

Railways Act 1993

Passenger Access ((Infrastructure Managers Other Than Network Rail) Short Term Timetable and Miscellaneous Changes) General Approval 2023

2023 No.10

Coming into force 25 September 2023

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

Citation and commencement

1. (1) This general approval may be cited as the Passenger Access ((Infrastructure Managers Other Than Network Rail) Short Term Timetable and Miscellaneous Changes) General Approval 2023.

(2) This general approval comes into force on 25 September 2023.

Interpretation

2. (1) In this general approval, where these definitions are applicable:

“Access Agreement” means an agreement entered into after 1 April 1994 under which the Infrastructure Manager grants a beneficiary permission to use its track for or in connection with the provision of services;

“Additional” means,

- a. in the context of services, either a new service that was not previously in the Access Agreement, or a physical (not temporal) extension of an existing service to a further start/end point; and
- b. in the context of station calls an extra call at a station for which the beneficiary already holds calling rights or a new call at a station that the beneficiary does not currently serve;

“Additional Permitted Charges” means any applicable charges that are listed in Part 5 of 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 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;

“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 relevant Network Code;

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

“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;

“Model Contract” means the model track access contract for passenger services issued by ORR and available on its website, as may be amended and re-issued by the ORR from time to time;

“Network Code” 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;

“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 (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;

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

“services” means train journeys capable of being included in the Working Timetable that carry passengers from a station of origin to a station of destination with a number (which may be zero) of station calls between the origin and destination points; not all services need call at each potential calling point.

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

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

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

“Timetable Period” has the meaning ascribed to it in Part D of the relevant Network Code;

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

“Viable Transfer Point” has the meaning ascribed to it in Schedule 4 of the Access Agreement; and

“Working Timetable” has the meaning ascribed to it in Part A of the relevant 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. 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.

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;

(b) an additional station call;

(c) the extension of services that would otherwise expire; and

(d) 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 where:

(a) the amendment lasts longer than 90 days;

(b) the amendment confers a Firm Right;

(c) the amendment 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) the amendment 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) the right conferred 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.

(3) If the beneficiary intends for the rights conferred to last for more than 90 days, it must apply for these on a permanent basis by means of a specific approval under Section 22 of the Act. The rights may not be further extended by means of another general approval.

(4) The General Approval may not be used to extend an access agreement in its entirety.

Amendments to list of Specified Equipment in Part 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 Part 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 relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2; and

(b) 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 permanently:

(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), the Infrastructure Manager shall demonstrate to the beneficiary how the Additional Permitted Charge reflects the incremental costs to the Infrastructure Manager 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 Annex B to Part 3 of Schedule 4

11. The parties to an access agreement may amend the Viable Transfer Point data in Annex B to Part 3 of Schedule 4.

Amendments to Schedule 7

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

13. The parties to an access agreement may amend the Traction Type in Appendix 7D of Schedule 7 to enact On-Train Metering of Traction Electricity.

Amendments to Appendices 1 and 3 of Schedule 8 to reflect corrections to Berthing Offsets

14.(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.

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 "monitoring Point" in Appendix 1 to Schedule 8.

Amendments to the access agreement to include clauses in the model contract provided by the Office of Rail and Road

16. (1) Subject to sub-paragraph (2), following any amendment and re-issue of the Track Access Passenger Model Contract by the ORR, the parties to a passenger access agreement may amend that agreement to be consistent with the provisions of the re-issued Model Contract (subject to any permitted departures).

(2) This paragraph 16 does not extend to permitting the amendment of the expiry date of an access agreement.

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

17. The parties to an access agreement may amend that agreement to disapply Schedule 8 (the performance regime) such that neither the Infrastructure Manager 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.

Amendments relating to amounts payable

18. Paragraphs 5 to 9 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.

Emyl Lewicki

Duly authorised by the Office of Rail and Road on 25 September 2023

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 and Road (“ORR”) to give its approval in advance to 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 of the Act must be obtained or directions made pursuant to section 22A, section 22C or Schedule 4A must be given. Amendments which have not been approved by ORR - either under a General Approval or a specific approval, or made pursuant to directions - are void. 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.

The General Approval is primarily intended to effect small-scale changes which are of low risk and low impact to the parties to the access agreement and other potentially affected parties. ORR anticipates that it will be used to support industry efficiency in cases where greater regulatory oversight is not required. The General Approval should not routinely be used to implement late-notice changes or for other last-minute purposes.

Broadly, where the General Approval is used to introduce new rights, these are limited to a maximum duration of 90 days (but no more than seven days in the case of rights that allow the use of track which the beneficiary does not already have permission to use) and will be contingent only. If the beneficiary intends for the rights to apply for longer than 90 days and/or become firm, the parties to the agreement must seek specific approval under section 22 of the Act.

Both parties to the access agreement must agree with the amendments. Where the parties to the access agreement expect that these amendments may impact negatively on another operator, they should apply by means of a specific approval under section 22 instead of using the General Approval, thereby allowing that operator to comment during the industry consultation.

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.