



Consultation on making the ORR General Approval available to non-Network Rail infrastructure managers

Consultation outcome

25 September 2023



Contents

1. Background and context	2
<hr/>	
2. Consultation responses to proposals	3
2.1 Changes made to the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2023	3
3. Summary and outcome	7
 Summary and final outcome	 7

1. Background and context

1.1 In 2022, ORR consulted rail industry colleagues on a review of the scope and definitions of the General Approval for Passenger Track Access. We aimed to: simplify the process of amending a Track Access Contract (TAC) in circumstances where the proposed revisions are low-risk and low-impact; to clarify the circumstances in which the General Approval can be used, and; to anticipate the need for greater flexibility in the future access application process. Following the consultation, we issued a new General Approval document in May 2023 with many of the proposed changes incorporated.

1.2 We received feedback during this consultation that we should consider making the General Approval provision available to infrastructure managers other than Network Rail. As well as simplifying the access application process for minor, low-risk changes, this may also assist in the alignment of access rights in cases where Network Rail infrastructure connects with or crosses that of other infrastructure managers. We therefore consulted on this proposal to gauge wider industry support and to ensure that the provisions within the General Approval are appropriate for and applicable to infrastructure managers other than Network Rail.

1.3 It is also noted that the General Approval provision is allowed under the terms of the Railways Act 1993 and so can only be used by infrastructure managers who are subject to this legislation.

1.4 The consultation closed on August 2023 and we received responses in total from a mixture of infrastructure managers, passenger operators, freight operators and passenger interest groups. The responses have been published on our website [here](#).

2. Consultation responses to proposals

2.1 Changes made to the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2023

2.1.1 We approached the drafting of this document by making changes to the relevant clauses in the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2023 (which can be viewed [here](#)) so that it would be suitable for use by other infrastructure managers. A breakdown of the proposed changes and any responses received to them follows.

i) Amendment of all references to “Network Rail” to read “the Infrastructure Manager”.

No comments received.

ii) Removal of paragraph 1.(3) which refers to the revocation of previous versions, which does not apply in this case.

No comments received.

iii) Adding a definition of “Infrastructure Manager” has been added, namely: “Infrastructure Manager” means any body (other than Network Rail Infrastructure Limited) which is a party to a track access agreement for the purposes of the Railways Act 1993, other than in the role of beneficiary.

Amey Infrastructure Wales (AIW) suggested that “Infrastructure Manager” should have the meaning ascribed to it in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. However, as the General Approval is a provision of the Railways Act 1993, we do not agree that the definitions in the Regulations are the appropriate point of reference. We have not adopted this suggestion.

Rail for London (Infrastructure) (RFLI) commented that the word “agreement” within this definition should be changed to “contract” to reflect the defined term in section 17(6) of the Railways Act. We note that the word “agreement” is used throughout the rest of the General Approval and it would be more consistent, both within this document and with the Network Rail General Approval, to leave the wording as it is.

iv) Removal of both paragraph 16, which allows for the alignment of a TAC with the published model contract, and of the definition of “Model Contract”.

AIW requested that these paragraphs should be restored, as other infrastructure managers use the model contract as the basis for their own contracts and they should have the ability to align their TACs with the published model in the same way that Network Rail operators can. ORR concedes that this is a valid objection and we have reinstated paragraph 16 and the definition of “Model Contract”.

v) Amendment of the definition of “Network Code” to mean “the document of that name, which is relevant to the particular Infrastructure Manager, incorporated by reference in any access agreement, where applicable”.

RFLI suggested a slight amendment to “...means the document of that **or equivalent** name, which is relevant to the particular Infrastructure Manager...” to reflect the fact that its own Code is called “CCOS Network Code”. We agree that this is better, more valid wording and have adopted the suggestion.

vi) Amendment of all subsequent references to the Network Code to read “the relevant Network Code” to make it clear that there are multiple Codes.

No comments received.

vii) Amendment of the definition of “Vehicle Change” to “has the meaning ascribed to it in Part F of the relevant Network Code, where it is preceded by the name of the Infrastructure Manager where applicable.

AIW pointed out that this does not cover the difference in names between the Network Rail Network Code and that of other infrastructure managers, as its own Code is called “CVL Network Code”, which is the name of the infrastructure, not its manager. We agree with this amendment and have adopted AIW’s suggested wording “has the meaning ascribed to it in Part F of the relevant Network Code”.

*viii) Amendment of Paragraph 3 to read “**Where both parties agree**, the parties to an access agreement may make to that agreement any amendment of the description specified in paragraphs 4 to 16 below subject to any restrictions stated therein”.*

AIW questioned the inclusion of this wording, noting that it is not used in the Network Rail General Approval. During the previous consultation on the Network Rail document, we received a suggestion that a General Approval could be used by the infrastructure manager to put rights in place without the agreement of the train operator. We wanted to provide clarity that both parties must agree to a change to the track access agreement and we acknowledge that this wording should also have been included in the Network Rail General Approval for the sake of consistency

ix) *In the explanatory note, the following phrase has been added: “Please note that, as the General Approval provision is allowed under the terms of the Railways Act 1993, it may only be used by infrastructure managers who are subject to this legislation.”*

No comments received.

2.2 Other comments

2.2.1 *AIW and Network Rail both asked if ORR planned to extend the Freight General Approval to other infrastructure managers as well.*

We have no immediate plans to extend the *General Approval for freight track access contracts 2019* to infrastructure managers other than Network Rail. We will, however, review the matter and act we are satisfied that is appropriate to do so.

2.2.2 *AIW suggested amending the definition of “Consultation” to remove the reference to the industry code of practice for track access applications, as the drafting of this document relates solely to applications on Network Rail infrastructure.*

We agree that the wording of the code of practice is not inclusive of other infrastructure managers but we also note that they still follow the guidance where relevant. We believe that this is a matter where the code of practice should be amended to include other infrastructure managers in order to reflect the way it is used.

In the meantime, a line has been added to the definition of “Consultation” so that it reads “means a consultation of potentially affected parties carried out by the Infrastructure Manager in accordance with the Industry code of practice for track access application consultations, **where this code applies to Infrastructure Managers other than Network Rail Infrastructure Limited**”.

2.2.3 *RFLI suggested an amendment to paragraph 15, which allows the amendment of monitoring point data in Appendix 1 to Schedule 8.*

As this data is in a different part of the table to that in a Network Rail contract, we have adopted the suggested wording to make the reference applicable to other infrastructure managers.

2.2.4 *RFLI commented on the definitions of “Berthing Offset”, “Vehicle Change”, “Viable Transfer Point”, and Paragraphs 12, 13 and 14, since they include definitions that do not exist in its own track access contracts.*

Rather than change all the definitions individually, ORR has amended 2.(1) to read “In this general approval, **where these definitions are applicable:**”

2.2.5 RFLI suggested changing the definition of “Performance Data Accuracy Code” to “Performance Data Accuracy Code has the meaning ascribed to it (**or, as applicable, where it is preceded by the name of the Infrastructure Manager or the name of the infrastructure**) in part B of the relevant Network Code”. This reflects the fact that its PDAC is preceded by “CCOS”.

We agree with this amendment and have included it in the final document.

2.2.3 Network Rail commented “We think it is important to emphasise the importance of close working between Infrastructure Managers and we suggest the explanatory note contained with the General Approval includes a recommendation that Infrastructure Managers treat each other as interested persons and look to notify when a General Approval is being sought that will impact on both Infrastructure Managers such as in the case of a 90-day contingent right being sought”.

Although we agree with the reasoning behind this statement, we consider that this is not a point of regulatory oversight as it is not for ORR to oversee the pre-submission internal consultation process.

3. Summary and outcome

3.1 We will be publishing a new General Approval which has been amended as per points i)-iii), vi), viii)-ix) as per the list detailed in 2.1.

- Point iv) has been withdrawn.
- Point v) has been amended so that the definition of “Network Code” reads “means the document of that or equivalent name, which is relevant to the particular Infrastructure Manager, incorporated by reference in any access agreement, where applicable”.
- Point vii) has been amended so that the definition of “Vehicle Change” reads “has the meaning ascribed to it in Part F of the relevant Network Code”.

3.2 In addition, the following new amendments have been made:

- The definition of “Performance Data Accuracy Code” now reads “has the meaning ascribed to it (or, as applicable, where it is preceded by the name of the Infrastructure Manager or the name of the infrastructure) in Part B of the relevant Network Code”.
- The definition of “Consultation” now reads “means a consultation of potentially affected parties carried out by the Infrastructure Manager in accordance with the Industry code of practice for track access application consultations, where this code applies to Infrastructure Managers other than Network Rail Infrastructure Limited”.
- Paragraph 15 (with heading) now reads “*Amendments to Appendix 1 to Schedule 8 to reflect changes in monitoring points.* 15. The parties to an access agreement may amend the monitoring point data in the relevant column headed Appendix 1 to Schedule 8”.

3.3 The new General Approval will be published under the name “Passenger Access ((Infrastructure Managers Other Than Network Rail) Short Term Timetable and Miscellaneous Changes) General Approval 2023”. It can be found on our website [here](#).

3.4 A marked-up version showing the final amendments can be found [here](#).



© Office of Rail & Road 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk

