



OFFICE *of the*
RAIL REGULATOR

DEPOT CLOSURES

ADVICE ON CLOSURES OF LIGHT MAINTENANCE DEPOTS AND PARTS OF THEM

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1. Introduction

- 1.1 Light maintenance services¹ are carried out on railway vehicles at a variety of light maintenance depots² (LMDs) by a range of service providers. In the main, those LMDs which have traditionally serviced passenger trains used for regular services are leased by Railtrack to passenger train operating companies (TOCs), usually for the length of their franchise. Some LMDs have traditionally serviced freight vehicles and were sold or leased on a long term basis to freight train operators. Other, smaller, LMDs which customarily serviced railway infrastructure maintenance and renewals vehicles are leased by Railtrack to maintenance and renewals companies, also on long term leases. Additionally, since railway privatisation, new LMDs have been opened and LMDs previously closed have been reopened. More recently, some train maintainers and train builders have become LMD operators and facility owners³ and aim to enter into long term LMD leases with Railtrack.
- 1.2 Currently, there are about 90 LMDs operated by licensed TOCs and other operators. They provide light maintenance services to their own and/or other TOCs' passenger vehicles, freight vehicles and a variety of maintenance and renewal vehicles on the railway network under access agreements, that is, those approved by the Regulator. By comparison, there are about 60 freight LMDs which have, in the main, been exempted from regulation, except for the provision of access for refuelling. A small number of other LMD operators have limited exemptions from specific areas of regulation.
- 1.3 Recent developments in the light maintenance market and commercial pressures within the railway industry are encouraging LMD operators to manage their resources in the most cost effective way possible. This has led some LMD operators to consider rationalising their LMD activities either through closure of one or more LMDs, or closure of parts of them. For example, a decision to stop using an area of land within the existing boundary of the LMD because it is no longer required for the provision of light maintenance services would be a closure of part of an LMD. Some LMD operators are considering replacing and re-siting facilities (such as a wheel lathe, CET

¹ See item 1 of Appendix 1 to this advice.

² See item 2 of Appendix 1 to this advice.

³ See items 5 and 6 to Appendix 1 to this advice.

equipment, or even a shed) within their LMDs or making other such improvements. These changes may result in a closure of an existing facility forming part of an LMD. Additionally, LMD operators may be considering revising the track layout within an LMD, involving the permanent removal of some of that track, that is, its closure.

- 1.4 This advice summarises the statutory and administrative procedures which must be followed in relation to closure proposals concerning LMDs. Its purpose is to convey general advice from the Regulator to all LMD operators (except those operating LMDs on behalf of the Franchising Director⁴) who intend to close parts of, or all of, their facilities. It is also intended to supplement information previously issued by this office about railway closures⁵. Additionally it makes reference to the extent of the Regulator's powers in cases where a closure of all or part of an LMD or the network⁶ within an LMD has been implemented without the operator first obtaining consent to that closure. Finally, this advice outlines certain contractual obligations contained in depot access agreements, including processes, which will need to be met in respect of proposed closures.
- 1.5 However, this advice does not attempt to give an exhaustive account of all the potential applications of the closure legislation or a definitive interpretation of the law as it would apply to any particular circumstance or set out the decisions the Regulator would make.
- 1.6 Appendices 5 and 6 to this advice are intended to provide, in the form of a flow chart, a guide to all these procedures.

⁴ See paragraphs 3.2(c) and 4.1(c) below

⁵ See Appendix 7 to this advice

⁶ See item 3 of Appendix 1 to this advice

2. The Railways Act 1993 - closure legislation

- 2.1 The Railways Act 1993 (the Act) specifies requirements for processing and approving notifications of proposals to discontinue⁷ the operation of LMDs or parts of them, normally referred to as a "closure". Subject to a right of appeal to the Secretary of State, no closure may be put into effect unless consent has been given by the Regulator or the facilities are exempt from that requirement. The Regulator may attach conditions to any closure consent he gives. The Regulator has powers to certify **certain** closures as minor closures (referred to in paragraphs 3.6 to 3.12 below). Where he is able to do so, the full closure procedures (referred to in paragraphs 3.13 to 3.17 and 4.5 below) need not be followed. The appropriate procedures set out in the following sections in respect of LMD closures will need to be adhered to depending on whether the intention is to close an LMD, or part of it (which could be buildings, machinery or land), or a part of the network within an LMD, or both.
- 2.2 For the purposes of licensing and closures, the Railways Act 1993 treats what may be commonly known as an LMD as two railway assets⁸. These are: (i) the LMD (the land, buildings and infrastructure comprising the depot), and, (ii) the network (track and associated installations) in the LMD. Thus, a proposal to close (permanently discontinue the use of) an LMD, or part of it, and some network in it is in effect two closure applications. (But it would only need to be one application if that network was to continue to be available for use.) For example, consent would be required for the closure of a part of an LMD (for example, a carriage cleaning shed) and the other for closure of the network within that part or area of the LMD if the network is removed and not replaced in substantially the same position⁹.
- 2.3 Although both closure applications should be dealt with in parallel, the closure provisions in respect of networks and LMDs can be very different. **It is therefore important to ensure that applications made to close one or more of those types of railway assets or any parts of them state correctly the intention of the applicant.** For example, if the intention is to close a part of an LMD, such as a refuelling point (or a facility other than network), or an area of an LMD (which might contain

⁷ See item 3 of Appendix 1 to this advice

⁸ See item 4 of Appendix 1 to this advice

⁹ See paragraph 2.4 below

facilities and network), the applicant will have to make clear in the closure application that it is referring to specific facilities, network and/or an area of that LMD. Such an application could constitute a partial closure application, i.e. an application for closure of a part of an LMD. Likewise, a proposal to close a network in an LMD, for example, closure of a dead-end road or sidings in an area of the LMD, requires a specific application to that effect and will need to identify the network in question. **That means consent to the closure of any network must be obtained independently of the area of the LMD in which it is sited.** To illustrate how the appropriate statutory provisions apply to closures of LMDs, parts of them, and networks within them, we have provided similar examples throughout this advice.

Removal and replacement of part of an LMD or network in an LMD

2.4 Where an operator of an LMD intends to remove and then replace a part of an LMD, or any network within an LMD, the Regulator would not normally consider that this required a closure consent provided:

- (a) the replacement part of the LMD or network is capable of providing a comparable or enhanced function; and,
- (b) the replacement part is to be sited in substantially the same place as the part which is to be removed.

Thus, where a facility is temporarily closed (e.g. for refurbishment) but it is intended to reinstate the facility in the same or in an enhanced form, and in substantially the same place, the closure provisions do not apply. **It is important that both the above criteria are met before¹⁰ work is undertaken to remove a part of the LMD or network within it.** Although the statutory closure provisions will not normally apply in such cases, the depot facility owner will need to consider what contractual obligations (section 5 below) it may have to meet.

2.5 The Regulator has also taken the view that certain changes at an LMD will not normally require a closure consent. An example is where there is a change of identity of the operator of an LMD or part of an LMD. Also, where there is a change in use of part of an LMD. This would not normally give rise to a closure within the meaning of the Act, provided the 'new' use is LMD related. For example, where LMD offices are turned into component stores.

¹⁰ See paragraph 2.6 below

Closure of part of an LMD without the required approval or consent of the Regulator

- 2.6** Where the operator of an LMD closes part of an LMD or network within it without the requisite approval or consent of the Regulator, the Regulator is under a duty to consider whether any enforcement action should be undertaken to ensure the correct procedure is complied with. Section 55 of the Act gives the Regulator the power to make a provisional or final order if he is satisfied that the operator is likely to or has carried out a closure without his prior consent. If enforcement action is considered appropriate, the *closed* facility may need to be reinstated at cost to the operator or the full closure procedures instigated. There may also be a further financial penalty.

3. Closure of LMDs or parts of LMDs

- 3.1** The statutory procedures relating to proposals to close an LMD (other than one which is operated on behalf of the Franchising Director) are contained in sections 41 and 43 of the Act¹¹ (Appendix 5 to this advice provides, in the form of a flow chart, details of all these procedures.) Where an operator of such an LMD intends to permanently discontinue the use of that LMD, or a part of it, the operator must propose closure of that LMD, or part of it, so as to meet the requirements of those sections. That means that a depot facility owner who is not the *operator* of an LMD may not apply for its closure. But the operator may appoint an agent to act for it who may be the depot facility owner or Railtrack. The requirement to obtain consent for a closure only applies if the LMD, or part of it, that is proposed for closure has been used for or in connection with the provision of services for regular scheduled passenger train services at any time within the preceding five years; referred to in this advice as "relevant qualifying use". **If the LMD, or part of it, has no relevant qualifying use then the statutory closure procedures will not apply.**
- 3.2** The Act, however, disapplies the LMD closure provisions in certain circumstances which means that LMDs, or parts of them, can be closed without going through the procedures described here. The circumstances are where the LMD, or part of it, in question is one which:
- (a) has no relevant qualifying use (as defined in paragraph 3.1 above – for example, where the operator of an LMD wishes to close a part of an LMD which has been used only for the provision of *freight* (non-passenger) or infrastructure services during the previous five years.);
 - (b) has relevant qualifying use but has only been used in connection with the provision of services which;
 - (i) involve travel through the Channel Tunnel; or,
 - (ii) are designated as experimental services¹²; or,

¹¹ See Appendix 3 to this advice

¹² As described in s41(2)(b) of the Railways Act 1993

- (iii) are provided other than as regular scheduled services. (Thus, if the facility is used to service passenger rolling stock in regular scheduled service (i.e. not charter trains) the facility will be subject to the closure provisions.)
- (c) is operated on behalf of the Franchising Director (this would normally only arise in the event of early termination of a franchise where the Franchising Director has secured the continued operation of an LMD. Where closure is proposed in such cases, the provisions contained in s42 of the Act, which are not covered in this advice, will apply.); or,
- (d) is one where the LMD closure provisions have been disapplied by the Secretary of State under s49(5) of the Act (see paragraph 3.3 below).

The Railways (Class & Miscellaneous Exemptions) Order 1994

- 3.3 The Railways (Class & Miscellaneous Exemptions) Order 1994 (the Order) disapplies the LMD closure provisions in respect of, certain, specified LMDs¹³, such as the majority of freight LMDs. An operator who intends to close an LMD, or a part of it, will need to satisfy itself whether the closure provisions are disapplied before formally making application for closure of an LMD under s41 of the Act. There will be no need to apply for closure of an LMD, or a part of it, under s41 of the Act if the LMD proposed to be closed is exempted from that requirement by the Order.
- 3.4 Where the LMD closure provisions do not apply, the operator of an LMD may close (permanently discontinue the use of) that LMD, or a part of it, without the prior consent of the Regulator. **But before that closure, or partial closure, can be effected, the facility owner¹⁴ of the LMD will need to consider what contractual obligations will need to be met before taking such action.** We have referred to those requirements, some of which need approval by the Regulator, in section 5 of this advice.
- 3.5 Where the LMD closure provisions apply and consent of the Regulator is required to permanently close an LMD, or a part of it (e.g. demolition of a carriage cleaning shed or removing an area of land in an LMD from the leased area), the 'full closure' process (outlined in paragraphs 3.13 to 3.17 below) may need to be followed **unless** the minor

¹³ Note: this may not include networks in LMDs - see paragraph 4.3 below

¹⁴ See items 5 and 6 to Appendix 1 to this advice

closure process (outlined in paragraphs 3.6 to 3.12 below) is applicable. **Applicants will therefore need to ensure that their application for closure of an LMD, or part of it, is made to the appropriate office.** The first step of the full closure process is to make application to the Franchising Director, whereas an application for a minor closure certificate is made direct to the Regulator. Additionally, the depot facility owner, who may be different from the operator of the LMD and proposer of a closure, will need to ensure that the appropriate contractual obligations¹⁵ contained in the Depot Access Conditions are met.

Minor Closure Certificates - LMDs

- 3.6 The Regulator has the power to certify a closure of an LMD, or a part (or several parts) of an LMD, as a **minor closure** if he is satisfied that the discontinuance of the operation of that LMD, or a part of it, would not jeopardise the provision of any services for the carriage of passengers by railway. For example, the Regulator would not normally expect to conclude that there would be jeopardy if an LMD operator proposed closure (removal) of a carriage washing plant which had not been used for three years because it was surplus to requirements and had no future use. However, the test might be more difficult to meet in the case of a proposal to close an operational carriage washer. In that instance, the no jeopardy test could be met if the proposal included plans to replace the working facility with one, for example, at a nearby site but not in substantially the same position.
- 3.7 Applicants will therefore need to provide detailed information in their letter to the **Regulator** applying for a minor closure certificate to demonstrate that no such jeopardy exists or will occur if effect is given to the proposed closure. The application will also need to provide sufficient detail to meet the Regulator's specific information requirements¹⁶. **If the Regulator is able to certify the closure as a minor closure then no formal reference to the Franchising Director is required. In practice, this means that administrative timescales are usually much less than the six months provided for in the full closure process.** But minor closure certificates cannot have conditions attached to them (unlike full closure consents) nor can they be issued retrospectively¹⁷.

¹⁵ See section 5 of this advice

¹⁶ Appendix 4 to this advice provides details of the Regulator's information requirements

¹⁷ See paragraph 2.6 above

- 3.8 Upon receipt of an application for a minor closure certificate the Regulator will need to satisfy himself that the application is one he could consider as a minor closure under s41 of the Act. The Regulator will then seek views on the proposal, within given timescales¹⁸, from all users and potential users of the LMD likely to be affected by the proposal, the Franchising Director/(Shadow) Strategic Rail Authority, Railtrack, the relevant Rail Users Consultative Committee (RUCC¹⁹), the Department for the Environment, Transport and the Regions and any Passenger Transport Executive whose services might be affected by the proposed closure.
- 3.9 The Regulator will then need time to consider any comments received on the effect of the proposal. The Regulator may seek further information from the applicant or a consultee in the light of comments received. He may also consider making a site visit to inform his decision, as every decision on a minor closure is made individually on its merits.
- 3.10 Once the Regulator is satisfied that the proposal, if implemented, would not jeopardise the provision of any services for passenger train services, he will certify the closure as a minor closure²⁰. Where facilities are to be replaced by similar facilities but in a substantially different location, the closure of the old facility must still have closure consent. In such cases the Regulator will not certify the closure as minor until the new facility is in place or the Regulator may issue the certificate but make it effective from the event of replacement facilities being provided.
- 3.11 If the Regulator forms the opinion that the closure proposal, if implemented, would jeopardise the provision of any services for the carriage of passengers by railway, the minor closure application and process is inapplicable, and the full closure provisions will apply²¹. In such cases the Regulator will inform the applicant that a full closure application will need to be made to the Franchising Director if the intention to close remains.
- 3.12 Where the minor closure process could apply to the closure of an LMD, or a part of it, **and** the operator also proposes closure of any network in that LMD, the network closure may require the full closure process. In such cases separate applications will

¹⁸ No statutory timescales exist

¹⁹ RUCC in this instance also includes the London Regional Passengers' Committee

²⁰ An example of a minor closure certificate is at Appendix 9 to this advice

²¹ See paragraph 3.13 et seq

need to be made to the Regulator (for a minor closure certificate for closure of the LMD or part of it) and the Franchising Director (for the closure of network in the LMD), respectively. Alternatively, the operator of the LMD may choose to close the LMD and surrender its lease to Railtrack. In those circumstances, Railtrack will become operator of the network (which was once part of the LMD) and therefore responsible for making any application for its closure²² in the event it wishes to permanently discontinue the use of that network.

The "Full Closure" process - LMDs

- 3.13 Where the LMD closure provisions apply and consent of the Regulator is required to close or permanently discontinue the use of an LMD, unless the closure has been certified by the Regulator as a minor closure, the operator of that LMD (or its appointed agent) must give the **Franchising Director** three months' notice of their intention to terminate the operation of that LMD, or part of it. The notice, which can be in the form of a letter, will need to include specific reasons for the proposal, the date on which the proposed closure is intended to take effect and details of any alternative available facilities. It should also contain additional supporting information (of the kind requested in Appendix 4 to this advice) to enable the Franchising Director to make an informed decision on the application. If the Franchising Director considers the proposed closure should be permitted to take effect then the statutory process contained in ss41 and 43 of the Act must be followed. **This process is referred to as the "Full Closure" process.** The 'Full Closure' process is outlined, with timescales, in Appendix 3 to this advice.
- 3.14 If the Franchising Director considers that the proposed closure should not be permitted to take effect, he must secure the continued operation of the network after the operator's intended closure date. In practice, the Franchising Director might procure the services of the current operator to secure that continued operation.
- 3.15 In arriving at his decision in respect of a full closure proposal, the Regulator must consider the Franchising Director's statement, any objections he has received to the proposal and the report from the relevant RUCC²³. The RUCC has a statutory role and duty to consider whether a proposed closure will cause any hardship and, if so, to recommend how that might reasonably be alleviated. It may hold a public hearing.

²² See also paragraphs 3.18 and 3.19 below

²³ RUCC in this instance also includes the London Regional Passengers' Committee

The RUCC will then report to the Regulator, within given timescales²⁴, any conclusions it has reached. The Regulator may also consider making a site visit to inform his decision. Like minor closures, every decision on a full closure is an individual one. If the Regulator decides to consent to the closure proposal he may impose conditions. For example, the operator of an LMD may propose to close an LMD which is only being used by beneficiaries of the LMD. The Regulator may decide to consent to the closure of the LMD on condition that effect could not be given to it until, the sooner of, all beneficiaries had made other arrangements to receive services at other, nearby, LMDs or a period of twelve months had expired from the date of his decision. That way, the requirements of all the parties might be met.

- 3.16 Once the Regulator has made his decision he will notify the Secretary of State, the Franchising Director, the RUCC, and the operator of the LMD (or his agent). The Regulator does not consider that the obligation on him to publish his closure decision at every station in the area affected by the proposed closure (as required by s43(12) of the Act) is relevant in the case of LMDs as there are no stations situated within in the area of an LMD. However, the Regulator may decide to make his decision more widely known. For example, he may notify all users of the LMD or other operators.
- 3.17 Any person who is aggrieved by that decision can appeal to the Secretary of State within four weeks of the decision. The Secretary of State may support, vary or overturn the Regulator's decision. The Secretary of State is not restricted to timescales in making his decision.

Partial Closure of an LMD - operational network remaining

- 3.18 The effect of closing all or part of an LMD can be that operational network, previously in (that part of) the LMD, continues to be used other than as part of that LMD, say, for stabling. In such cases, the operation and management of that network may only be undertaken by a person, who could be the LMD operator, having a network licence or an exemption from that requirement. Routinely, management or operation of that network would revert to Railtrack; for example, following amendments to or surrender of all or part of the LMD lease, which is an unregulated document. In such circumstances, Railtrack may then operate the network as stabling sidings.

²⁴ See Appendix 3 to this advice

- 3.19 If Railtrack subsequently decides it wishes to discontinue the operation of that part of the network it will, subject to the qualifying use test, need to propose closure of it. The network closure process (s39 of the Act) and a Network Change Proposal (Part G of the Railtrack Track Access Conditions, which is *not* dealt with in this advice) will apply. Section 4 below provides advice on the statutory closure provisions relating to network within LMDs.

4. Closure of Network in LMDs

- 4.1 The statutory procedures relating to proposals to close networks are contained in sections 39 and 43 of the Act²⁵. Appendix 6 to this advice provides an outline, in the form of a flow chart, of these procedures. Where the **operator** of a network (within an LMD) intends to discontinue permanently the use of any part of that network, he must propose closure of that network under those sections and obtain consent of the Regulator to that closure. This requirement will not apply if the network in question:
- (a) has no relevant qualifying use (as stated in paragraph 3.1 above). For example, this might apply where the operator of network in an LMD wishes to close part of that network which has only been used for stabling/maintaining freight (non-passenger) or infrastructure vehicles during the previous five years;
 - (b) has relevant qualifying use but has only been used in connection with the provision of services which:
 - (i) involve travel through the Channel Tunnel; or,
 - (ii) are designated as experimental services²⁶; or,
 - (iii) are provided other than as regular scheduled services on that network or the part of the network in question. (Usually, where a light maintenance service is provided on rolling stock which is in regular scheduled passenger service (i.e. not charter trains) and which involves use of network within an LMD, that network will be caught by the closure provisions. However, if it can be shown that the relevant network is not used on a regular basis, that network may be exempt under this provision.)
 - (c) is operated on behalf of the Franchising Director (this would normally only arise in the event of early termination of a franchise where the Franchising Director has secured the continued operation of a network. Where closure is proposed in such cases, the provisions contained in s40 of the Act, which are not covered in this advice, will apply.);

²⁵ See Appendix 3 to this advice

²⁶ As described in s39(3)(b) of the Railways Act 1993

- (d) forms part of a multiple track railway²⁷ between any two places which will continue to be connected by at least a single track railway²⁸ after the closure;
- (e) is one where the network closure provisions have been disapplied by the Secretary of State under s49(4) of the Act (see paragraph 4.2 below).

The Railways (Class & Miscellaneous Exemptions) Order 1994

4.2 The effect of the Order is referred to in paragraph 3.3 above and applies equally to certain networks. But in most cases the network in the *exempted* LMDs (i.e. in Schedule 1 to the Order) is not also exempted from the network closure provisions. An operator who intends to close network in an LMD will need to satisfy itself whether the network closure provisions apply before formally making application for full closure of that network under s39 of the Act. There will be no need to apply for closure of a network under s39 of the Act if the network proposed to be closed is exempted from that requirement by the Order.

4.3 Where the network closure provisions do not apply the network may be closed permanently without prior consent of the Regulator. But before any network can be closed, the facility owner²⁹ of that network will need to consider what contractual obligations it has to meet before taking such action. We have referred to these requirements, some of which may need approval by the Regulator, in section 5 of this advice.

Minor Closure Certificate – network

4.4 The definition of "minor closure" in the Act in respect of a proposal to close network³⁰ is precise. It means the discontinuation of operation of any part of a network consisting of a stretch of track, or associated installations, along which there is no station (or station in use) where the circumstances are that any trains that would otherwise use that part of the network in travelling between two stations would pass along an alternative route, and that passengers on such trains would not be required to make any additional change of train and would not incur any significant increase in their journey time. Thus, only track which is used by trains for travelling between two

²⁷ See item 7 of Appendix 1 to this advice

²⁸ An example of this is provided in Appendix 2 to this advice

²⁹ See items 5 and 6 of Appendix 1 to this advice

³⁰ See item 3 of Appendix 1 to this advice

stations could fall within the scope of minor closure involving part of a network. **This means that the closure of a dead-end part of a network within an LMD, e.g. a dead end siding, cannot be certified by the Regulator as a minor closure because such network does not consist of track used by trains to travel between two stations. In these circumstances, the full closure process will apply.**

The "Full Closure" process - network

- 4.5 Where the network closure provisions apply and consent of the Regulator is required to close permanently a network, for example, where dead-end sidings³¹ with the relevant qualifying use are to be permanently closed, the full closure process (detailed in paragraphs 3.13 to 3.17 above, relating to LMDs) will apply and need to be followed³². Additionally, the proposer of a closure of network in an LMD will need to ensure that the appropriate contractual obligations contained in the Depot Access Conditions are met.

³¹ An example of dead end sidings and network in an LMD is shown in Appendix 2 to this advice

³² An example of a network closure consent is at Appendix 10 to this advice

5. *Contractual obligations*

Passenger LMDs

- 5.1 Where the Regulator is able to issue a minor closure certificate in respect of an LMD, or a part of it, or a consent to a closure as a full closure in respect of all or part of LMD or network within it, the facility owner³³ will also need to consider what contractual obligations it has to fulfil before giving effect to that certificate or consent. It may also be important for the proposer of a closure at an LMD to consider by what date it requires the contractual processes (referred to below) to be completed e.g. so that work can begin by that date. **Depot facility owners and LMD operators will therefore need to consider the timing of the commencement of both the statutory and contractual processes which may need to run concurrently.**
- 5.2 LMD access agreements incorporate the National Depot Access Conditions (December Standard) or the National Depot Access Conditions (December Standard) (Scotland) (referred to hereafter as 'the Conditions'). The Conditions place obligations on parties to those agreements where certain changes to a passenger LMD are proposed. A 'Proposal for Change' or 'Railtrack Change Proposal' (as defined in the Conditions) includes a proposal to close, permanently, all or part of an LMD, including any network within it³⁴. That means the procedure set out in Part C of the Conditions will need to be completed.
- 5.3 As a result of a closure, there may be consequential changes to the access agreements (which include the Conditions) in place at a passenger LMD. For example, there could be a reduction in a beneficiary's maintenance requirements in an agreement or a change to the Depot Plan or Equipment Inventory in the Annexes to the Conditions. In such cases, on acceptance of a Proposal for Change or Railtrack Change Proposal the depot facility owner must submit that completed proposal to the Regulator for approval (Condition C5). At the same time the depot facility owner must submit any proposed consequential amendment(s) to an access agreement for approval by the Regulator under s22 of the Act, unless: (a) they are covered by General Approval³⁵;

³³ See items 5 and 6 of Appendix 1 to this advice

³⁴ While network is included in an LMD lease, proposals to close that network are dealt with under the Depot Access Conditions and NOT as a Network Change Proposal - Part G of the Track Access Conditions

³⁵ See paragraph 5.8 below

(b) other statutory consents or approvals relating to the implementation of the proposal (such as planning permission) are outstanding; or (c) other procedures contained in the Conditions are required to be completed (Conditions 5.1.2 and 5.1.3).

- 5.4 Under the Conditions, no Proposal for Change or Railtrack Change Proposal may be implemented or take effect until the Regulator's approval is given. Thus, the facility owner will need to ensure that **all** the necessary approvals have been issued by the Regulator before any work to close the LMD, or part of it (including network) is commenced. In practice, the depot facility owner should have consulted the LMD users about the consequential changes to depot access agreements at the time of issue of the Proposal for Change.
- 5.5 Under Part B of the Conditions, the depot facility owner is required to seek the Regulator's approval of modifications to the Conditions which have been proposed and approved by the depot facility owner and user(s) of an LMD. (Part B can also apply in circumstances where there are no closures at the LMD.) Such proposals are required to be submitted to the Regulator for approval and no effect may be given to a Conditions Change Proposal until the Regulator approves the proposal pursuant to s22 of the Act.
- 5.6 However, if the Part C Proposal for Change also results in a change to the Conditions, the Regulator does not believe it is necessary to also apply the Part B process. In practice, the intention of the procedures contained in Part B of the Conditions in respect of closures is similar to that in Part C, that is, they contain a requirement to consult relevant parties on changes to depot access agreements, and changes to the LMD and effect consequential changes to those agreements. Therefore, the consultation undertaken in respect of a Proposal for Change (Part C) obviates the need for similar consultation and approval of changes to depot access agreements under a Conditions Change Proposal (Part B).

Freight LMDs

- 5.7 Similar contractual obligations to those on passenger LMD facility owners also exist for Freight LMD facility owners. These are contained in the freight facility access agreement documentation. A Proposal for Change will need to be approved by the Regulator under Condition Part C and, where appropriate, a Conditions Change Proposal under Part B. **Ideally, the statutory and the contractual processes should run concurrently.**

General Approvals - Passenger LMDs & Freight LMDs

5.8 The Regulator has already issued³⁶ a series of General Approvals, under s22(3) of the Act, and General Consents, under the Conditions, granting prior approval to certain amendments to depot access agreements and freight Master Facility Access Agreements which should enable most changes resulting from a Proposal for Change or a Conditions Change Proposal to be made easily and quickly. Amendments falling outside the General Approvals will need specific approval under s22(2) of the Act.

³⁶ See Appendix 8 to this advice

6. Closure of an LMD – termination of access agreements and new access agreements

- 6.1 Where an LMD closes and this also involves the facility owner surrendering its LMD lease, the facility owner will cease to be the facility owner of that LMD. Any depot access agreements for the continued provision of any services at or access to that LMD will need to be terminated. An LMD operator may also need to terminate a depot access agreement if a part of an LMD or network within that LMD is closed which means it is unable to provide specific light maintenance services required by one (or more) of its beneficiaries. The obligations and processes associated with termination of such access agreements are contained in clause 6 of the template (December Standard) LMD Access Agreement and Master Facility Access Agreement.
- 6.2 In the above circumstances, it is advisable for depot facility owners to commence the contractual termination process at the same time as the formal network or LMD closure application and any Proposal for Change/Conditions Change Proposal is made. Alternatively, the parties to the access agreement(s) may simply wish to negotiate termination rights and agree terms in respect of them.
- 6.3 Where the closure of an LMD, or part of it, or network within it requires a beneficiary to seek access to other LMDs for the provision of services or access to that other LMD, there will need to be the necessary access rights to the new LMD in place at the time of the closure. In such cases, the Regulator may be required to approve new access agreements, under s18 of the Act, or specifically approve amendments to existing access agreements, under s22(2) of the Act, and he will require sufficient time to consider those agreements prior to deciding whether he is able to approve them or not. It is therefore advisable for any beneficiary so affected by an LMD or network closure to commence the process of securing its new LMD access rights as soon as possible. However, the Regulator is unlikely to approve the closure unless such access rights are agreed and approved.

7. Further information

7.1 For further information please contact one of the following members of the Depot Regulation Team;

Brian Kogan, Manager, Track Access and Depot Regulation: Tel: 0171 282 2097;

Bill Hammill, Executive, Depots: Tel: 0171 282 2107; or

Karen Wales, Executive Assistant, Depots: Tel: 0171 282 2112.

Fax: 0171 282 2042

E mail: rng.orr@gtnet.gov.uk

Appendix 1: Section 83 of the Railways Act 1993 - Interpretation

1. Light maintenance services means services of any of the following description, that is to say-
 - (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock
 - (b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service

2. Light maintenance depot means any land or other property which is normally used for or in connection with the provision of light maintenance services, whether or not it is also used for other purposes

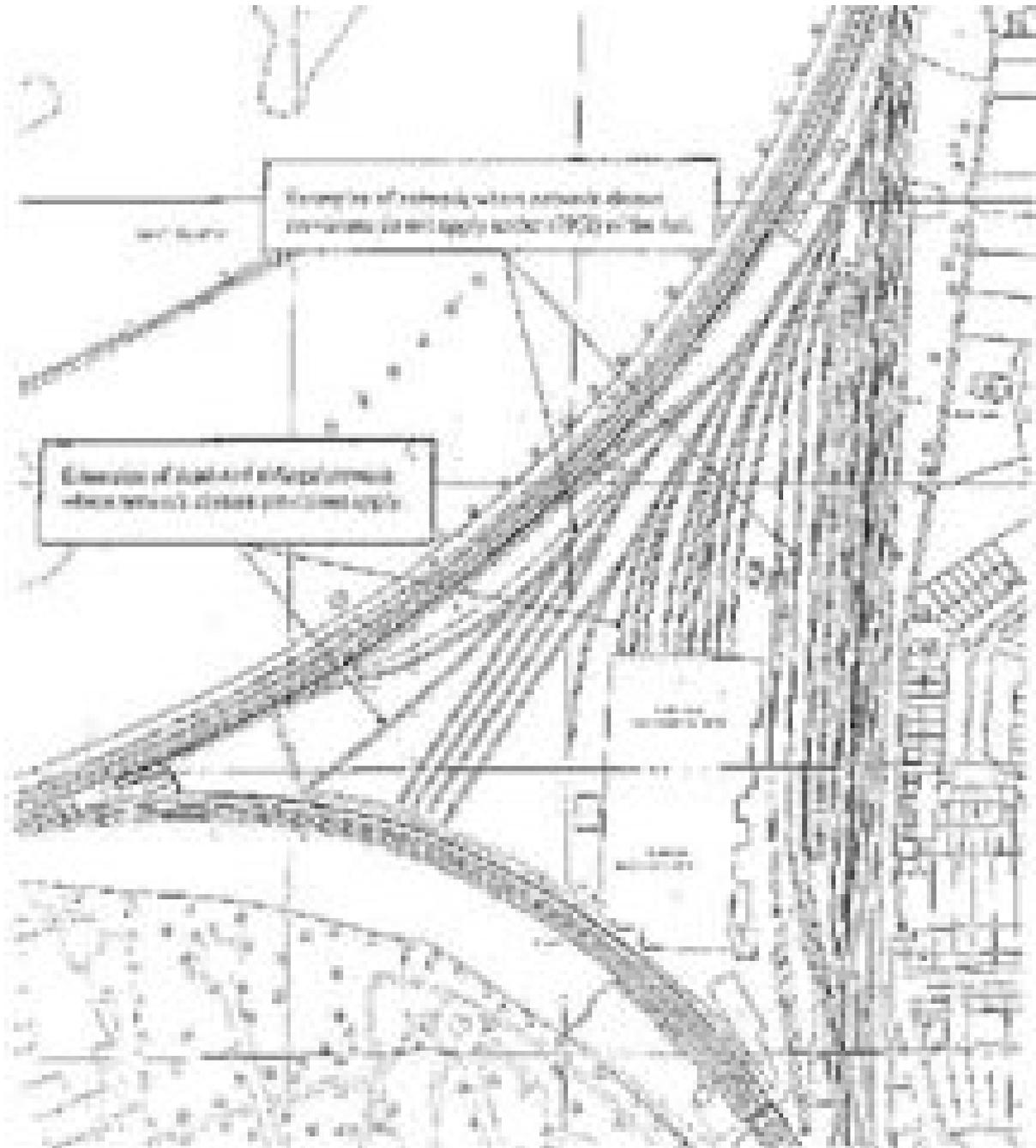
3. Network means –
 - (a) any railway line, or combination of two or more railway lines, and;
 - (b) any installations associated with any of the track comprised in that line or those lines, together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains

4. Railway asset means –
 - (a) any train being used on a network, whether for the purpose of carrying passengers or goods by railway or for any other purpose whatsoever;
 - (b) any network;
 - (c) any station;

(d) any light maintenance depot.

5. Facility Owner means any person –
- (a) who has an estate or interest in, or right over, a railway facility; and (b) whose permission to use that railway facility is needed by another before that other may use it; and any reference to a facility owner's railway facility is a reference to the railway facility by reference to which he is a facility owner
6. Railway facility means any track, station or light maintenance depot
7. Multiple track railway means a railway line between any two places which consists of two or more continuous sets of track taking the same route between those two places

Appendix 2: Examples of networks in an LMD



Appendix 3: Network and LMD closures: The "Full Closure" Process

Sections 39, 41 & 43 of the Railways Act 1993

Timescale	Key Stage
	The applicant gives notice to the Franchising Director of its proposed closure under s39 or s41 of the Railways Act 1993.
Timetable Commences	The Franchising Director (FD) publishes a notice of the proposed closure along with his recommendations in respect of any conditions to the consent to the closure. The notice provides the FD's reasons for his decision and must appear in two national newspapers and a local newspaper for two successive weeks. It must also state where the notice can be inspected or a copy obtained and at what cost. A copy of the notice is then sent to the Regulator and the RUCC. A period of at least six weeks (from the date of the last published notice) is provided for objections to be made to the Regulator which are copied to the RUCC.
Week 7	Once the closing date for objections is reached, the RUCC has a further 12 weeks to consider whether the proposed closure would cause any hardship and make a written report to the Regulator. The RUCC may hold public hearings. A further period may be granted by the Regulator if appropriate.
Week 19	The Regulator considers the RUCC report before making his decision on the application.
Week 26	The Regulator makes his decision within 26 weeks of receiving notice from the FD - an extension to this timescale may only be granted by the Secretary of State (SoS).

A copy of the Regulator's decision is sent to: DETR (for SoS); the Franchising Director; the RUCC; PTE and the applicant. Notifications will also be sent to individuals or groups who have objected or made representations to the Regulator on the proposal.

Section 44 of the Act provides that any person aggrieved by the decision of the Regulator may refer that decision to the SoS by giving notice in writing to the SoS not later than 4 weeks after the date of the decision. It also stipulates the parties to whom the SoS will publish notice of his decision.

Section 45 of the Act provides that the Regulator may vary or revoke any conditions attached to a consent to closure. Any person aggrieved by such a decision of the Regulator may refer that decision to the SoS under s44 of the Act.

Appendix 4: Light Maintenance Depot minor closure certificate application: Office of the Rail Regulator's requirements

A minor closure certificate should be requested with a formal letter of application stating the request and the intention to close all or part of the LMD. This is a checklist of the initial information that companies should provide when requesting a minor closure certificate:

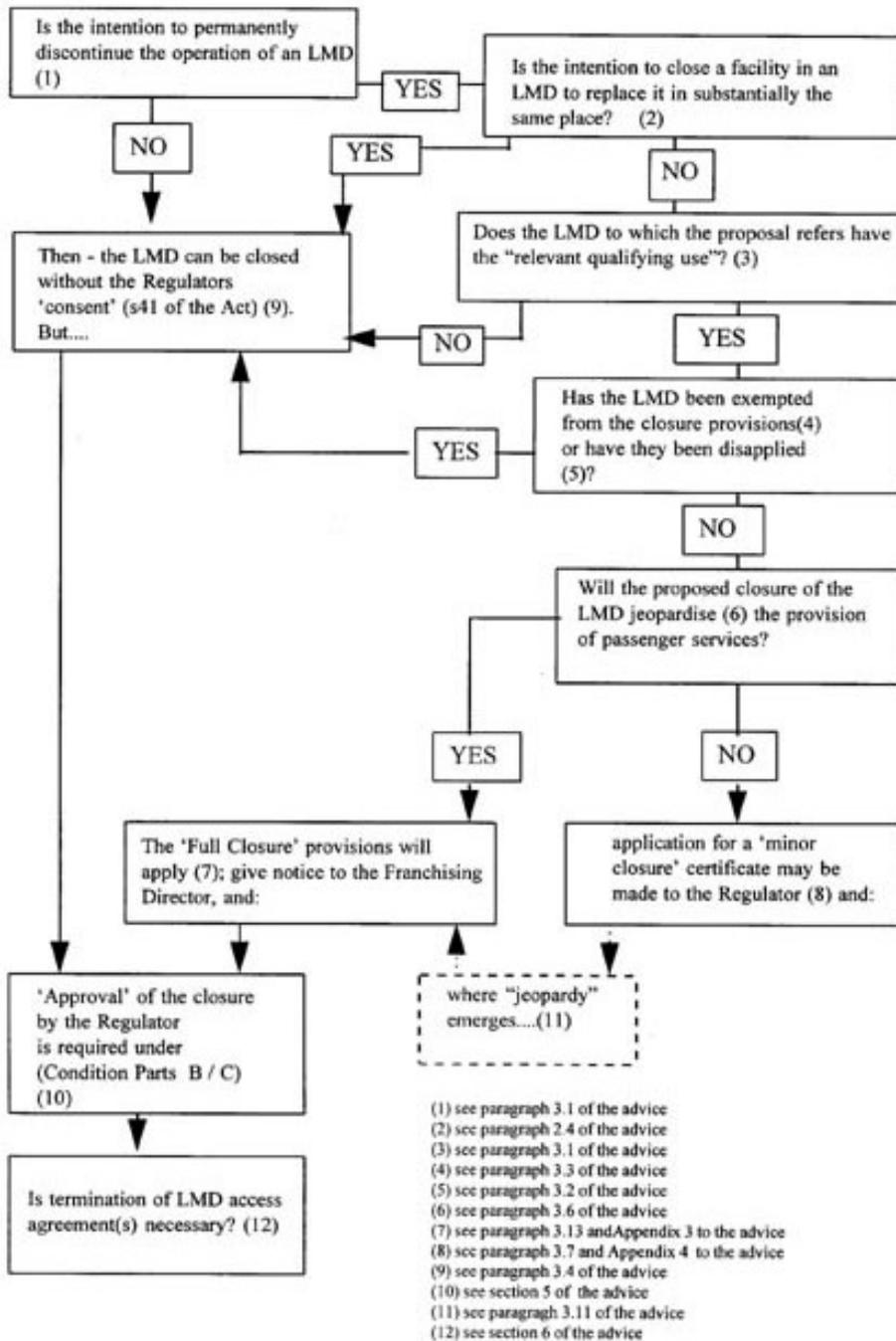
- (a) a plan of the LMD highlighting in a distinct colour any area and/or part to be closed, and with a key to any colouring on the plan;
- (b) an explanation of the nature of the services provided by the area and/or part to be closed including an explanation of the rolling stock using the area and/or part to be closed;
- (c) an outline of the nature of the services provided by the area and/or part to be closed during the previous five years;
- (d) a list of current users of the area and/or part to be closed;
- (e) details of alternative arrangements that will be made to meet the needs of users of the LMD or area and/or part of LMD that is closing. Where beneficiaries are being displaced to other LMDs, the Office of the Rail Regulator (ORR) will wish to be confident that the receiving LMD facility owners are willing and able to accept these customers before the closure can be agreed to;
- (f) a statement on the impact of the closure. This should include impacts on services, e.g. extra train movements, any reduction in maintenance provided, any timetable changes that are required, any costs imposed by the closure and any inconvenience to operators, including users of the LMD and other operators. Where the closure involves only part of an LMD ORR will be interested to understand the impact of the closure on the part of the LMD that is to remain open;
- (g) a comment on the reason for the closure. This may include demand changes or costs and efficiencies. Where market forces are suggested as the reason for the

closure ORR will be interested in the steps, if any, that the company has taken to market the services in order to prevent the closure;

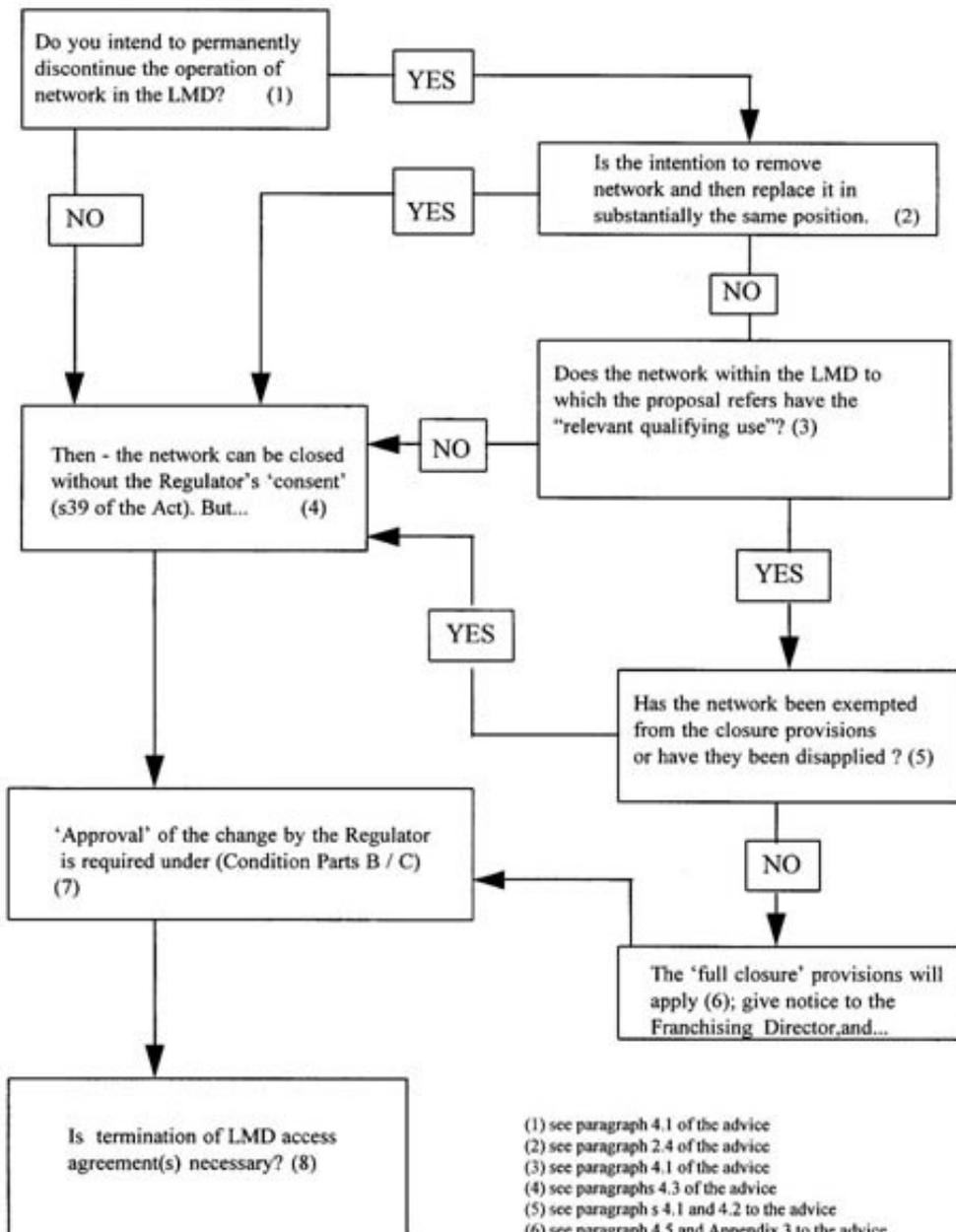
- (h) details of future plans for the area and/or part proposed for closure;
- (i) copies of *comfort* letters from operators directly affected and/or displaced. These should contain more than simple statements of 'no objections'. Affected operators' letters to support the closure should indicate that the closure has no impact on the safety of their operations;
- (j) confirmation of the proposed date of closure;
- (k) details of any information about any prior consultation or publicity for the proposal. This should include whether or not consultation has taken place with any party, including the Franchising Director, Railtrack, RUCC and the PTE, and the outcome of that consultation. DFO's may have already completed the Conditions Change Proposal and/or the Proposal for Change procedure (Parts B and C of the Conditions) prior to making the application - if so, information about those procedures, the issues that arose and how they have been resolved should be explained.

In support of points ORR *may* wish to see copies of the Depot Work Plan for the closing and, if applicable, recipient LMDs.

Appendix 5: Proposed Closure of an LMD (or part of an LMD) - Considerations



Appendix 6: Proposed Closure of Network (or part of a Network) within an LMD - Considerations



Appendix 7: Railway Closures - Information Paper 2

Railway Closures

Introduction

The Railways Act 1993 ('the 1993 Act') has involved a number of important changes to the previous arrangements for scrutiny of proposed 'closures'; that is, any proposal to close the whole or part of any network, station or light maintenance depot used for or in connection with railway passenger services, or involving the withdrawal of all the services on any line or from any station.

This information note summarises, in question and answer format, the procedures which must be followed in relation to any such proposed closure. It includes information about how anyone who objects to such proposals can make his or her views heard. If, having read the note, you require any further information, please write to:

The Manager
Station Access Team
Passenger Services Regulation Group
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London EC1N 2ST

What is the Regulator's role?

1. The Rail Regulator has an important role in relation to closures. The 1993 Act provides that, unless the service or facilities are exempt, or the alternative closure procedure, described in paragraph 17 below, applies, the Regulator will be given the opportunity to examine all closure proposals before they are allowed to take effect. Subject to a right of appeal to the Secretary of State, no closure can be put into effect unless consent has been given, and the Regulator may attach conditions to any consent he decides to give.

What are the differences between the former legislation and the 1993 Act?

2. The 1993 Act provides a new process for the consideration of proposed closures. The process incorporates features of the former closure legislation, set out in the 1962

Transport Act ('the 1962 Act'). In particular there is a continuing role for the Rail Users' Consultative Committees (RUCCs), and the London Regional Passengers' Committee (LRPC), and a process for the lodging and consideration of objections.

3. However, the scope of the legislation is now broader, covering proposed closures of light maintenance facilities as well as closure of stations and lines, and service withdrawals which were covered by the former procedures under the 1962 Act. Also, the closure legislation now applies to proposals to terminate the use of parts of stations.
4. In addition, under the former legislation closures could take place provided no objections to the proposal were received. Under the 1993 Act the Regulator's consent is required, irrespective of whether there are any objections.

What is the process for considering closures?

5. The process involves the following steps. First, the train operator gives notice of the proposal to the Franchising Director, who then advertises the proposal. There is a period of time (not less than six weeks) allowed for objections, after which time the RUCC has twelve weeks to consider the impact of the closure and report to the Regulator. Following receipt of the RUCC's report, the Regulator will make his decision.

How is the Franchising Director involved?

6. First, the train operator must propose a closure to the Franchising Director, giving at least three months notice of the proposed date of the closure, reasons for the proposed closure and details of any alternative services and facilities (unless it is the Franchising Director himself who has proposed the closure).
7. If, following consideration of the proposal, the Franchising Director decides that the proposed closure should be permitted to take effect, he must publish a notice about the proposal on two successive weeks in a local newspaper circulating in the area affected and two national newspapers. This notice must include certain information such as the date when the closure is proposed to take place, details of alternative services and facilities, where a statement of reasons for the closure can be obtained and how and where objections may be lodged.
8. The Franchising Director must send copies of his notice to the Regulator and the relevant RUCC(s).

How are objections dealt with?

9. Any objections to the proposed closure should be lodged with the Regulator. An important difference in the new procedures is that any party may lodge an objection to a closure proposal, not just users of any service affected, or their representatives.
10. The period for making objections is normally six weeks from the date on which the Franchising Director's notice last appears in a relevant local newspaper. The Regulator must send copies of the objections lodged with him to the RUCC.

What is the role of the RUCC?

11. The RUCC must consider whether or not the proposed closure will cause any hardship and, if so, how that could, reasonably, be alleviated, taking the value for money of their proposals into account. The RUCC may decide to hold a public hearing in order to consider these questions and to assist them to prepare a report for the Regulator.
12. The RUCC should report to the Regulator within 12 weeks of the closing date for lodging objections, though this can be extended by agreement with the Regulator.

When is the Regulator involved?

13. After the Regulator receives the RUCC's report on the proposed closure he must decide whether the closure should be allowed to take place and, if so, any conditions that should be attached. The Regulator must consider the reasons for the proposed closure given by the Franchising Director, any objections to the proposed closure and the report from the RUCC. The Regulator's decision must be published at every station in the area affected by the proposed closure. The Regulator's decision should be made within 26 weeks of the date on which the Franchising Director gives him notice of the proposal although this can be extended by agreement with the Secretary of State for Transport.
14. Any person who is aggrieved by the Regulator's decision can appeal to the Secretary of State. Any appeals must be made within four weeks of the Regulator's published decision. The Secretary of State can support, vary or overturn the Regulator's decision.
15. The proposed closure cannot be put into effect until the process described in paragraphs 6-14 has been completed.

Are there any exclusions from the full closure process?

16. There are some circumstances where the above process does not apply. These include where the service or station in question has not been used for or in connection with regular scheduled railway passenger services during the five years prior to the closure being proposed; if the service (or station) is an experimental one or where the service involves travel through the Channel Tunnel.
17. Also, some services, primarily those which were not operated by British Rail on 1 April 1994, are exempt from the closure procedure by Order of the Secretary of State. In some of these cases, closures are considered under an 'alternative' procedure similar to that which operated under the 1962 Transport Act. This alternative procedure applies to proposals in relation to the Docklands Light Railway and the London Underground.

What are minor closures?

18. The 1993 Act has also introduced a new provision whereby if the Regulator has certified a proposed closure as a 'minor closure' it need not be considered under the full closure process. The term 'minor closure' is defined in different ways in the Railways Act according to the type of closure.
19. For example in order to certify a proposed closure of part of a station as a minor closure the Regulator will need to be satisfied that the part in question is not necessary for the operation of the station in connection with railway passenger services. In relation to proposed closures of parts of the network the tests to be satisfied relate to the impact on passengers making journeys.
20. For a closure involving a light maintenance depot to be certified as a minor closure the Regulator will need to be satisfied that this would not jeopardise the provision of railway passenger services.
21. 21. In order to consider requests that a proposal is certified as a minor closure the Regulator gathers information from the applicant, consults operators affected or likely to be affected by the proposal and the relevant RUCC. The Department of the Environment, Transport and the Regions and the Franchising Director are also likely to be consulted.

Appendix 8: Index to current General Approvals and General Consents

Section 22(3) Railways Act 1993

Index to current General Approvals

<i>Coming into force</i>	<i>Description</i>
<i>Passenger LMDs</i>	
<i>9 August 1996</i>	<i>Light Maintenance Depot Access (Applicable Systems Interfaces) General Approval 1996 No. 14</i>
<i>9 August 1996</i>	<i>Light Maintenance Depot Access (Diagram Timings) General Approval 1996 No. 16</i>
<i>9 August 1996</i>	<i>Light Maintenance Depot Access (Minimum and Maximum Levels of Services) General Approval 1996 No. 17</i>
<i>9 August 1996</i>	<i>Light Maintenance Depot Access (Charges and Key Performance Indicators) General Approval 1996 No. 26</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Short Term Changes) General Approval 1999 No. 1</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Specifications) General Approval 1999 No.2</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Off-depot Services) General Approval 1999 No.3</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Minimum and Maximum Level of Services) General Approval 1999 No.4</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Charges and Key Performance Indicators) General Approval 1999 No.5</i>
<i>6 March 1999</i>	<i>Light Maintenance Depot Access (Scotland) (Diagram Timings) General Approval 1999 No.6</i>

6 March 1999	<i>Light Maintenance Depot Access (Scotland) (Applicable Systems Interfaces) General Approval 1999 No.7</i>
6 March 1999	<i>Light Maintenance Depot Access (Scotland) (Administrative Details) General Approval 1999 No.8</i>
6 March 1999	<i>Light Maintenance Depot Access (Scotland) (Depot Access Conditions) General Approval 1999 No.9</i>
6 March 1999	<i>Light Maintenance Depot Access (Depot Access Conditions) General Approval 1999 No.10</i>
6 March 1999	<i>Light Maintenance Depot Access (Off-depot Services) General Approval 1999 No.11</i>
6 March 1999	<i>Light Maintenance Depot Access (Administrative Details) General Approval 1999 No.12</i>
6 March 1999	<i>Light Maintenance Depot Access (Specifications) General Approval 1999 No.13</i>
6 March 1999	<i>Light Maintenance Depot Access (Short Term Changes) General Approval 1999 No.14</i>
<i>Freight LMDs</i>	
19 March 1996	<i>Track and Light Maintenance (Freight Facilities) Access General Approval (No.1) 1996</i>

Depot Access Conditions

Index to current General Consents

<i>Coming into force</i>	<i>Description</i>
6 March 1999	<i>Light Maintenance Depot Access (Scotland) General Consent 1999 No.1</i>
6 March 1999	<i>Light Maintenance Depot Access General Consent 1999 No.2</i>

Appendix 9: Example of a Minor Closure Certificate

The Railways Act 1993

Minor Closure London East Ham Light Maintenance Depot

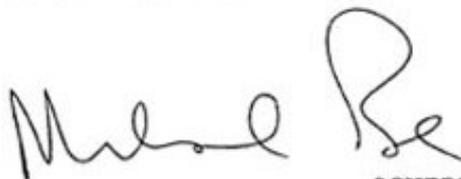
1998 No. 36

Whereas:

- (a) LTS Rail Limited has advised the Regulator that it proposes to terminate the use of a part of the light maintenance depot known as London East Ham, details of which are set out in the Schedule to this certificate ("the relevant facilities");
- (b) the relevant facilities have, within the period of five years preceding the date of the closure proposal, been used in connection with the provision of services for the carriage of passengers by railway; and
- (c) the relevant facilities are not ones which are operated on behalf of the Franchising Director,

I, being of the opinion that such discontinuance would not jeopardise the provision of any service for the carriage of passengers by railways and in exercise of powers under Section 41 of the Railways Act 1993 ("the Act") delegated to me, certify that the closure proposal is a minor closure within the meaning of Section 41(9) of the Act.

Dated 12th August 1998



Michael Beswick
Authorised by the Rail Regulator

SCHEDULE

The part of the depot which is subject of the closure proposal, and this certificate, is 83 metres of two access platforms alongside the end of numbers 8 and 9 roads and numbers 9 and 10 roads in the maintenance shed.