procedure is similar to that for section 23, as described above.

Section 25: Proposal to discontinue excluded services

118. This section sets out the circumstances and procedures under which operators can initiate proposals to discontinue all services on a particular line or from a particular station that are not 'relevant railway passenger services' for the purposes of sections 22 to 24 or experimental passenger services, and have been designated as services by Order to which this section applies.
119. Services may not be "relevant railway passenger services" because they have been excluded from the main closure provisions in sections 22 to 24 by an Order under section 38. Another reason may be that such services (for example tram services) fall within the wider meaning of "railway" in section 81(2) of the 1993 Act, but not within the limited meaning set out in section 81(1) of that Act.
120. Services that have been designated as services to which this section applies cover two categories. The first category is referred to as "special procedure excluded services" that are not "excluded London services". The second category is referred to as special procedure excluded services that are "excluded London services".
121. "Special procedure excluded services" are designated by order under section 25(7) by the national authority. The national authority will be the Scottish Ministers in the case of services wholly within Scotland or certain cross border services and otherwise the Secretary of State. Services that have been so designated are subject to the closure procedures set out in this section provided they are not excluded London services. The procedures are similar to the main closure provisions in section 22 that apply to closure of non- passenger franchised services. As in section 22, under section 25 the operator

must not discontinue the services before the ORR has issued a “closure ratification notice” as set out in section 32. However unlike section 22, there is no duty on the national authority to secure the continued provision of the services in the event that the ORR does not ratify the closure under section 32.

122. "Excluded London services" are defined in section 25(7) mean any excluded service provided by TfL or that has been designated as a "London service" by the Secretary of State by order. Under section 25(8), the Secretary of State can designate a service as a "London service" if it is a service that is wholly within Greater London. Special procedure services that are excluded London services are subject to closure procedures that are set out in Schedule 8. These procedures are different to the main closure procedures set out in sections 22 to 24 passenger services. This is because they largely replicate the procedures that are currently set out in paragraph 5A of Schedule 5 to the Railways Act 1993.
123. Under subsections (10) and (11), services to which Schedule 5 to the Railways Act 1993 applies immediately before commencement of section 25, either by virtue of an order under section 49(3) of the 1993 Act, or under paragraph 5A(1)(b)(ii) of Schedule 5 to that Act, or because they are otherwise so treated, are deemed to be services to which section 25 applies.
124. Services to which this section will apply because they have been designated as services to which Schedule 5 to the 1993 Act applies are predominantly light rail or metro systems, including Manchester Metrolink, the Tyne & Wear Metro and the Croydon Tramlink.

Discontinuance of operation of passenger network

Section 26: Proposal by operator to close passenger networks

125. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an operator proposes to discontinue all or part of their passenger network. The procedures are similar to those for operators wishing to discontinue non-franchised services set out in section 22. This section applies to Network Rail's network.

Section 27: Proposal by funding authority to close passenger network

126. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes to close all or part of a passenger network. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Section 28: Proposal to discontinue operation of secured network

127. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes closure of all or part of a passenger network that it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Discontinuance of use or operation of stations

Section 29: Proposal by operator to close station

128. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when operators of stations propose to close all or part of those stations. The procedures are similar to those for operators wishing to discontinue non-franchised services set out in section 22.

Section 30: Proposal by funding authority to close station

129. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can initiate proposals to close all or part of a station. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Section 31: Proposal to discontinue operation of secured station

130. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can propose closure of all or part of a station it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

References to the ORR

Section 32: References to the ORR

131. This section sets out the information a NA or RFA must provide to the ORR as part of a reference on a closure proposal following a consultation. It also sets out the duties of the ORR in considering a reference.
132. A reference to the ORR can only be made if the body intending to make it is satisfied that the proposal meets the criteria in the guidance provided by the Secretary of State, the Scottish Ministers or NAW or any combination of them, as set out in section 42.
133. If the ORR is satisfied that the consultation process was flawed or that the proposal does not meet the criteria, it must issue a "closure non-ratification notice" and the closure must not go ahead. If it is not satisfied of either of those things, it must issue a "closure ratification notice". The effect of this is that the ORR must issue a closure ratification notice on the reference made to it, but only where it has fulfilled the duties set out in this section.
134. Should the NA or RFA decide to implement the closure that the outcome of the reference allowed, then it would need to negotiate separately changes to appropriate franchise or other agreements with the relevant other parties. The outcome of the ORR reference itself does not authorise anything that would contravene such agreements.

Section 33: Closure requirements

135. This section sets out the powers of the ORR to impose specific requirements in connection with a closure. If an operator fails to comply with requirements that have been imposed on it, the Secretary of State or the Scottish Ministers may take enforcement action under the 1993 Act. This can be in the form of an order setting out steps that the operator must take or financial penalties. Requirements can also be imposed on any of the railway funding authorities and the Passenger Transport Authority but these requirements are not subject to enforcement action.

Excluded Proposals

Section 34: Minor modifications

136. This section sets out the powers of the Secretary of State and the Scottish Ministers to determine that closures of services, network and stations are 'minor modifications' and so not subject to main closure procedures. Section 35 describes the closures eligible to be treated as minor modifications. The concept of 'minor modifications' is very similar to that of 'minor closures' in the 1993 Act.

137. Under this section a closure is a minor modification if it has been determined as such or falls within a description that has been so determined. Such a determination can be made only in respect of eligible closures as described in section 35.

Section 35: Closures eligible to be treated as minor modifications

138. This section describes the type of closure proposals that are eligible to be treated as minor modifications and therefore not subject to the closure procedures in sections 22 to 31. Much of it is based on the descriptions of minor closures in the 1993 Act.
139. It also gives a power to the Secretary of State and the Scottish Ministers to make an order that any other description of closures which are temporary or have only a limited effect on the provision of passenger services should be treated as minor modifications, subject to the negative resolution procedure.

Section 36: Designation of experimental passenger services

140. This section sets out the powers of the Secretary of State, the Scottish Ministers as well as the NAW to designate passenger services as 'experimental'. The maximum period for which a service may be designated as "experimental" is five years. A service that is already so designated under the 1993 Act will continue to be so designated until the 5 years expires in their case (or the designation is revoked). Designated experimental services are not covered by the provisions in sections 22 to 24 but have a separate and simplified closure procedure as set out in section 37.

Section 37: Discontinuance of experimental passenger services

141. This section sets out the procedures for discontinuing services designated as experimental for franchised and non-franchised services. These procedures involve notice being given that the service is to be discontinued at least six weeks before the service is discontinued.

Section 38: Services, networks and stations excluded by order

142. This section gives the Secretary of State and the Scottish Ministers powers to exclude services, networks and stations from the provisions of sections 22 to 24 and 26 to 31. A similar power for the Secretary of State exists in the 1993 Act. It has been used to exempt light rail, metro and discrete parts of the heavy rail network from the closure provisions. Services that have been excluded by order under this section may be subject to the closure procedures described in section 25 if designated by order under section 25 following the negative resolution procedure.

Substitution services

Section 39: Quality contracts schemes in connection with service modifications

143. *Section 39* adapts the powers to make quality contracts schemes for local bus services in sections 124 to 134 of the Transport Act 2000. The changes apply in cases where a rail service, or part of a rail service, which is either wholly or primarily in the area of a Passenger Transport Executive (in England) is or is to be discontinued under Part 4, or otherwise reduced (e.g. with fewer stops or lower frequency).
144. Quality contracts schemes under the existing provisions of the 2000 Act are made by local transport authorities, including the Passenger Transport Authorities which control the Passenger Transport Executives, and must be approved by the Secretary of State. They may only be made if they satisfy the conditions in section 124(1) of that Act, one of which is that they must be the only practicable way of implementing policies in the authority's bus strategy.

145. Quality contracts schemes apply to an area. Within that area, they give the authority powers to determine the network, frequency and fares of bus services within the scheme. Any bus services within the area must be provided in accordance with a contract with the local authority, unless the service is excluded from the scheme. The local authority must let contracts by competitive tender to operators, who are granted the exclusive right to operate the service.
146. *Subsection (1)* provides an alternative set of tests to be met in the context of a scheme made by a Passenger Transport Authority (alone or with another local transport authority) in response to the discontinuance or reduction of a rail service in their area. The remainder of the section adds definitions or makes consequential amendments to the Transport Act 2000.

Section 40: Substitute road services

147. This section gives the Secretary of State, the Scottish Ministers and the NAW the power to secure the provision of substitute bus services if a passenger rail service is temporarily interrupted or has been discontinued.

Supplemental provisions of Part

Section 41: Proposals by funding authorities

148. This section sets out the circumstances under which RFAs can initiate closure proposals under sections 22 to 31. RFAs, except for PTEs, the Mayor and Transport for London, can initiate closure proposals if, and only if:
- (a) the closure proposal is made alongside another proposal by the authority;
 - (b) this other proposal concerns an agreement to which the authority is a party that relates to the provision of financial assistance for the passenger service, network or station that it proposes should be closed;
 - (c) in the authority's view, the proposal to change the funding agreement referred to in (b) above is likely to result in the actual closure of the passenger service, network or station concerned.
149. The effect of this is that RFAs can only initiate closures for which they provide the funding for, either directly or indirectly. PTEs, the Mayor and Transport for London can only propose closures for services, networks or stations wholly within their areas, or for services, networks or stations for which they are the only public funding body.

Section 42: Closures guidance

150. This section sets out the duties of the Secretary of State, the Scottish Ministers and the NAW in publishing guidance on assessing closure proposals referred to in sections 22 to 31. Neither this nor any other section of the Act sets out what will be in the guidance, but it is likely to include criteria that are likely to cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.
151. The section allows for the guidance to include different provisions for different purposes and for different types of closure proposal. This means that the guidance and criteria could be different for, say, operator initiated proposals and RFA initiated ones, as well as smaller and larger proposals.

Section 43: Procedure relating to publication and modification of closures guidance

152. *Section 43* provides for parliamentary scrutiny of Closures Guidance, and modifications to such Guidance, that the Secretary of State, Scottish Ministers and the National

Assembly for Wales have a duty to publish under Section 42. Subsections (1) and (2) of the Section requires that new Closures Guidance and all modifications to it must be laid in both Houses of the Westminster Parliament and/or the Scottish Parliament as appropriate, depending on whether the Secretary of State, Scottish Ministers or both have a duty to publish the Guidance under Section 42. The Guidance, or modifications to it, is then brought into force by an order made by the Secretary of State and/or Scottish Ministers as appropriate under subsection (3). The order is subject to the negative resolution procedure. These orders are subject to the consent of the National Assembly of Wales, where they bring into force joint Guidance published by the NAW with Scottish Ministers and/or the Secretary of State.

153. Subsection (6) provides that if the order made under subsection (3) introducing the Guidance or amendments to it is annulled by the UK or Scottish Parliament, the Guidance or modifications are effectively withdrawn and that in these circumstances, existing Guidance would continue to be in force. Subsection (7) makes clear that the withdrawal of any guidance following annulment of an order to which it relates does not affect anything done in consequence of the Guidance before its withdrawal and doesn't preclude publication of further guidance.

Section 44: Exclusion of liability for breach of statutory duty

154. This section exempts specified persons from liability for breach of statutory duty in certain circumstances. Paragraphs (a), (b), (c) and (d) (to the extent they relate to closure requirements imposed on relevant operators), (e) and (f) of subsection (2) of this section are based on section 50(2) of the 1993 Act and cover obligations whose breach could lead to a final or interim order under section 55 of the 1993 Act; a breach of such an order would carry liability for breach of statutory duty (see section 57 of that Act). Paragraph (d) (to the extent that it relates to closure requirements imposed on the Secretary of State or the Scottish Ministers) and (g) of subsection (2) of section 44 are based on section 50(1) of the 1993 Act.

Section 45: Interpretation of Part 4

155. This contains definitions of terms used in sections 22 to 45 of the Act. It also gives a power to the Secretary of State or the Scottish Ministers to designate additional bodies as RFAs subject to negative resolution procedure.