**EXPLANATORY MEMORANDUM TO**

**THE CLOSURES GUIDANCE (RAILWAY SERVICES IN SCOTLAND AND ENGLAND) ORDER 2006**

**2006 No. 2837**

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**1.** This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

## 2. Description

2.1 The Closures Guidance (Railway Services in Scotland and England) Order 2006 (the "Scotland and England Order") and the Closures Guidance (Railway Services in England and Wales) Order 2006 (the "England and Wales Order") (together referred to as the "Orders") each give effect to guidance on the criteria which must be taken into account before railway closures can be considered. The guidance has been laid before Parliament and before the Scottish Parliament.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None

## 4. Legislative Background

4.1 The Orders are made under section 43(3) of the Railways Act 2005 (the "Act"). The closures regime is contained in Part 4 of the Act (sections 22 to 45). Part 4 of the Act will replace the current closures regime contained in sections 37 to 50 of the Railways Act 1993.

4.2 Section 42 of the Act sets out the duty on the Secretary of State, Scottish Ministers and the National Assembly for Wales to publish closures guidance. The closures guidance sets out the criteria against which proposals to discontinue passenger railway services, networks or facilities will be considered. A single set of closures guidance has been published for all proposed closures.

4.3 Section 43(3) of the 2005 Act requires that the Secretary of State or Scottish Ministers, as the case may be, must make an order to give effect to such guidance. Where the closures guidance relates to proposals to discontinue any Welsh service or services or where the proposals relate to discontinuing the operation of any network or station in Wales, the order must be made with the consent of the National Assembly for Wales. It has been decided to make two separate orders to give effect to the closures guidance so that the parliamentary

procedures applicable to each of the Orders can be completed with the minimum of delay.

4.4 The Orders give effect to closures guidance as follows:

4.4.1 The Scotland and England Order gives effect to closures guidance applicable to proposals to discontinue passenger railway services, networks or facilities which are funded solely by Scottish Ministers or by Scottish Ministers acting jointly with the Secretary of State for Transport.

4.4.2 The England and Wales Order gives effect to closures guidance applicable to proposals to discontinue any Welsh service or services or proposals to discontinue the operation of any network or station in Wales. It also gives effect to closures guidance applicable to discontinuance of other services which are subject to Part 4 of the Act but which are not covered by other closures guidance. In general terms, this will be proposals to discontinue any English service or services or proposals to discontinue the operation of any network or station in England.

## 5. Extent

5.1 These instruments extend to Great Britain.

## 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 The Orders give effect to guidance on the criteria which must be taken into account before railway closures can be considered. Under the Act, a closure can be proposed by a Rail Funding Authority (RFA) or a train or network operating company. The RFAs specified in the Act are the Secretary of State, Scottish Ministers, the National Assembly for Wales, the English Passenger Transport Authorities and the Mayor of London. Where a train or network operating company proposes a closure, a view on whether it should be brought into effect must be taken by the RFA. Whether the proposal is made by the operator or the RFA, the Office of Rail Regulation (ORR) must determine whether it satisfies the criteria set out in the guidance.

7.2 The closures guidance is based on the following principles:

- It focuses on the need to create an objective test and does not purport to be comprehensive guidance on all factors which an RFA or operating company might want to take into account when considering closure.

- The test is based on the RFA's or operator's assessment of comparative value for money ("vfm"). The vfm assessment should be carried out in the same way as for an investment in new road or railway.

- The effect of the guidance is that a closure cannot be pursued in Scotland, England or Wales if the benefit cost ratio of retaining the service, station or network is 1.5 or over. If it falls below that, the impacts which cannot be quantified in monetary terms must be considered in the closure proposal.

- The ORR will check that the vfm assessment contains all the elements, and has followed the assessment methodology required by the closures guidance in respect of the costs and benefits of the proposal and the wider scheme impacts.

- The assessment should be based on an estimate of actual costs and savings arising from closure, and not notional or industry-average costs.

- The Act requires the RFA to undertake a public consultation on a closure proposal, and specifies the parties to be consulted. The consultation may be as wide ranging as the RFA judges appropriate. The closures guidance does not seek to fetter the RFA's discretion, but it does require that they demonstrate to the ORR that:

    - interested and affected parties have been provided with the RFA's assessment of costs and benefits, and the assumptions on which they are based;

    - interested and affected parties have been provided with a clear explanation of how the RFA has reached its decision;

    - interested and affected parties have been given an opportunity to comment on or challenge the RFA's calculation;

    - a summary of responses to the consultation has been made publicly available, confirming that all responses have been considered and setting out whether the proposals submitted to the ORR were amended as result and the reasons for doing so; or if not, the reasons for not doing so.

- The guidance is framed in terms of the monetary values specified in the Department for Transport's guidance on investment appraisal, which are in turn based on the Treasury's "Green Book".

7.3 The Secretary of State and Scottish Ministers were required to consult with any persons operating railway passenger services, networks and stations affected by the proposed closures guidance as well as any other persons they deemed appropriate before publishing the closures guidance.

7.4 A consultation exercise held by both the Department for Transport and the Scottish Executive sought views on draft guidance. Sixty-seven responses were received by the Department and fourteen by the Scottish Executive. Responses came from across the transport industry, national, regional and local public sector bodies, lobby groups, Community Rail Partnerships, Passenger Transport Authorities and Executives, trade unions and some individuals.

7.5 The consultation sought views on 3 specific questions:

- Do consultees agree that the objective test to be contained in the closures guidance should relate only to the Rail Funding Authority's (RFA) calculation of quantifiable benefits and costs of closure? The Office of Rail Regulation (ORR) would review this assessment only.

- Do consultees agree that the Rail Funding Authority should retain broad discretion not to pursue a closure, but should only be permitted to make a closure where the quantifiable benefits exceed the quantifiable costs to a defined value?

- Do you agree that the guidance should be based on the same methodology and the same monetary values that are used to appraise new projects? If not, what changes would you suggest? And what would you see as the justification for these?

7.6 A detailed analysis of the consultation responses and the Department's response to the issues raised has been placed on the Department's website. In short, while many welcomed the attempt to develop an open and transparent framework for closure decisions, there was concern about some key aspects of the proposals. A significant majority of those who commented (80%) disagreed with the proposition that the ORR's role should be confined to reviewing the RFA's assessment of the quantifiable impacts of the closure proposal. Around half of those who commented were concerned about the adequacy of the appraisal methodology for dealing with closure proposals. Other issues of concern to a number of respondents were the transparency of the RFA's decision process and the degree of discretion the RFA has in consultation provisions.

7.7 In the light of the consultation responses we have reconsidered, in consultation with the ORR, the role the ORR should play in ratifying closure decisions. The ORR has indicated that it will:

- look beyond the objective test proposed in the guidance to satisfy itself that the appraisal has taken account of wider scheme impacts;

- consider the rigour of the RFA's decision making process to the extent that it will wish to satisfy itself that the RFA has set out in its submission to the ORR both how and why it reached its decision;

- consider whether the RFA has met the requirements set out in the 2005 Act, and elaborated in the guidance, to consult statutory consultees and any other consultees it deems appropriate. This requirement includes: the duty to consider all responses; set out whether the proposal as submitted to the ORR has been amended as a result and the reasons for doing so; and, if not amended, the reasons for not doing so;

- consider third party submissions in its ratification process, to the extent that it would need to satisfy itself that any issues raised had been considered by the RFA.

The closures guidance has been revised to provide clarification to this effect.

7.8 Having considered respondents' comments concerning the appraisal methodology, some clarifying amendments have been made to the closures guidance, but the guidance continues to require that closure proposals follow the new approach to appraisal (NATA) methodology, because the Government believes that it is a comprehensive methodology for the appraisal of transport schemes which reflects the Government's five objectives for transport (i.e. environment, safety, economy, accessibility and integration).

7.9 The closures guidance has also been revised to take account of suggestions made by respondents on areas which needed clarification.

## 8. Impacts

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The closures guidance impacts on public sector rail funding authorities, primarily the Secretary of State for Transport and Scottish Ministers. There are, however, no immediate impacts. The closures guidance establishes criteria for determining value for money when considering railways closure proposals.

## 9. Contact

Ian McBrayne at the Department for Transport Tel: 020 7944 3280 or e-mail: Ian.McBrayne@dft.gsi.gov.uk can answer any queries regarding the instrument.