

Sam Gibbins
Executive, Track Access
Telephone 020 7282 3855
Fax 020 7282 2118
E-mail sam.gibbins@orr.gsi.gov.uk

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Doreen Marsh
Customer Assistant
Network Rail Infrastructure Limited
Northern House
7-9 Rougier Street
York
YO1 6HZ

George Thomas
Access Manager
First/Keolis Transpennine Limited
8th Floor, Bridgewater House
60 Whitworth Street
Manchester
M1 6LT

Dear Doreen and George

Approval of the 27th Supplemental Agreement to the Track Access Agreement between Network Rail Infrastructure Limited and First/Keolis Transpennine Limited

1. The Office of Rail Regulation (ORR) has today approved the 27th supplemental agreement to the track access agreement between Network Rail Infrastructure Limited (Network Rail) and First/Keolis Transpennine Limited (FKT) submitted to ORR today under section 22 of the Railways Act 1993 (the Act). The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2. The agreement permits FKT to carry out ancillary movements for the purpose of driver training on Class 170s between Marsden and York via Wakefield Kirkgate in advance of them achieving the route acceptance necessary for their use in the carriage of passengers. FKT is due to commence new passenger services on this route on PCD 2008. Specifically, the amendments in the agreement are:

- (a) Schedule 1: Network Rail's address for the service of notices is updated;
- (b) Schedule 2: the route from Marsden to York is added to the list of main routes; and
- (c) Schedule 5: a new paragraph 2.16 is inserted providing rights to ancillary movements for the purpose of driver training between Marsden and York.

The amendment to Schedule 1 is effective for the duration of the track access contract, with the amendments to Schedules 2 and 5 being effective until PCD 2008.

Consultation

3. Network Rail carried out the industry consultation on this application. Due to FKT wishing to have the rights in place by 13 September 2008, the consultation was for 7 days. In advance of Network Rail's consultation, FKT carried out a telephone consultation of potentially affected operators. Northern, EWS, Freightliner and XC Trains said that they were content with the rights and the approach proposed by the parties. On this basis, we were content with a shorter consultation. We were also content that Network Rail had consulted all potentially affected parties. No issues were raised by any party.

Our review

4. The parties submitted the draft agreement to us in advance of the consultation closing due to the date by which FKT had requested our approval. We were content with the wording of the new paragraph 2.16 in Schedule 5 as it is consistent with wording that we approved for rights to train testing in FKT's 16th supplemental agreement in July 2007. We did not have any issues with the rights from an operational perspective.

5. The parties will be making a separate application for the rights to operate passenger services on this route from December 2008. We look forward to receiving that application.

Our conclusions

6. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular that relating to enabling FKT to plan the future of its business with a reasonable degree of assurance (section 4(1)(g)).

7. Please find enclosed a copy of the approval notice together with a copy of the supplemental agreement. I am copying this letter and both documents to Robin Marie at DfT. Copies of the approval notice and the supplemental agreement will be placed on our public register and copies of this letter and the supplemental agreement will be placed on the ORR website. I am also emailing this letter without enclosures to Steven Saunders at Network Rail.

Yours sincerely

Sam Gibbins