



To everyone on the attached list

22 October 2003

## **LIGHT MAINTENANCE DEPOTS: APPROVAL PROCESS**

1. The purpose of this letter is to provide you with guidance on the process you should follow when making applications to the Regulator under the access provisions of the Railways Act 1993 (“the Act”), and who to contact for further information. The guidance covers applications to the Regulator to approve:

- (a) proposed depot access agreements, including depot connection agreements;
- (b) proposed amendments to depot access agreements, including novations; and
- (c) proposed amendments to depot access conditions, including the depot access annexes.

2. The contact for depot access matters within the team is Roy Smith (on 020 7282 2087) or [stations.depots@orr.gsi.gov.uk](mailto:stations.depots@orr.gsi.gov.uk)

### **Timescales**

3. The Stations and Depots Policy Team (“the team”) will deal with all applications for approval and/or directions under sections 17 to 22 of the Act as expeditiously as possible, consistent with due process, the Regulator’s duties under section 4 of the Act, and proper consideration by the team of all relevant matters. The team may require a legal review of particular cases (see below) and will, therefore, need to allow sufficient time for this review to be undertaken.

4. In respect of application for approval and directions under section 18 of the Act, and applications for approval of amendments to existing contracts under section 22, provided you follow the guidance below, I would normally expect to be able to complete the approval process within one month of a formal application for approval. It would be, therefore, prudent for you to build into your work planning processes a period of at least one month for the approval process. Section 17 applications have specific timescales set out in the Schedule 4 of the Act.

5. Where an application raises significant issues, the process could take longer than one month, particularly if the team needs to seek legal advice on the effect of proposed agreements or amendments, or undertake consultation with other train operators. Early liaison with the relevant

**DAVID CHAPMAN**

Doc # 222581.01

**Head of Stations & Depots**

Telephone 020 7282 2090 • Fax 020 7282 2043 • E-mail [david.chapman@orr.gsi.gov.uk](mailto:david.chapman@orr.gsi.gov.uk)

case officer (i.e. prior to formal application) will enable a view to be taken on the likely approval timescale. We will endeavour to take account, where practicable, of any particular time pressures or constraints expressed by the parties.

## **Making an application**

### *Early discussions with ORR*

6. Although the Regulator cannot prejudge any particular matter, or fetter his discretion in considering an application, it is often very helpful to understand sooner rather than later what you are planning or proposing, the reasons for the proposals and when you need an answer. I therefore welcome informal discussions; or submission of proposals in draft; or submission of proposed access documentation at an advanced- but not yet final- stage of drafting, for our comments on how we would be likely to respond if it were to be submitted formally.

### *Draft submission*

7. All the key documents, which together constitute the contractual regime at depots, have been established in template form, to facilitate the process of establishing contracts and reducing transaction costs. For most cases, use of template documentation is advised and will facilitate the process of regulatory approval.

8. There may be circumstances when parties wish to alter the template, in order to reflect particular commercial or other considerations. **I strongly recommend that if you are asking the Regulator to approve any agreement which does not exactly reproduce the terms of the relevant template document, you should first make a submission in draft before making a formal application for approval.** Applications submitted in draft may be amended as many times as necessary. A formal submission that, following our consideration, requires amendment will have to be amended and re-submitted with letters of consent appropriate to the document in its new form.

### *Help available from ORR*

9. When you are preparing an application, ORR can help in a number of ways. For example, the team will provide, on request, electronic or hard copies of template documents (some of these template documents are readily available from the Regulator's website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)) and copies of the general approvals given by the Regulator under section 22(3) of the Act.

10. The Regulator's website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)) also contains a list of approved access agreements. They are all available for inspection in hard copy (in redacted form) on the Regulator's public register at this office and copies of relevant documents can be obtained from the ORR librarian (Sue MacSwan, telephone 020 7 282 2001). The team is currently working on documents that will identify the most common customisations of the template documents and the reasons for those customisations. When completed, these documents will be made publicly available, and we hope that they will prove useful by, for example, helping to facilitate depot enhancements and reducing transaction costs.

### *Legal advice*

11. The team will be as helpful as it can in terms of providing template documents, information on depot access and updates on the progress of applications. However, it cannot provide legal comments or advice on the drafting of contracts. The team's comments on documents, which are submitted to it, should not be treated as a substitute for professional legal advice.

### **Supporting documentation**

#### *The application itself*

12. For all applications, you should include a covering letter specifying what it is you are asking the Regulator to do. If, for example, you are seeking comments on a draft proposal, you should say so in the application. Alternatively, if you are seeking approval of a depot access contract, the terms of which are agreed by the parties, you should state in the covering letter that your application is seeking approval by the Regulator of the proposed depot access contract, which must of course be attached, under section 18 of the Railways Act 1993.

#### *Letter of consent*

13. In some cases, the consent of other beneficiaries and/or Network Rail, as parties to agreements that incorporate the Depot Access Conditions, will be required. For those depot access agreements or amendments where the terms are agreed between the parties, the application for approval must be supported by a letter from the other party clearly stating its consent to the terms of the proposed contract. The Regulator has to be satisfied that the application is properly made under section 18 or section 22 of the Act and that both parties agree the proposed terms. In this context, I would also stress the importance of complying with the requirements of the contractual change procedures in the depot access conditions in relation to a modification of the depot access documentation or a change to the depot.

#### *Information required with all applications*

14. For an application for approval and directions in respect of a depot access agreement under section 18 of the Act, you should include with the application:

- (a) a statement that sets out how the proposed contract, or amendment to a contract, will impact on capacity at the depot, and explains how you have made this assessment; and
- (b) a statement that describes the basis for the proposed pricing terms and explains how they are consistent with the prices charged to other beneficiaries at the depot.

#### *Additional requirements for customised versions of template documents*

15. For all applications that propose to vary or customise the drafting of template documents, you should include with the application:

- (a) a summary of the proposed departures from the relevant template documents (listing the changes to the legal drafting) and the reasons for such departures;

- (b) the documents in clean and marked-up versions (marked up against the relevant template documents) in electronic form;
- (c) a note of the overall benefits that you expect to derive from the new or amended contract (for example, facilitating depot enhancements that will accommodate the needs of new rolling stock); and
- (d) appropriate letters of consent in support of the application, including the results of any consultation carried out under the change provisions of the depot access conditions.

16. Any legal drafting should be clear, precise and unambiguous as to its meaning. It should also be consistent with the rest of the drafting in the document, conform to best legal practice and achieve what it is meant to achieve.

17. To complete the approval process in the shortest time possible, we need you to provide the right documentation with your application. If the right documentation is not provided, we may not be able to begin the process of considering submissions, which may delay the approval process.

#### **Next steps**

18. You may wish to retain this letter for future reference or pass it to your legal advisers/consultants responsible for handling depot access applications to the Regulator on your behalf.

19. If you wish to discuss the contents of the letter, you should call me (at the telephone number below) or Roy Smith on 020 7282 2087.

**DAVID CHAPMAN**