

# Railways Act 1993

## Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009

### 2009 No. 9

*Made* 25 November 2009

*Coming into force* 26 November 2009

The Office of Rail Regulation, in exercise of the powers conferred upon it by section 22(3) of the Railways Act 1993, gives the following general approval.

#### **Citation, commencement and revocation**

1. (1) This general approval may be cited as the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009.
- (2) This general approval comes into force on 26 November 2009.
- (3) The general approvals listed in the Annex are hereby revoked from 1 March 2010.

#### **Interpretation**

2. (1) In this general approval:

"access agreement" means an agreement entered into after 1 April 1994 under which Network Rail Infrastructure Limited grants a beneficiary permission to use its track for or in connection with the provision of services;

"Additional Permitted Charges" has the meaning ascribed to it in Schedule 7 to the access agreement;

"beneficiary" includes an operator of trains;

"Berthing Offset" has the meaning ascribed to it in the Performance Data Accuracy Code;

"Consultation" means a consultation of potentially affected parties carried out by Network Rail Infrastructure Limited in accordance with the Industry code of practice for track access application consultations;

"Contingent Right" has the meaning ascribed to it in Schedule 5 to the access agreement;

“financial effect” means a change in the sums payable by one party to another under an access agreement;

“Firm Right” has the meaning ascribed to it in Part D of the Network Code;

“Industry code of practice for track access application consultations” means the current document of that name published by the Office of Rail Regulation, which may be amended from time to time;

“Network Code” means the document of that name incorporated by reference in any access agreement;

“Passenger Train Slot” has the meaning ascribed to it in Schedule 5 to the access agreement;

“Performance Data Accuracy Code” has the meaning ascribed to it in Part B of the Network Code;

"Principal Change Date" has the meaning ascribed to it in Part D of the Network Code;

"services" means services for the carriage of passengers by railway;

“Specified Equipment” has the meaning ascribed to it in the access agreement;

“Sponsor” has the meaning ascribed to it in Part F of the Network Code;

"Subsidiary Change Date" has the meaning ascribed to it in Part D of the Network Code;

“Timetable Period” means, as the context requires, either the period between one Principal Change Date and the Subsidiary Change Date subsequent to it, or the period between one Subsidiary Change Date and the Principal Change Date subsequent to it; and

“Vehicle Change” has the meaning ascribed to it in Part F of the Network Code.

(2) In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 shall have the same meanings in this general approval;
- (b) the Interpretation Act 1978 applies to this general approval in the same way as it applies to an enactment; and
- (c) unless the context otherwise requires, any reference to a numbered paragraph is a reference to the paragraph in this general approval which bears that number.

## **Approval of amendments**

3. The parties to an access agreement may make to that agreement any amendment of the description specified in paragraphs 4 to 15 below subject to any restrictions stated therein.

### **Types of amendment for which approval is given**

#### *Amendment of the expiry date of an access agreement*

4. The parties to an access agreement may amend the definition of the expiry date in order to bring forward the expiry of that agreement.

#### *Removal of routes in Schedule 2*

5. (1) The parties to an access agreement may amend Schedule 2 to that agreement to delete one or more of the routes contained therein.

(2) Where an amendment is made under sub-paragraph (1), the parties to the access agreement may also make any consequential changes to the paragraphs in Schedule 2 which are appropriate to reflect that amendment.

#### *Contingent Rights for additional services lasting up to 90 days*

6. (1) Subject to sub-paragraph (2) below, the parties to an access agreement may amend that agreement to permit a beneficiary to use any track for or in connection with:

- (a) the provision of services; and
- (b) the making of train movements which are necessary or reasonably required to enable such services to be provided (including the provision of stabling).

(2) Sub-paragraph (1) above does not apply to any amendment that confers on a beneficiary a permission to use that:

- (a) lasts longer than 90 days;
- (b) is a Firm Right;
- (c) allows the use of track which the beneficiary does not already have permission to use where such additional use would be for a period in excess of seven days;
- (d) involves a change to the types of railway vehicles which may be used on any track under the access agreement, except where this change is within the scope of paragraph 7 below; or
- (e) is the same or substantially the same as a permission to use which was previously authorised by a general approval and which would otherwise expire.

*Amendments to list of Specified Equipment in Table 5.1 of Schedule 5*

7. (1) Subject to sub-paragraph (2) below, the parties to an access agreement may add to, or delete any of, the Specified Equipment in Table 5.1 of Schedule 5.
- (2) Where an addition to the Specified Equipment constitutes a Vehicle Change, the amendment may only be made if:
- (a) the process stipulated under Part F of the Network Code has been completed and the Sponsor is entitled to implement the Vehicle Change; or
  - (b) it has effect for no longer than 28 days, and is not the same or substantially the same as an amendment which was previously authorised by a general approval and which would otherwise expire.

*Contingent Rights to special or seasonal events*

8. (1) The parties to an access agreement may amend paragraph 2.8 of Schedule 5 to that agreement by inserting or substituting (as the case may be) the following provision:

“2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:

- (a) the whole of the relief Passenger Train Slot operating over the Routes as described in Schedule 2;
- (b) the relief Passenger Train Slot calling at stations listed in column 2 and/or column 3 of Table 4.1;
- (c) the relief Passenger Train Slot operating using the Specified Equipment; and
- (d) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.”

- (2) Where an amendment is made pursuant to sub-paragraph (1), the parties may delete any table in Schedule 5 made redundant as a consequence of that amendment.

*Reduction in the number of passenger train slots and consequential changes*

9. (1) Subject to sub-paragraph (3), the parties to an access agreement may amend Schedule 5 to that agreement to:
- (a) delete any of the tables in Schedule 5;

- (b) delete any of the rows in any of the tables in Schedule 5; and
- (c) reduce the number of Firm Rights or Contingent Rights contained in Schedule 5.

(2) Where an amendment is made under sub-paragraph (1), the parties to the access agreement may also make any consequential changes to the tables and paragraphs in Schedule 5 which are appropriate to reflect that amendment.

(3) An amendment may not be made under this paragraph 9 if it would involve removing a condition or limitation on any of the access rights in Schedule 5, unless the access rights in question would themselves be removed from the access agreement.

*Additional permitted charges*

10.(1) Subject to sub-paragraphs (2) and (3), the parties to an access agreement may amend Part 5 of Schedule 7 of that agreement to include new Additional Permitted Charges.

(2) An amendment may only be made under sub-paragraph (1) if:

- (a) the total of all Additional Permitted Charges agreed pursuant to this general approval would not be more than £20,000 in any one year;
- (b) it would apply for no longer than one year; and
- (c) it is not the same or substantially the same as an amendment which was previously authorised by a general approval and which would otherwise expire.

(3) Prior to the making of an amendment under sub-paragraph (1), Network Rail shall demonstrate to the beneficiary how the Additional Permitted Charge reflects the incremental costs to Network Rail of providing the service to which the charge relates.

(4) The parties to an access agreement may remove from that agreement any Additional Permitted Charges where such charges have been included in that access agreement pursuant to sub-paragraph (1) above.

*Amendments to Appendix 7C of Schedule 7*

11. The parties to an access agreement may amend the Default Train Consist Data in Appendix 7C of Schedule 7.

*Amendments to Appendices 1 and 3 of Schedule 8 to reflect corrections to berthing offsets*

12.(1) Where the magnitude of one or more Berthing Offsets is changed through the process set out in the Performance Data Accuracy Code and this change gives rise to a financial effect (all other things being equal), the parties to the access agreement concerned may amend Appendices 1 and/or 3 of

Schedule 8 to the access agreement only to the extent necessary to neutralise that financial effect.

(2) An amendment made under (1) may be applied retrospectively provided that the amendment would not come into effect any earlier than the date on which the magnitude of the Berthing Offsets in question was changed.

*Disapplication of Schedule 8 for early morning services on New Year's Day*

13. The parties to an access agreement may amend that agreement to disapply Schedule 8 (the performance regime) such that neither Network Rail Infrastructure Limited nor the beneficiary shall incur any liability to the other under Schedule 8 in relation to any cancellation of or interruption or delay to the operation of Passenger Train Slots for services that are operated between 0000 and 0500 hours on New Year's Day.

**Types of amendment for which approval is given subject to the conduct of a prior consultation**

*Contingent Rights for additional services lasting up to one Timetable Period*

14. (1) Subject to sub-paragraphs (2) and (3) below, the parties to an access agreement may amend that agreement to permit a beneficiary to use any track for or in connection with:

- (a) the provision of services; and
- (b) the making of train movements which are necessary or reasonably required to enable such services to be provided (including the provision of stabling).

(2) An amendment may only be made under sub-paragraph (1) if a Consultation in respect of that amendment has been carried out before the amendment is made and there are no outstanding objections from any consultee.

(3) Sub-paragraph (1) above does not apply to any amendment that confers on a beneficiary a permission to use that:

- (a) lasts beyond one Timetable Period;
- (c) is a Firm Right;
- (c) involves a change to the types of railway vehicles which may be used on any track under the access agreement, except where this change is within the scope of paragraph 7 above; or
- (d) is the same or substantially the same as a permission to use which was previously authorised by a general approval and which would otherwise expire.

*Contingent Rights for driver training lasting up to one Timetable Period*

15. (1) Subject to sub-paragraphs (2) to (4), the parties to an access agreement may amend that agreement to permit a beneficiary to use any track for or in connection with:

- (a) the making of train movements for the purpose of providing driver training; and
- (b) any other train movements which are necessary or reasonably required to enable the driver training to take place;

(2) Where an amendment under sub-paragraph (1) would involve a change to the types of railway vehicles which may be used on any track under the access agreement and this would constitute a Vehicle Change, that amendment may only be made if:

- (a) a Consultation in respect of that amendment has been carried out before the amendment is made and there are no outstanding objections from any consultee; and
- (b) the railway vehicles involved have obtained the necessary route clearance.

(3) Where an amendment under sub-paragraph (1) would permit train movements for driver training to be undertaken using track for which the beneficiary does not already have a permission to use, that amendment may only be made if:

- (a) the beneficiary:
  - (i) is in the process of negotiating or obtaining Firm Rights or Contingent Rights to operate services on the track in question; or
  - (ii) cannot reasonably undertake the driver training on the routes specified in Schedule 2 of its access agreement because of one or more of these routes will not be open for use at the relevant time;
- (b) the permission to use the track conferred by the amendment is limited to the operation of train movements in connection with driver training only, unless otherwise authorised by the other provisions of this general approval; and
- (c) a Consultation in respect of that amendment has been carried out before the amendment is made and there are no outstanding objections from any consultee.

(4) An amendment made under sub-paragraph (1) may last no longer than one Timetable Period and may not confer any Firm Right.

**Amendments relating to amounts payable**

16. Paragraphs 5 to 9 and 14 to 15 of this general approval do not extend to any amendment to an access agreement that relates to mechanisms for the calculation of the amounts which are payable for or in respect of any permission to use.

**Brian Kogan**

**Duly authorised by the Office of Rail Regulation**

**25 November 2009**

## **ANNEX**

The following general approvals are revoked from 1 March 2010:

- the Revised Passenger Access (Traction Electricity Charges) General Approval 2007;
- the Supplemental Agreement (Interim Treatment of Access Charges Review) General Approval 2008;
- the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2008;
- the Passenger Access (Short Term Extensions to Charter Agreements) General Approval 2009; and
- the Passenger Access (Further Short Term Extensions to Charter Agreements) General Approval 2009.

**EXPLANATORY NOTE** *(this does not form part of the general approval)*

*Section 22(3) of the Railways Act 1993 (“the Act”) enables the Office of Rail Regulation (“ORR”) to give its approval in advance to the making of certain amendments to access agreements. As long as an amendment falls wholly within the terms and conditions of a general approval, the parties to the access agreement in question may amend it without seeking ORR’s specific approval of the amendment. If it does not come within the scope of the general approval, a specific approval under section 22 or directions under section 22A, section 22C or Schedule 4A to the Act must be obtained. Amendments which have not been approved by ORR - either under a general approval or a specific approval, or made pursuant to directions - are void.*

*Paragraph 4 of this general approval permits the expiry date of an access agreement to be brought forward to make the agreement expire earlier.*

*Paragraph 5 permits the removal of routes from Schedule 2 of an access agreement – for example, where a route is no longer required.*

*Paragraph 6 permits amendments that would give a beneficiary Contingent Rights for additional services and any necessary ancillary movements for up to 90 days. However, if the services would use routes which the beneficiary does not already have permission to use (i.e. are not already contained in Schedule 2), the amendments may only be for up to seven days. (Please note that this applies only where the rolling stock to be used on the additional route has the necessary route clearance, as per footnote 1 of Table 5.1 of Schedule 5 of the passenger model track access contract.) The general approval cannot be used to extend the duration of rights that would otherwise expire.*

*Paragraph 7 allows for amendments to be made to the types of railway vehicle that the train operator has permission to use (the Specified Equipment). If the change of railway vehicle does not constitute a Vehicle Change, as defined in Part F of the Network Code, or if it does and the Vehicle Change process under the Network Code has been completed, then Specified Equipment may be amended permanently. If the change of railway vehicle constitutes a Vehicle Change but the Vehicle Change process has not been completed, then the amendment to the Specified Equipment may only be made for up to 28 days.*

*Paragraph 8 provides for a permanent amendment to paragraph 2.8 of Schedule 5. The new paragraph 2.8 would give the train operator Contingent Rights to relief services for special or seasonal events, e.g. sporting events, concerts or Christmas shopping without the requirement for subsequent supplemental agreements. The number of relief services is uncapped but must be necessary to accommodate anticipated demand at a special or seasonal event, and use the Routes, Stations and Specified Equipment listed in the access agreement (although it may be possible to change these via amendments permitted under paragraphs 6, 7 and 14 of this general approval).*

*Paragraph 9 permits amendments to:*

- *reduce the number of Firm Rights or Contingent Rights held in Schedule 5;*
- *remove rows from any of the tables in Schedule 5; and*
- *remove any of the tables in Schedule 5.*

*It also permits the making of consequential changes to the paragraphs and other tables in Schedule 5 to reflect the removal of those rights (for example, the deletion of service intervals or rights to maximum journey times for corresponding rights in Table 2.1 that are to be deleted).*

*Paragraph 10 permits the inclusion of Additional Permitted Charges in Part 5 of Schedule 7 (e.g. for additional signal box opening hours). However, the parties may not agree one or more Additional Permitted Charges using this general approval that would, individually or taken together, amount to more than £20,000 in any one year. In addition, any charges agreed may last for no longer than one year and the general approval cannot be used to extend the duration of a charge that would otherwise expire. Therefore, if an Additional Permitted Charge is required for a further period, an application for ORR's specific approval should be made in good time before the expiry of the charge.*

*Paragraph 11 permits the amendment of the Default Train Consist Data in Appendix 7C of Schedule 7.*

*Paragraph 12 permits the amendment of Appendices 1 and/or 3 of Schedule 8 to the extent necessary to neutralise any financial effect caused by changes to Berthing Offsets. Any such changes may be applied retrospectively provided they would not take effect any earlier than the date that the Berthing Offsets were changed.*

*Paragraph 13 permits amendments to disapply Schedule 8 (the performance regime) in respect of services operating in the early hours of New Year's Day. These amendments may be permanent or may be made separately for each New Year.*

*Paragraph 14 permits amendments that would give a beneficiary Contingent Rights for additional services and any necessary ancillary movements for up to one Timetable Period (that is, the period between either a Principal Change Date and the subsequent Subsidiary Change Date, or a Subsidiary Change Date and the subsequent Principal Change Date). This may include the use of a route not previously permitted by the access agreement. However, before an amendment under paragraph 14 can be made, a consultation of potentially affected parties must have been carried out in accordance with the Industry code of practice for track access application consultations. The amendment can only then be made if there are no unresolved objections to the consultation. The general approval cannot be used to extend the duration of*

*rights that would otherwise expire. Therefore, if the access rights are required for a further period, an application for ORR's specific approval should be made in good time before the expiry of the rights.*

*Paragraph 15 permits the inclusion of Contingent Rights for the making of train movements for driver training for up to one Timetable Period. This is to cover instances where the beneficiary does not already have rights under its access agreement for driver training (e.g. in paragraph 2.6 of Schedule 5). The use of this provision requires a consultation of potentially affected parties if it would involve:*

- the use of rolling stock that the beneficiary does not already have a permission to use for a period of longer than 28 days and the addition of this rolling stock to the access agreement would constitute a Vehicle Change; or*
- the use of routes that the beneficiary does not already have a permission to use.*

*This provision is partly intended to provide for driver training to be undertaken in preparation for the operation of new services (where the rights for these services have not yet been obtained). It is also intended to cover situations where one or more of a train operator's normal routes are not open because of an engineering blockade, and where it has a reasonable need to undertake driver training (albeit on routes on which it will not actually be operating trains). Accordingly, in relation to driver training on new routes, to use this provision the beneficiary must either be:*

- in the process of negotiating or obtaining access rights for the operation of services over those new routes; or*
- unable to use one or more of its routes in Schedule 2 of its agreement for driver training because those routes will not open at the appropriate times.*

*Paragraphs 10 to 13 are the only provisions of the general approval under which amendments may be made to the arrangements for payments between the parties to the access agreement. All charges payable for any additional or amended services must be calculated using the existing charging provisions as specified within Schedule 7, except to the extent that an Additional Permitted Charge is required as provided for by paragraph 10.*

*Under section 72(5) of the Act a copy of all amendments of access agreements, including amendments approved under this general approval, must be sent to ORR within 14 days of being made. Subject to the requirement in section 72(3) of the Act to have regard to the need for excluding certain information, such copies will be entered into the public register.*