

**EXPLANATORY MEMORANDUM TO**  
**THE RAILWAY CLOSURES (MINOR MODIFICATIONS) ORDER 2009**  
**2009 No. 2973**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The purpose of this Order is to allow railway closures which comprise removing a section of track that runs through or beside a station to be eligible to be treated as a minor modification if the closure has a limited effect on rail passenger services. The Secretary of State would be able to determine that a closure proposal that meets the criteria as defined in the Order is for a minor modification and would then not be subject to the full statutory closure process as set out in Sections 26-28 of the Railways Act 2005.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 35(6) of the Railways Act 2005 gives the Secretary of State powers to make an Order to treat closures of any description as a minor modification because they are temporary in nature or have limited effect on the provision of railway passenger services.
  - 4.2 The Order being proposed intends to capture railway closures that have a limited effect on the provision of railway passenger services where a stretch of track that runs through, but does not serve, a station is removed and there is no reduction in capacity of the network.
  - 4.3 This Order would allow the Secretary of State to treat this type of closure as a minor modification instead of requiring it to follow the process for closures as detailed in the Closures Guidance which has been published by the Secretary of State under Section 42 of the Railways Act 2005.
  - 4.4 Closures that are eligible to be treated as minor modifications do not generally have a significant impact on the provision of railway passenger services.
  - 4.5 Proposals for closures which are eligible to be treated as minor

modifications do not require public consultation, but must still be considered on a case by case basis by the Secretary of State.

- 4.6 If the Secretary of State chooses not to make a minor modification determination in respect of a proposal, then this can subsequently be proposed as a full closure.
- 4.7 This Order is being proposed in order to reduce regulatory burden in cases where the full closure process is considered excessive and an alternative and more appropriate process exists.

## **5. Territorial Extent and Application**

- 5.1 The instrument will apply to England and Wales.
- 5.2 The Scottish Minister may make similar Orders which would apply to Scotland.
- 5.3 There are no stations close enough to the borders to require powers in this Order in relation to cross border network.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- 7.1 Section 35 of The Railways Act 2005 contains descriptions of the types of closure that are eligible to be treated as a minor modification, and therefore excluded from the full closure procedures detailed in Sections 22 to 31 of the Act.
- 7.2 Minor modifications are generally small changes to the railway network or stations that have a limited effect on passengers or railway passenger services.
- 7.3 Section 35(2) allows the discontinuance of sections of track where there is no station (or station in use) and trains will instead pass along an alternative route and passengers will not need to change trains or incur significant increase in journey time.
- 7.4 Section 35(3) allows the discontinuance of sections of track which does no more than serve a station or light maintenance depot and is not necessary for the operation of the station in connection with the provision of railway passenger services.
- 7.5 There appeared to be a gap in the provisions that addressed a part of the network where a track ran through, but did not serve a station. This

defaults those types of closure to having to follow the full closure procedure.

- 7.6 Section 35(6) allows the Secretary of State to make an Order to make closures of any description as eligible minor modifications where there is limited effect on railway passenger services.
- 7.7 Where the capacity and capability of the network is not reduced, closures of this nature would appear to have such limited effect.
- 7.8 A proposal for a minor modification made by a network operator would be considered by the Secretary of State on a case by case basis. If the criteria of that part of the Act can be applied, then a determination is made.
- 7.9 A minor modification proposal has no requirement for public consultation, nor does it need to follow the closures guidance in respect of the level of detail for economic evaluation. This is appropriate given that the effect of the discontinuance is proportionate to the impact on railway passenger services.
- 7.10 A proposal for a closure that does not meet the eligibility criteria would not be eligible to be treated as a minor modification and would need to be proposed as a closure subject to the relevant section of the Act.

## **8. Consultation Outcome**

- 8.1 The consultation document contained a proposal to include relocation of a railway station a short distance away from its existing location, and the removal of sections of multiple track railway through a station provided that there remains a minimum of a single track.
- 8.2 The consultation ran for 12 weeks from 12<sup>th</sup> September to 5<sup>th</sup> December 2008 and was published on the Department for Transport's website.
- 8.3 The majority of those who responded to the consultation had concerns about the relocation of a station being eligible to be treated as a minor modification and objected to the removal of track from the network, concerned that this would be reducing network capacity which is at odds with Government policy.
- 8.4 As a result of the consultation, the proposed Order has been revised to remove station relocation, which will remain subject to the full closure procedure in all cases, and the wording concerned with discontinuing track has been modified to ensure that current network capacity and capability is protected rather than referring to the number of tracks remaining.

- 8.5 Capacity and capability are terms recognised in the rail industry. Capacity refers to the availability of the network to accommodate a quantum of train services. Capability refers to the operational capacity of the network at a given time. For example the network can be set so that trains can operate in a variety of ways depending upon signalling and timing of train movements through sections of the network. The basis of comparison will be the latest version of the network statement published by the infrastructure manager of the network as required by the Railways Infrastructure (Access and Management) Regulations 2005.
- 8.6 The Government conclusions and response to the consultation has been published on the Department for Transport's website, and can be found at the following web address:  
<http://www.dft.gov.uk/consultations/closed/minormodificationsrailways/summaryofresponses>

## **9. Guidance**

- 9.1 The Secretary of State has published a non statutory operation guidance note for minor modifications. This is aimed at train operating companies and Network Rail and is intended to guide them through the application of the minor modifications regime. This guidance note will be updated to coincide with the laying of this Order.

## **10. Impact**

- 10.1 This Order has no cost impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is to reduce regulatory burden on Network Rail and Government by applying a more appropriate part of the Railways Act in cases where the impact of a closure does not reduce the capacity or capability of the network.
- 10.3 There will be a reduction in cost to the public sector where this Order is applied to closures meeting the description. The cost savings will be made by not needing to carry out a statutory consultation that requires notices to be placed in local and national newspapers for one day a week for two consecutive weeks, the production of posters and other printed material, and potentially consultation events.
- 10.4 An impact assessment is not required as the cost saving to the public sector is less than the threshold of £5m per annum.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & Review**

12.1 The legislative change is intended to be permanent and the success of the change will be measured through casework of applying the minor modification procedure to proposals that meet the eligibility criteria being created.

**13. Contact**

13.1 David Allsop at the Department for Transport, Tel: 020 7944 4273 or e-mail: [david.allsop@dft.gsi.gov.uk](mailto:david.allsop@dft.gsi.gov.uk) can answer any queries regarding the instrument.