



Minor Modifications Operational Guidance Note

Version 2.0 March 2007

Introduction

The Network Modifications (Closures) regime contained in the Railways Act 2005 (“the Act”) allows for certain ‘Excluded proposals’ to be treated as minor modifications under sections 34 and 35 of the Act.

Section 35 defines the remit for which closures are eligible to be treated as a minor modification.

This Operational Guidance Note applies to applications to the Scottish Ministers to make a determination that a closure is a minor modification within the meaning of the Railways Act 2005.¹ Therefore, it does not apply to freight only facilities that do not impact on the passenger railway network.²

Section 34(4)(b) of the Act allows Scottish Ministers to make a determination relating to a description of closures that are eligible minor modifications, and to make a determination to cover all cases falling within that description (referred to throughout this document as a “general determination”) without having to make a further individual determination.

This document aims to guide the reader through the following steps of the process;

1. verifying that a proposal meets the eligibility criteria;
2. providing guidance for [applying to Transport Scotland](#) for a minor modification determination ([p.2](#)); and
3. [what to do if a general determination has been made \(p.5\)](#).

Where a general determination has been made, it can be used if a proposal falls entirely within the description and meets the criteria detailed within the determination. In these circumstances only, the proposal will not need to be referred to transport Scotland for a new determination to be made. This document contains [a copy of all general determinations](#) that have been made ([p.13](#)).

The Scottish Ministers reserve the right of audit to verify that the general determination has been applied appropriately.

¹ It applies to the discontinuance of: one or more Scotland-only services; one or more cross-border services in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers; a network or part of a network that is wholly in Scotland; or a station or part of a station that is wholly in Scotland.

² Please also note section 26(1)(b) and (2)(2)(c)

Process for applying to the Transport Scotland for a minor modification determination

1. There are no statutory timescales laid down in the Railways Act 2005 for Scottish Ministers to consider an application for a minor modification. It would be prudent though, in the course of planning a project of works, to make an application to the Transport Scotland for a minor modification at least **10 weeks** prior to the planned commencement of any physical works at the location.
2. Scottish Ministers are of the opinion that, in line with previous interpretations of 'Minor Closures' under the earlier legislation³, the following actions **would not normally require a minor modification determination to be made** when referring to a part of a station ([Section 35\(5\)\(b\)](#)):
 - a. The closure of commercial outlets located within the station premises;
 - b. The demolition of a structure or station facility when it is replaced in substantially the same position (quantified to be within a radius of three metres of the footprint of that being replaced), and the new structure or facility performs the same function as that which it replaces;
 - c. The change in use of a part of the station, provided that:
 - i. the new use is still in connection with the provision of railway passenger services, for example a waiting room is converted into a ticket office; and
 - ii. the former function of that part of the station continues to be provided elsewhere within the station.
3. A station is defined as meaning "*...any land or other property which consists of premises used as, for the purpose of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is or the premises are, also used for other purposes;*"⁴
4. Often, during the course of station improvement programmes, the layout of the station will be altered such as to come within the remit of minor modifications under section 35 (5)(b) of the Act. In line with earlier interpretations of Minor Closures, Scottish Ministers consider it appropriate that the following list, though not exhaustive, are some examples of types of changes that **fit within the remit of [Section](#)**

³ The Railways Act 1993

⁴ This definition is contained in Section 83 of the Railways Act 1993 but it is imported into the Act by section 58(2)

[35\(5\)\(b\)](#), (subject to the part of the station being considered to be not necessary for the operation of the station)

- a. The demolition of structures within a station, for example station toilets, waiting shelters, platform canopies, or footbridges;
 - b. the permanent closure of any station facilities, such as locking out of use toilets, waiting rooms, etc. (even if the structure remains in place);
 - c. the reduction in length or removal of a platform;
 - d. the relocation or reduction in size of a station car park (owing to sale of station land);
 - e. The conversion of a part of the station to another use which is not station related (such as retail);
 - f. The closure of part of or all of an approach road or footpath to the station
5. In the example given in 4(e) above, if an operator is considering a scheme to convert all or part of a station waiting room into a café/coffee shop retail facility, then Scottish Ministers will only consider such an application if the proposal contains continued provision of low level seating which is available to all passengers whether or not they choose to purchase refreshments from that retail facility.
6. The person making the proposal should verify for themselves that the proposal is eligible to be treated as a minor modification. The [process maps](#) on the following pages have been designed to assist this process.
7. Once eligibility has been established, the proposer should carry out a consultation with stakeholders. The consultees should include;
- a. other operators using the station or network;
 - b. Network Rail
 - c. Passenger Focus;
 - d. Relevant Passenger Transport Executives (if applicable)

and should allow 4 weeks for those organisations to make representations in respect on the proposal to the proposer. A nil response will be deemed to be agreement to the proposal.

8. Once all consultation responses are received, a formal application for a determination should be made to Transport Scotland enclosing full details (including plans) of the proposal for minor modification and copies of the consultation responses.

9. Transport Scotland will then consider the proposal against the criteria as set out in the Railways Act 2005 and decide whether to make a determination for a minor modification based on the information provided in support of the application and further investigation and analysis by Transport Scotland. Scottish Ministers will consult further if it is felt necessary to clarify any matter, or because of potential wider impact, for example on integrated travel.

10. Applications should be made to:

Alan Martin
Network Regulation Manager
Strategy & Investment Directorate
6th Floor
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow G4 0HF

11. In the event that following an application Scottish Ministers do not issue a determination, then the proposal is not deemed to be a minor modification, but it may still be considered under the full closures procedure, for which Guidance has been published.

Process for using the general determination

If the proposal is a proposal that falls within a description of minor modifications for which [a general determination has been made](#), then you do not need to make a new application to the department.

1. Follow steps 6 and 7 as at page 3, stating in your consultation with stakeholders that you believe that the proposal falls within the description contained within the general determination that you propose to make use of.
2. Transport Scotland considers it acceptable that the consultation is carried out in tandem with, or as an integral part of other required processes such as station/network change provided that it is an explicit part of that consultation.
3. Provided that there are no negative responses to the consultation and that all other conditions detailed in the determination have been met, then the general determination can be applied.
4. Where:
 - a. negative responses are received to a consultation; or
 - b. the negative response is not connected with the proposal in question; and
 - c. those negative responses are the only reason why the proposal cannot be dealt with under a general determination;

then the person making the proposal should refer this to Transport Scotland and request that a determination be made in accordance with section 34 of the Act. Transport Scotland will endeavour to reach a decision on the matter as quickly as possible.

5. In the interests of good record-keeping, Transport Scotland requires a standard return to be made to the address detailed above on each occasion when the general determination has been applied. The standard text should read as follows;

Please accept this letter as notification that [Operator X] has made use of the general determination [ref: x] at [x location].

This will aid Transport Scotland in maintaining its records.

6. **Please retain a full audit trail when applying the general determination as Scottish Ministers reserve the right of audit.**

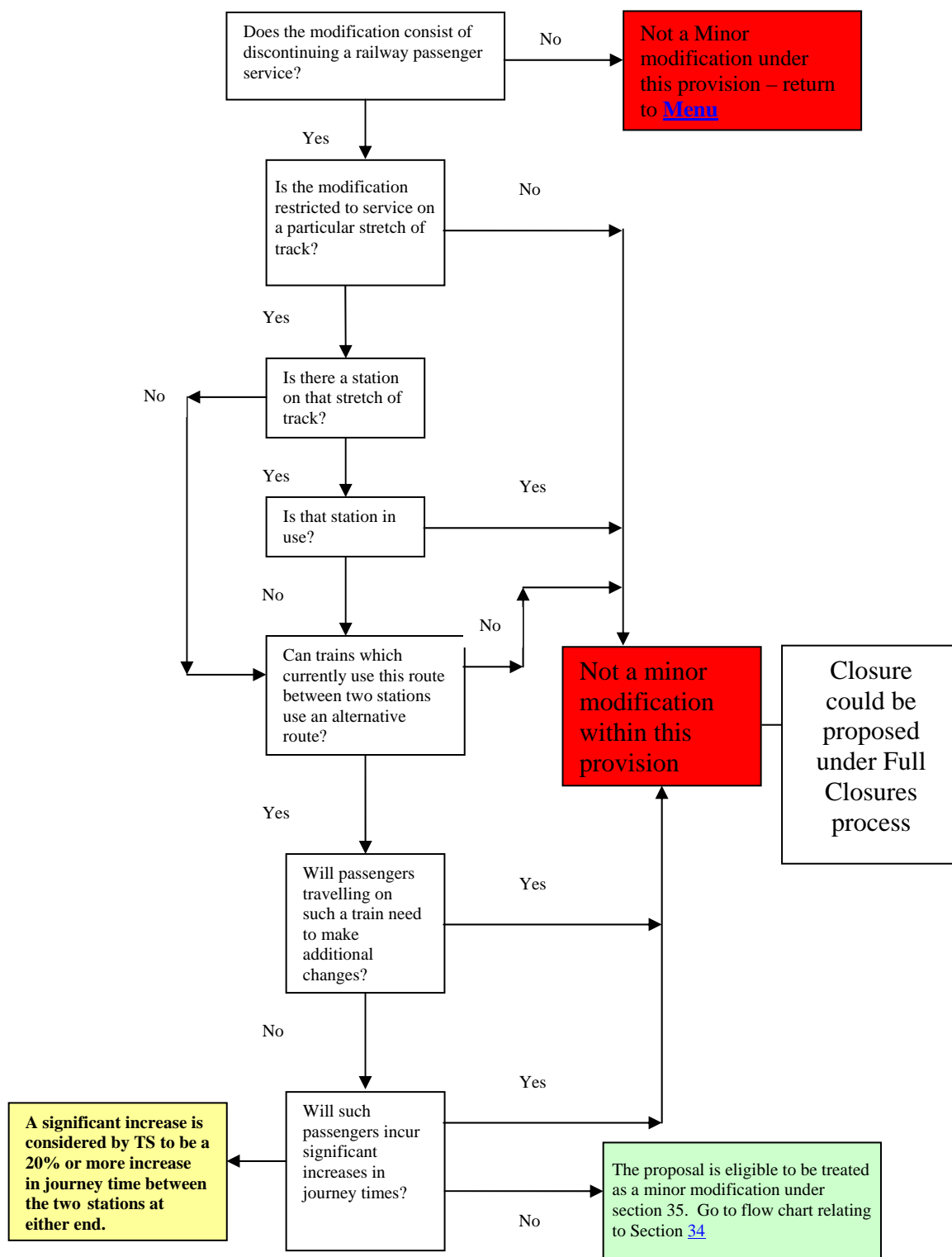
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Use the list below to select the part of the guidance most appropriate to the proposal.

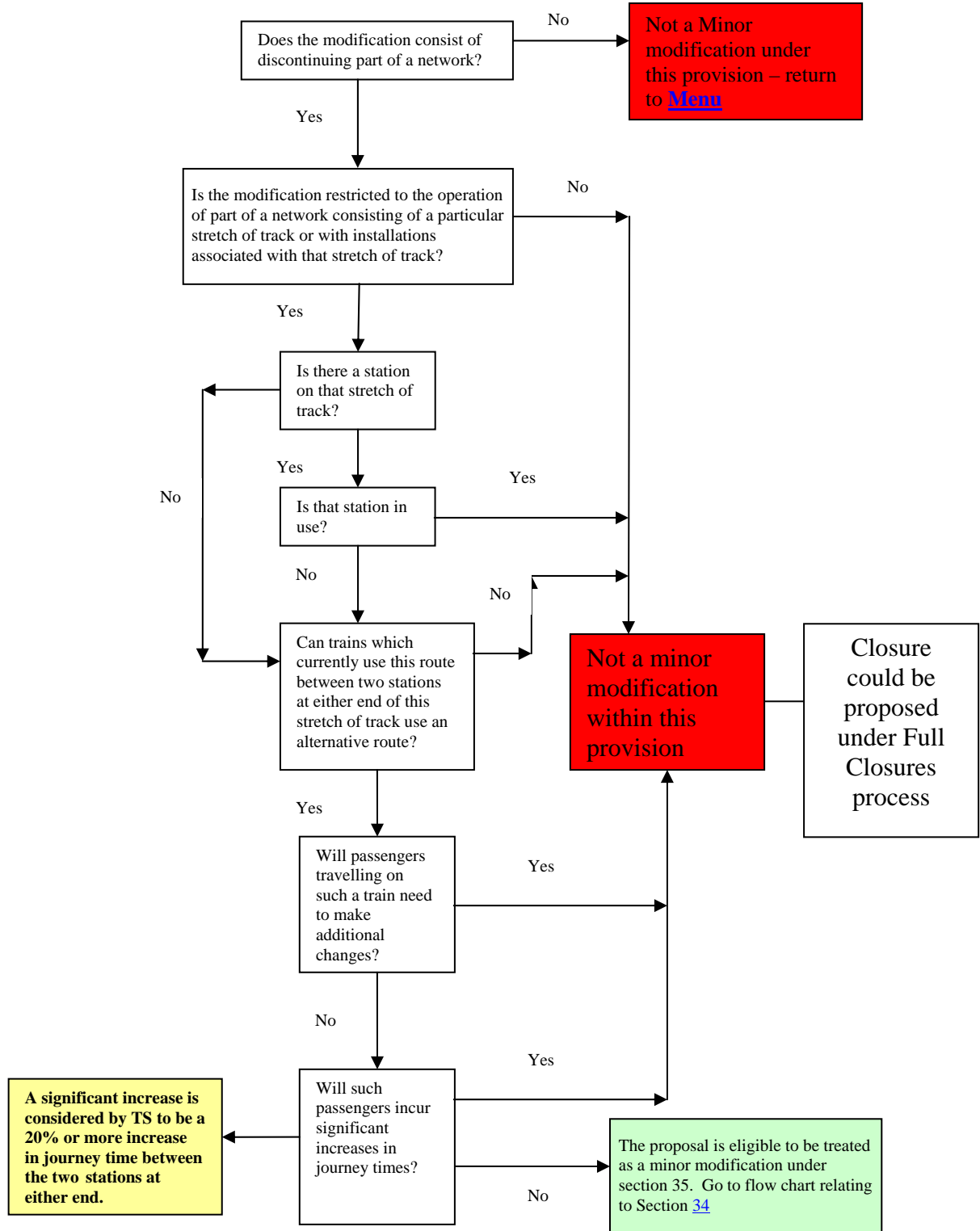
1. If it is a proposal to discontinue a railway passenger service, then [click here](#) (or go to p.7);
2. If it is a proposal to discontinue the operation of part of the network that consists of a stretch of track where there is no station or station in use, then [click here](#) (or go to p.8);
3. If it is a proposal to discontinue the operation of part of the network that consists of a track that does no more than serve a station or light maintenance depot, or some part of it, then [click here](#) (or go to p.9);
4. If it is a proposal to discontinue part of a network other than track, then [click here](#) (or go to p.10);
5. If it is a proposal to discontinue part of a station, then [click here](#) (or go to p.11).
6. Section 35(6) of the Act allows for Scottish Ministers to treat, by order, closures of any description not specified in Section 35 as a eligible under Section 34 as a minor modification because of its temporary nature or limited effect. [Click here](#) (or go to p.14) to see where this section has been used.

Section 35(1)



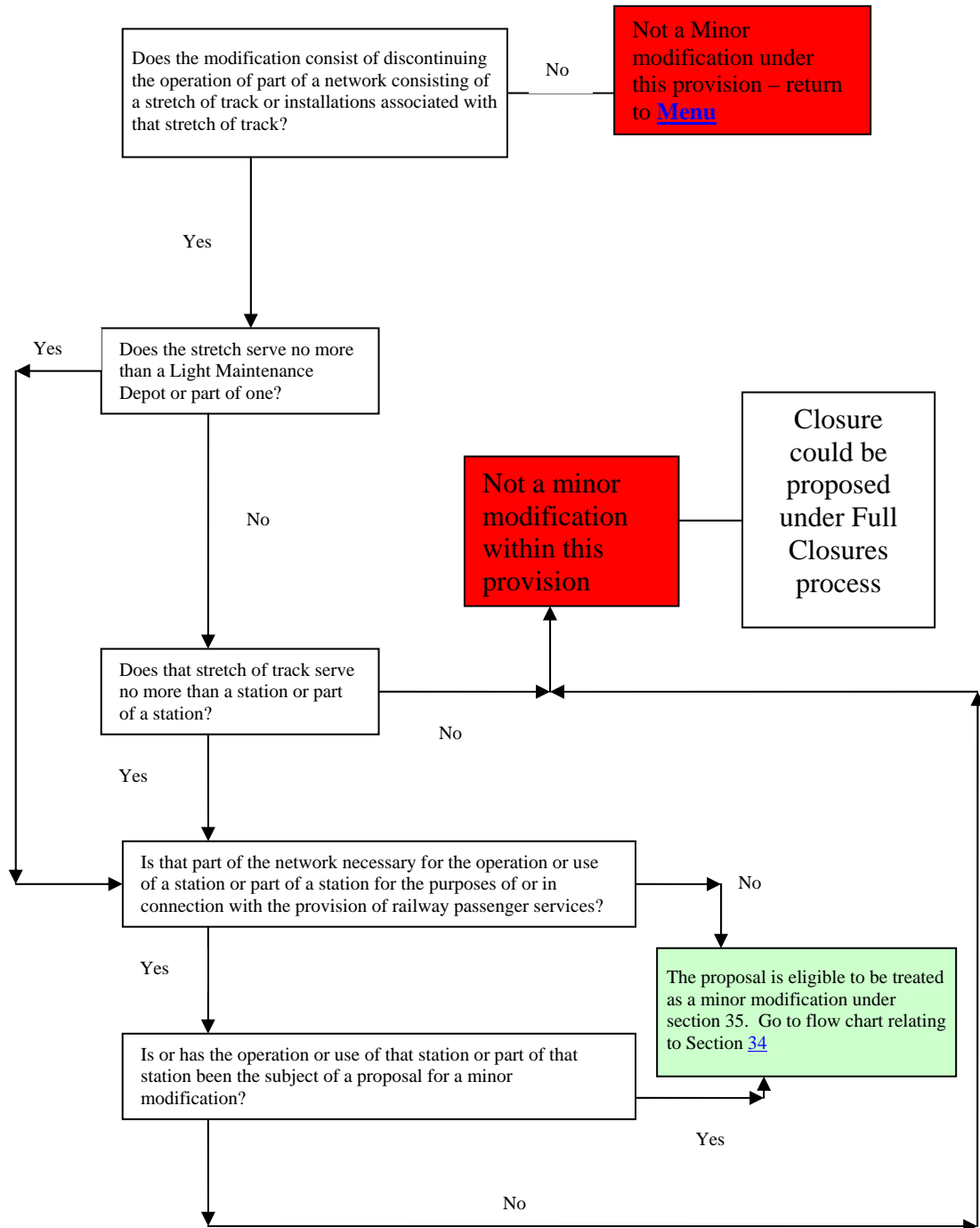
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Section 35(2) and (4)



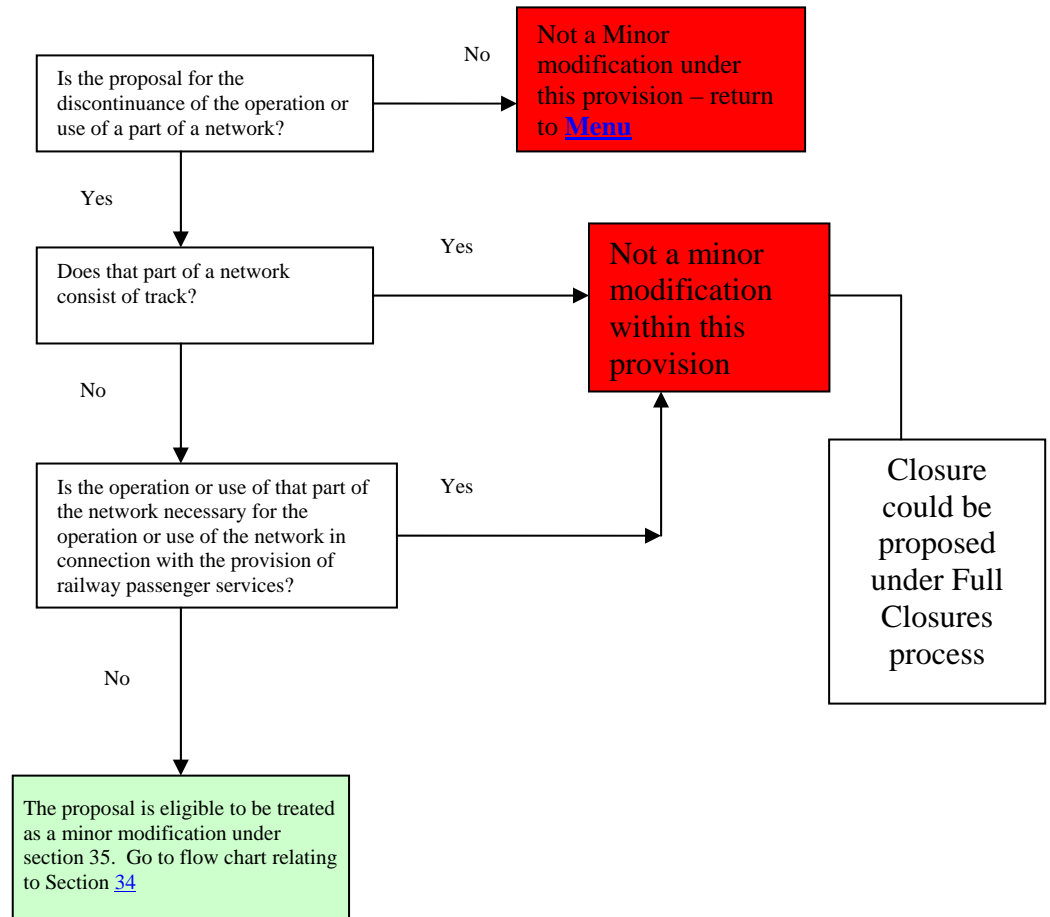
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Section 35(3) and (4)



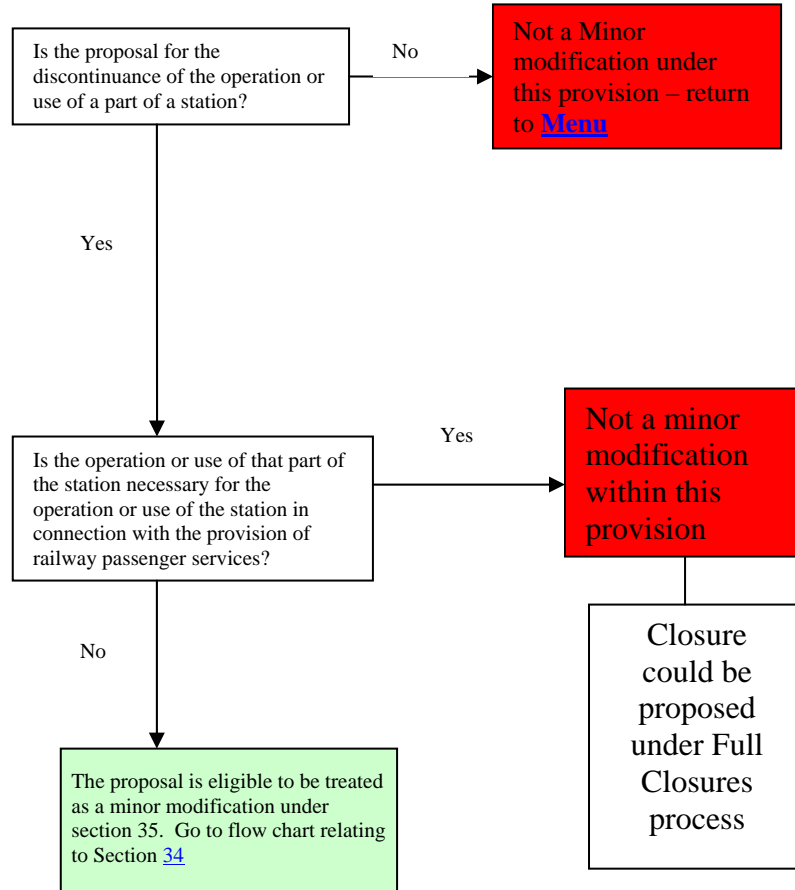
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Section 35(5)(a)



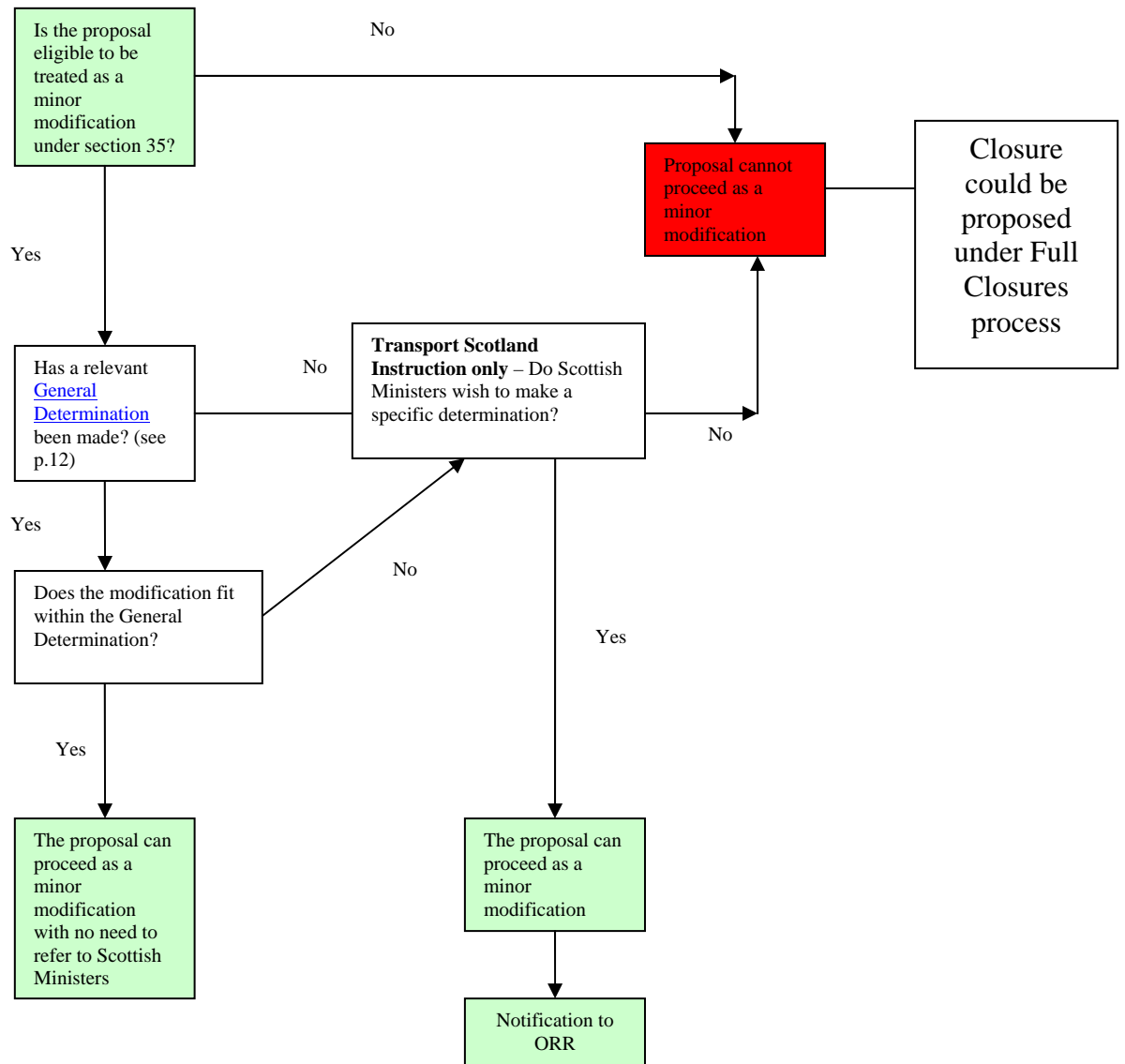
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Section 35(5)(b)



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Process Chart for Section 34



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General Determinations

Ref #	Date made	Date revoked	Brief description	Link to full document
GD/001	11 May 2007		Replacement of facility/structure with a new facility/structure in a different part of a station or removal of facility/structure because of persistent criminal damage	Click here to follow the link to the document on the Transport Scotland website ⁵

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[Back to Section 34](#)

⁵ The determination is published on the Transport Scotland website <http://www.transportscotland.gov.uk/defaultpage1221cde0.aspx?pageID=264>. or available upon request from the address given on p.10 of this guidance note.

Section 35(6) Orders

Date of Order	Brief details	Link to full document

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