

Railways Act 1993

General Approval (Depots) 2013

Made 13 December 2013

Coming into force 13 December 2013

The Office of Rail Regulation (ORR), in exercise of the powers conferred upon it by sections 18(1)(c) and 22(3) of the Railways Act 1993, gives the following general approval.

1. Citation, commencement and revocation

- 1.1 This general approval may be cited as the General Approval (Depots) 2013.
- 1.2 This general approval comes into force on 13 December 2013.
- 1.3 The General Approval (Depots) 2010 is hereby revoked from 13 December 2013

2. Interpretation

- 2.1 In this general approval:

“the Act” means the Railways Act 1993;

“Beneficiary” has the meaning given to it in a Depot Access Agreement;

“Depot Access Agreement” means an access agreement as defined in the Act which relates to access to a depot and those documents incorporated by reference into that agreement, including the Depot Access Conditions and any schedules and annexes;

“Depot Access Conditions” means the depot access conditions incorporated into and forming part of any Depot Access Agreement;

“Depot Facility Owner” has the meaning given to it in a Depot Access Agreement;

“Excluded Party” means any Depot Facility Owner or Beneficiary listed as an excluded party on the ORR website, for such period as they remain so listed;

“permitted departures” means any of the following departures from the Template Depot Access Agreement:

- (i) the completion of areas marked by square brackets (or otherwise left blank for the purposes of completion), such areas being completed as appropriate by the parties;
- (ii) the completion of tables, such tables being completed as appropriate by the parties, including substituting pre-printed table entries with equivalent entries where permitted; and
- (iii) the parties choosing one from various suggested alternative words or phrases,

except where such departure alters the meaning of any other provision in the agreement, inserts a formula for calculating a figure or inserts a reference to an external price list for calculating a cost of providing goods or services;

“permitted modifications” means any modifications to a Depot Access Agreement specified in paragraph 6 of this general approval, subject to any restrictions stated therein and to the restrictions specified in paragraph 7 of this general approval; and

“Template Depot Access Agreement” means any Depot Access Agreement as published by the ORR on 1 June 2010 and as may be amended and re-issued by the ORR from time to time.

2.2 In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Act 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.

3. **Scope of application of this general approval**

- 3.1 Subject to paragraph 3.2 below, the Office of Rail Regulation gives its approval to the matters set out in paragraphs 4 to 6 below subject to any restrictions stated in those paragraphs or specified in paragraph 7 below.
- 3.2 This general approval shall not apply to the making of any new Depot Access Agreement or to the making of any modifications to any Depot Access Agreement where any party to the agreement is an Excluded Party.

4. Approval of new Depot Access Agreements

- 4.1 A Depot Facility Owner and a Beneficiary may enter into a new Depot Access Agreement provided it is entered into on the same terms as a Template Depot Access Agreement, subject to any permitted departures.

5. Approval of modifications to Depot Access Agreements

- 5.1 The parties to a Depot Access Agreement, whether a new Depot Access Agreement entered into pursuant to paragraph 4 of this general approval or a Depot Access Agreement in place at the time of this general approval coming into force, may make any permitted modifications to that agreement.

6. Permitted modifications to Depot Access Agreements

6.1 Factual modifications to Depot Access Agreements

- 6.1.1 The parties to a Depot Access Agreement may make the following factual modifications to that agreement:
- (a) change information entered into tables;
 - (b) insert or alter numbers or monetary figures;
 - (c) alter the responsibility for maintenance or repair;
 - (d) insert or alter facts, dates, diagrams, plans, maps, routes, performance criteria, descriptions of a service level or specification, charges or amounts to be paid;
 - (e) describe a relevant “notifiable condition” in Schedule 18 of the Depot Access Agreement;
 - (f) provide registered company names or addresses and related information;
 - (g) provide names and addresses for service and related information;
 - (h) signify the parties’ acceptance of the terms of the contract, such as inserting signatures;
 - (i) insert the words “not used” where appropriate to indicate that a schedule or appendix has not been used;
 - (j) insert, substitute or delete a word or words where a choice of alternative words has been provided, provided at least one of the original alternative words remains;
 - (k) change the name of the light maintenance depot facility set out at paragraph 4 of Schedule 1; or
 - (l) change the name of the light maintenance depot facility in Annex 1 of the Depot Access Conditions.

6.2 *Alterations to Depot Access Agreements governed by the law of Scotland*

6.2.1 The parties to a Depot Access Agreement may make any alterations to that agreement to render it compliant with the law of Scotland including:

(a) deleting any governing law clause and replacing it with:

“This Agreement shall be governed by and construed in accordance with the law of Scotland”;

(b) deleting any jurisdiction clause and replacing it with:

“Subject to the Depot Access Conditions, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement”; and

(c) altering the form in which that agreement is to be executed.

6.3 *Alterations to Depot Access Agreements where a party to the agreement is also party to a concession agreement*

6.3.1 The parties to a Depot Access Agreement may make any of the following alterations as are applicable to that agreement to give effect to a concession agreement:

(a) insert any new definitions or alter any existing definitions which define the concession agreement and the parties to the same or define a concession awarding body;

(b) insert a new provision or alter any existing provision dealing with events of default to provide that an event of default shall arise under the Depot Access Agreement in connection with termination of the concession agreement;

(c) insert a new provision or alter any existing provision dealing with termination notices to provide that a party to the concession agreement shall receive any termination notice relating to termination of the Depot Access Agreement;

(d) insert a new provision or alter any existing provision dealing with novation to provide that the Depot Access Agreement shall be novated to a third party where such third party is a party to the concession agreement or is nominated by a party to the concession agreement but only where such novation and the terms of the same shall have been approved by the ORR pursuant to the Act;

- (e) alter any rights of third parties clause in a Depot Access Agreement by naming a party to the concession agreement as a third party directly able to enforce such rights as have been granted to it under such Depot Access Agreement;
- (f) insert a new provision or alter any existing provision dealing with references in the Depot Access Conditions to allow for a party to the concession agreement to be named alongside the Franchising Director and the Strategic Rail Authority, (in each case interpreted as a reference to the Secretary of State) where applicable; and
- (g) insert or alter the name and address of a party to the concession agreement in any schedule dealing with contract particulars or addresses for service.

7. Restrictions on modifying Depot Access Agreements

- 7.1 Any alteration to a Depot Access Agreement made pursuant to paragraph 6 shall be prohibited where it has the effect of:
- (a) overriding or redefining the meaning of any term of the Depot Access Agreement, unless it been specifically approved by the ORR;
 - (b) creating a new substantive clause or provision in a Depot Access Agreement, unless this alteration is permitted explicitly in paragraph 6 or has been specifically approved by the ORR; or
 - (c) deleting a substantive clause or provision in a Depot Access Agreement, unless this alteration is permitted explicitly in paragraph 6 or such deletion has been specifically approved by the ORR.

BRIAN KOGAN

Duly authorised by the Office of Rail Regulation

13 December 2013

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

Sections 18(1)(c) and 22(3) of the Act enable the ORR to give its prior approval to the entering into of new, and amendment of existing, access agreements. If the entering into a new access agreement or an amendment to such an agreement falls wholly within the terms and conditions of a general approval, the parties to the access agreement in question may enter into or amend it without seeking the approval of ORR.

If a new or amended access agreement does not fall within the scope of the general approval, a specific approval under section 22, or directions under section 18 of the Act, must be obtained. New depot access agreements or amendments to such agreements which have not been approved by ORR – either under a general approval, a specific approval or pursuant to directions, are void.

Whilst not expressly stated in this general approval, beneficiaries seeking access to depots will still be able to make depot access applications to ORR under sections 17 or 22A of the Act, should they fail to reach agreement on the terms of access to a depot with the Depot Facility Owner.

Paragraph 3.2 provides that this general approval cannot be used to gain approval for the making of or for the making of amendments to, a Depot Access Agreement where any party to that agreement is then an excluded party. An excluded party is any Depot Facility Owner or beneficiary listed as an excluded party on the ORR website for the period they are so listed.

Paragraph 4.1 permits a Depot Facility Owner and a beneficiary to enter into a depot access agreement provided this would be on the same terms as any Template Depot Access Agreement issued by ORR subject to any permitted departures and to any permitted modifications. Paragraph 4.2 makes it clear that such approval is for the purposes only of new Depot Access Agreements and is not approval for any other purpose.

Paragraph 5.1 permits the parties to an existing Depot Access Agreement to make any permitted modifications. Paragraph 5.2 makes it clear that such approval is for the purposes only of amendments to access agreements and is not approval for any other purpose.

Paragraph 6 lists the permitted modifications which may be made by parties to a new or existing Depot Access Agreement under the terms of this general approval.

Sub-paragraph 6.1 permits the parties to a Depot Access Agreement to make factual modifications to that agreement.

Sub-paragraph 6.2 permits parties to a Depot Access Agreement which is to be governed by and construed in accordance with the law of Scotland to make changes to that agreement to that effect and to render certain provisions of the agreement compliant with such law.

Sub-paragraph 6.3 permits alterations to a Station Access Agreement where a party to that agreement is also party to a concession agreement to give effect to the concession agreement.

Paragraph 7 sets out restrictions on the ability of the parties to make the permitted modifications specified in paragraph 6.

Under section 72(5) of the Act a copy of all access agreements and amendments of access agreements, including those made 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 for ORR to have regard to the need for excluding certain information, such copies will be entered into the public register.