

Minor Modifications Operational Guidance Note

**Version 2.0
May 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 Secretary of State¹ to make a determination that a closure is a minor modification within the meaning of the Act. Therefore, it does not apply to freight-only facilities that do not impact on the passenger railway network².

Section 34(4)(b) of the Act allows for the Secretary of State 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 the Department for Transport (the “Department”) 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 it. In these circumstances only, the proposal will not need to be referred to the department for a new determination to be made. This document contains a copy of all general determinations that have been made (p.13).

The Secretary of State reserves the right of audit to verify that the general determination has been applied appropriately.

¹ 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 are not the responsibility of the Secretary of State. Such determinations are the responsibility of the Scottish Executive.

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

Process for applying to the Secretary of State for a minor modification determination

1. There are no statutory timescales laid down in the Act for the Secretary of State 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 Secretary of State for a minor modification at least **10 weeks** prior to the planned commencement of any physical works at the location.
2. The Secretary of State is of the opinion that, in line with previous interpretations of 'Minor Closures' under previous 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, the Secretary of State considers it appropriate that the following list, though not exhaustive, are examples of types of changes that **fit within the remit of Section 35(5)(b)**, (subject to the part of the station being considered to be not necessary for the operation of the station)

³ The Railways Act 1993

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

- 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 the Secretary of State 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/London TravelWatch;
 - d. Welsh Assembly Government (if applicable)
 - e. Relevant Passenger Transport Executives (if applicable)

and should allow 4 weeks for those organisations to make representations 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 the Department enclosing full details (including plans) of the proposal for minor modification and copies of the consultation responses.

9. The Department will then consider the proposal against the criteria as set out in the Act 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 the Department. The Secretary of State 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:

Minor Modifications
Fares, Ticketing and Passenger Benefits Team
Zone 3/33
Department for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR

11. In the event that following an application the Secretary of State does 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 above, 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. The Department 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 the Department and request that a determination be made in accordance with section 34 of the Act. The Department will endeavour to reach a decision as quickly as possible.

5. In the interests of good record-keeping, the Department 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 the Department in maintaining its records.

6. **Please retain a full audit trail when applying the general determination as the Secretary of State reserves the right of audit.**

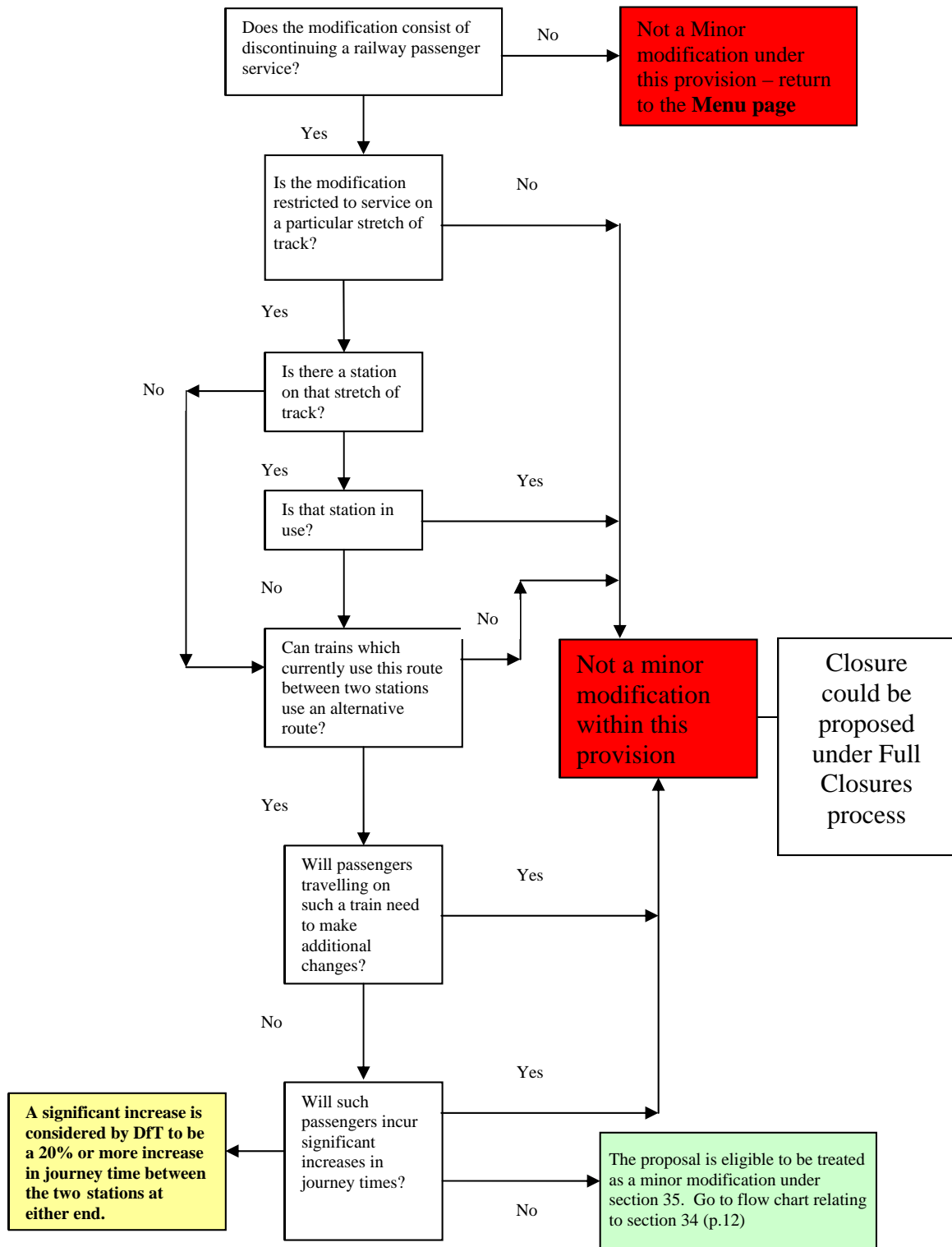
Minor Modifications

Menu page

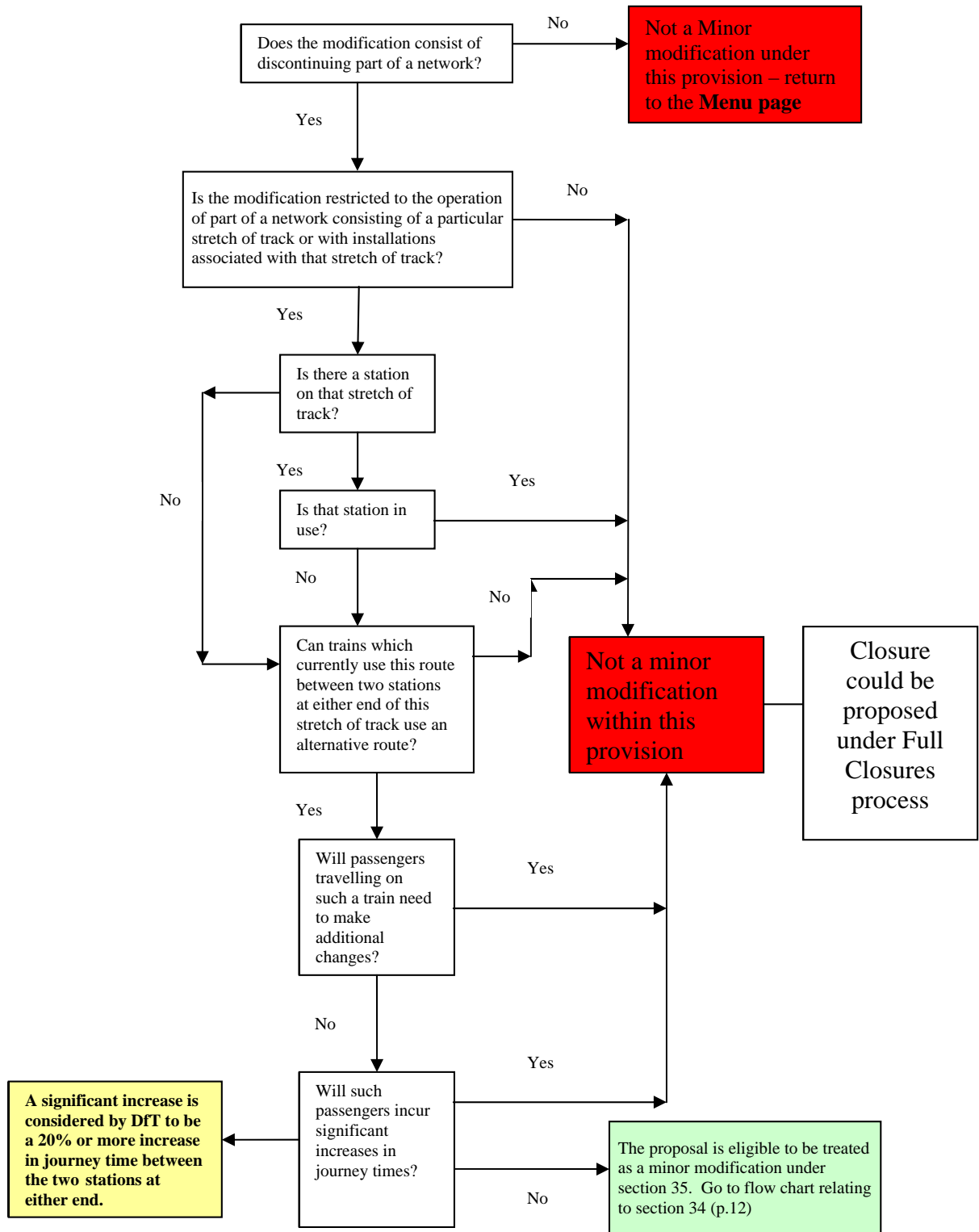
Use the list below to select the part of the guidance most appropriate to the proposal.

1. If it is a proposal to discontinue a railway passenger service, then 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 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 go to p.9;
4. If it is a proposal to discontinue part of a network other than track, then go to p.10;
5. If it is a proposal to discontinue part of a station, then go to p.11.
6. Section 35(6) of the Act allows for the Secretary of State to treat, by order, closures of any description not specified in Section 35 as eligible under Section 34 as a minor modification because of its temporary nature or limited effect. Go to p.14 to see where this section has been used.

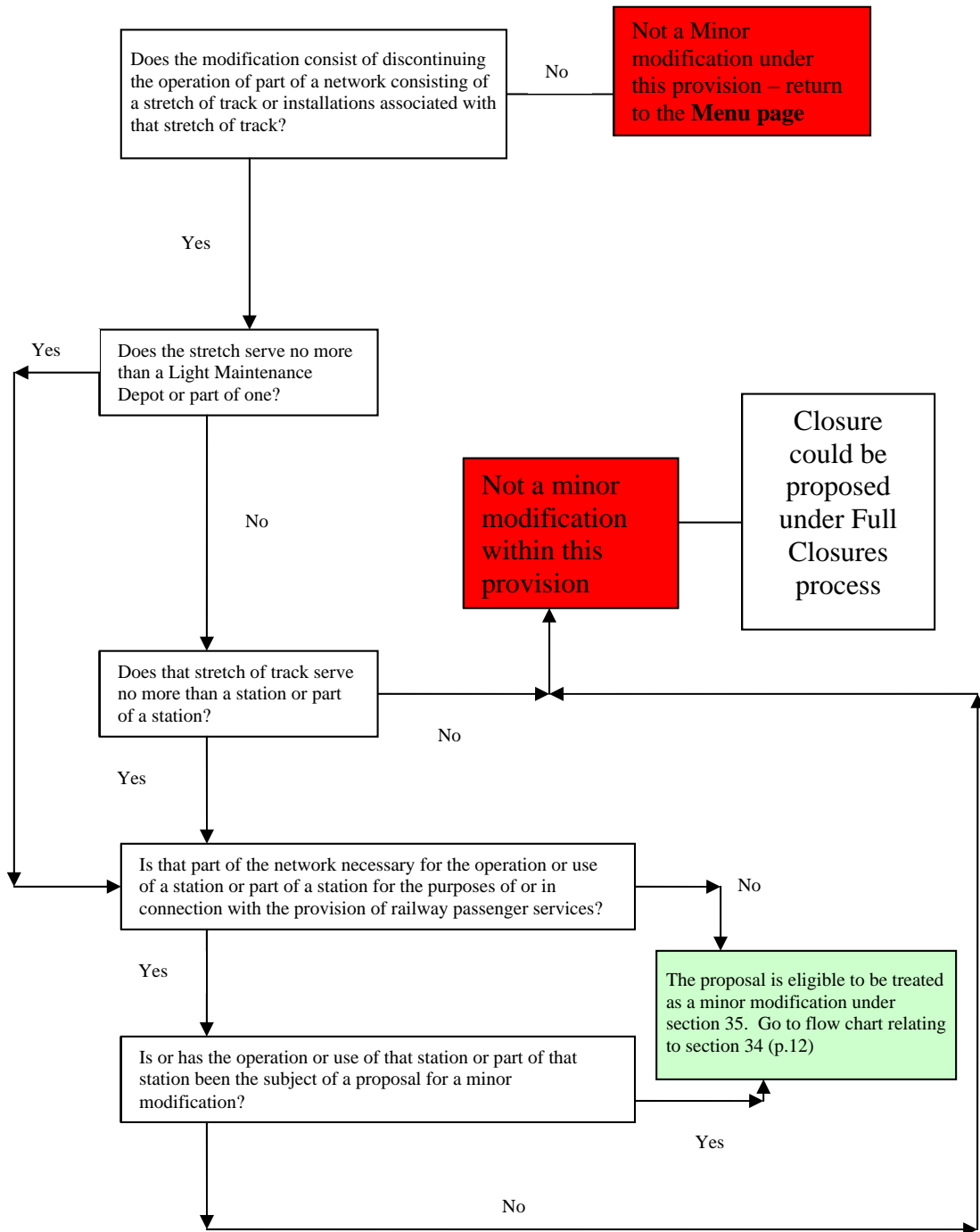
Section 35(1)



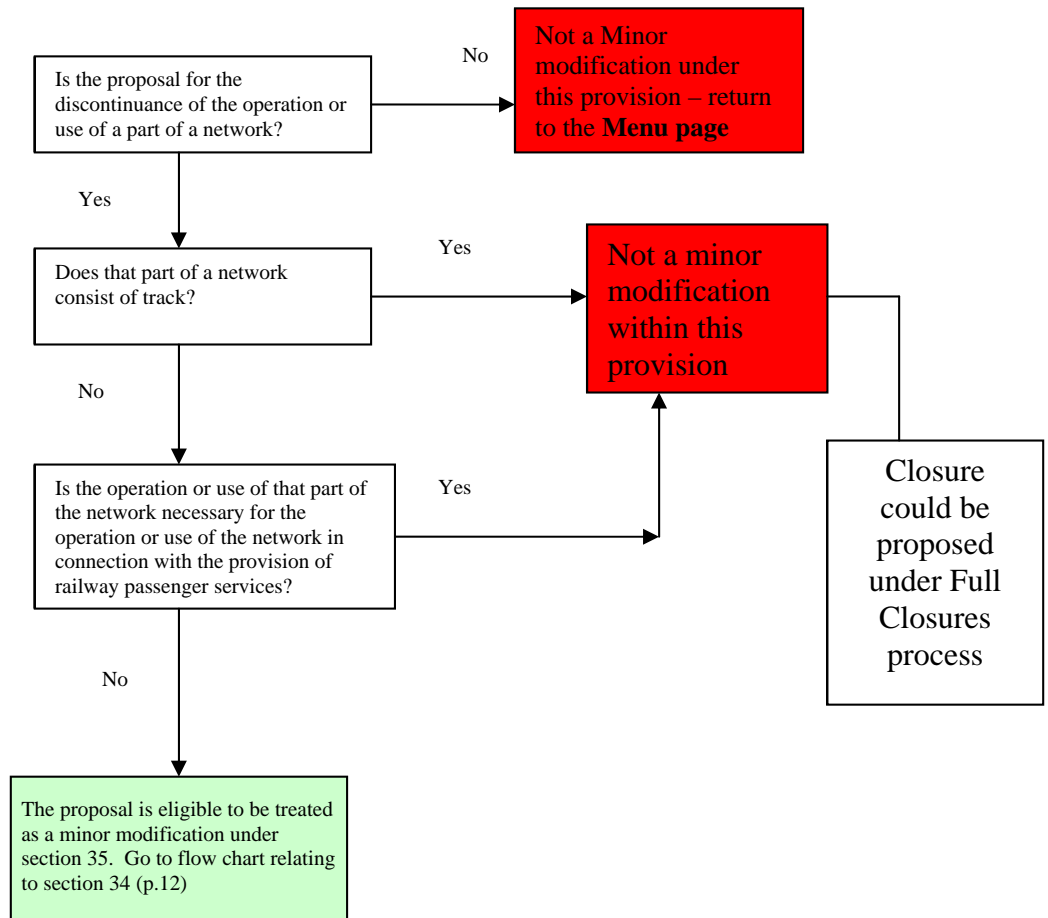
Section 35(2) and (4)



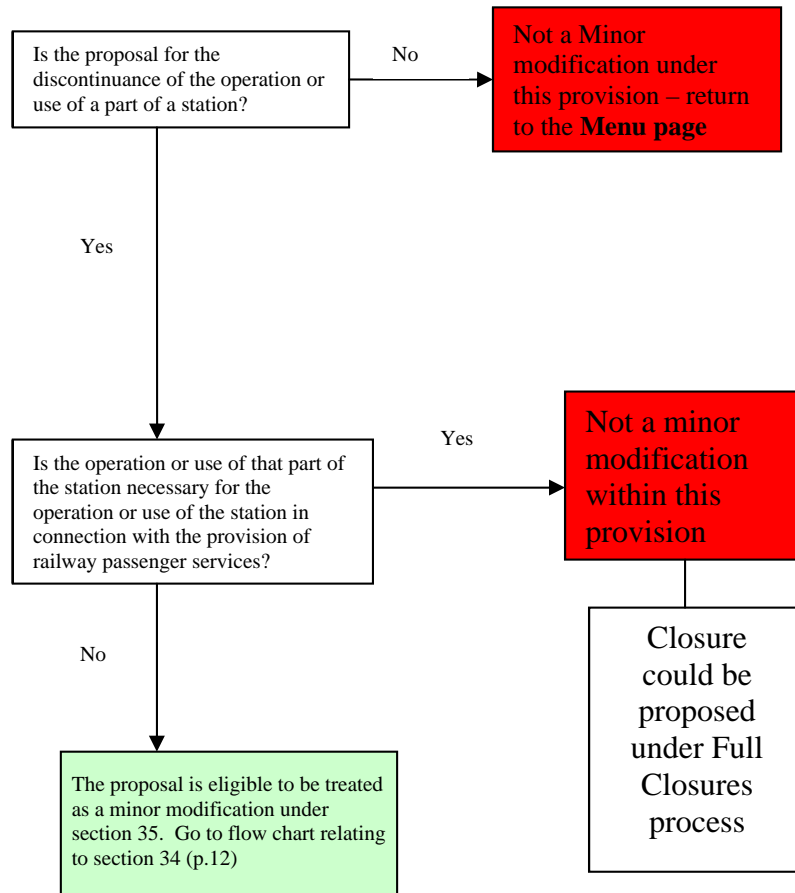
Section 35(3) and (4)



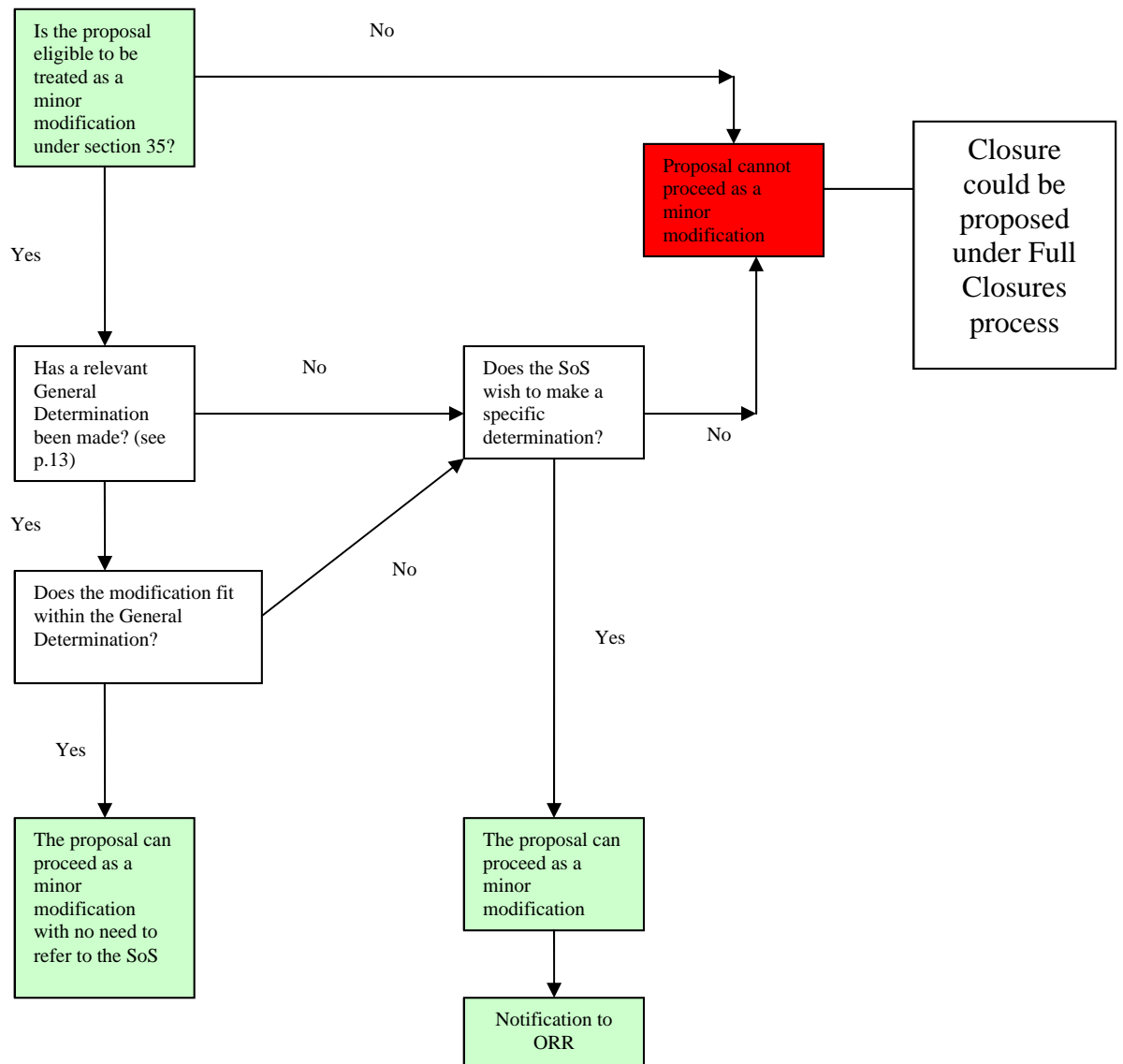
Section 35(5)(a)



Section 35(5)(b)



Process Chart for Section 34



General Determinations

Ref #	Date made	Date revoked	Brief description	Link to full document
GD/001	11 th 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	See footnote to follow the link to the document on the DfT website ⁵

⁵ The determination is published on the DfT website <http://www.dft.gov.uk/pgr/rail/passenger/stations/> or available upon request from the address given on p.4 of this guidance note.

Section 35(6) Orders

Date of Order	Brief details	Link to full document