

Railways Act 1993

Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2008

2008 No. 3

Made 12 June 2008

Coming into force 13 June 2008

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 2008.

(2) This general approval comes into force on 13 June 2008.

(3) The Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2007 is hereby revoked from 11 July 2008.

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;

"beneficiary" includes an operator of trains;

"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;

"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;

"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 12 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. The parties to an access agreement may amend Schedule 2 to that agreement to delete one or more of the routes contained therein.

Additional Contingent Rights for 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 Specified Equipment 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 a change is made pursuant to sub-paragraph (1), the parties may delete any table in Schedule 5 made redundant as a consequence of that change.

Reduction in the number of passenger train slots and consequential changes

9. (1) The parties to an access agreement may amend Schedule 5 to that agreement to delete one or more of the Firm Rights and/or Contingent Rights 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 tables in Schedule 5 which are appropriate to reflect the removal of the Firm Rights and/or Contingent Rights.

Amendments to Appendix 7C of Schedule 7

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

Disapplication of Schedule 8 for additional New Year's Day services

11. 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

Additional Contingent Rights for up to one timetable period

12. (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 Specified Equipment except where this change is within the scope of paragraph 7 above;
- (d) is the same or substantially the same as a permission to use which was previously authorised by this general approval and which would otherwise expire.

Amendments relating to amounts payable

13. Paragraphs 5 to 9 and 12 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

12 June 2008

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 agreement to be brought forward to bring about an earlier expiry of the agreement.

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 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 track access agreement (although it may be possible to change these via amendments permitted under paragraphs 6, 7 and 12 of this general approval).

Paragraph 9 permits amendments to reduce the number of Firm Rights or Contingent Rights held in Schedule 5 as well as the making of consequential changes to other tables in Schedule 5 to reflect the removal of those rights (for example, the deletion of service intervals or Maximum Journey Time information for rights that are to be deleted).

Paragraph 10 permits the amendment of the Default Train Consist Data in Appendix 7C of Schedule 7.

Paragraph 11 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 12 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 12 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.

Paragraphs 10 and 11 are the only provisions of the general approval under which amendments may be made to 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.

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.