



## **GENERAL APPROVAL FOR STATIONS (2017)**

### **GUIDANCE**

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# 1. Introduction

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## Background

- 1.1 We have now issued three sets of consolidated General Approvals for stations to date. First, the General Approval (Stations) 2010 was issued following our consultation on a 'more focused approach to stations and depots access'.<sup>1</sup> We then undertook a formal review of the 2010 General Approval, which led to the issue of the General Approval (Stations) 2013.<sup>2</sup> Then in summer 2016 we undertook a review of the General Approval (Stations) 2013 as it had been in force for around three years and we were keen to ensure it was still working well for the industry and to understand if there were ways in which it could be improved. The responses we received from those industry parties that kindly responded to our consultation letter indicated the General Approval works well and some respondents made suggestions for how it could be improved. Further information on the consultation and on our conclusions can be found [here](#).
- 1.2 We concluded that we would publish a new edition of the stations General Approval, with revisions that would allow for the first time agreements and amendments that incorporate bespoke or alternative SACs that have been endorsed by ORR, to be approved using the General Approval. The General Approval will now also permit removing one or more stations from a Station Access Agreement (SAA). Another revision means that the General Approval is disapplied where a Consultee has an unresolved objection to a Proposal. We have also decided to refer to our template SAAs as model agreements and have also taken the opportunity to update them to correct some historical cross-referencing errors and to make some other changes that are described in Chapter 3. The model agreements can still be found on the template documentation page of our website and our updates include refreshed versions of our General Approval guidance documents.

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<sup>1</sup> The original consultation can be found [here](#), and the consultation conclusions [here](#).

<sup>2</sup> The 2013 consultation and conclusions are found [here](#).

- 1.3 The General Approval for stations (2017) can be found on our website [here](#). This edition of the Stations General Approval is clearer and more concise than previous versions. We will continue to review the use of the General Approval, and will update this guidance where necessary.

## **How the guidance works**

- 1.4 This guidance has been developed in conjunction with the General Approval for stations (2017). It explains the scope and application of the General Approval and describes the changes made to the model Station Access Agreements.
- 1.5 The guidance should be referred to when parties are entering into new Station Access Agreements or when parties are amending existing agreements which were entered into under the General Approval or under our specific approval.
- 1.6 Please contact the Stations & Depots team for advice on the General Approval and this guidance at [StationsandDepots@orr.gov.uk](mailto:StationsandDepots@orr.gov.uk).

## 2. Scope and application of the General Approval

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- 2.1. Sections 18(1)(c) and 22(3) of the Railways Act 1993 (the Act) enable ORR to give its prior approval for new access agreements and to the amendment of existing agreements.
- 2.2. The General Approval for stations (2017) is wide-ranging and provides for the approval of new Station Access Agreements and for the amendment of agreements, without the need to seek our prior specific approval. The agreements, or any amendments to them, must fall wholly within the terms of the General Approval.
- 2.3. Parties may enter into a new agreement using the General Approval and may subsequently make changes to that agreement, also under the General Approval. Finally, so long as the proposed amendments fall wholly within the terms of the General Approval, parties may use the General Approval to make changes to existing agreements where the agreement being amended originally had required our specific approval.

### *Entering into new access agreements*

- 2.4. The General Approval states that parties may enter into a new Station Access Agreement provided they use any of the ORR-approved model Station Access Agreements, subject to making any of the permitted alterations set out in the General Approval. Such alterations include the right to complete areas which have purposefully been left blank in order that relevant details can be inserted; to complete areas marked by square brackets; to fill in tables; and to select one of various alternative words or phrases.
- 2.5. The model access agreements (available on our [website](#)) incorporate some minor amendments made in 2017. Further details on these amendments can be found in Chapter 3.
- 2.6. Because new access agreements which meet the prescribed criteria will be pre-approved by virtue of the General Approval, we will not issue our directions notice and decision letter. For this reason, we require all new agreements to be signed and dated by the parties prior to submission to us.

### *Amendments to access agreements*

- 2.7. Amendments to access agreements can also be made under the General Approval, in line with the permitted alterations specified in the General Approval.
- 2.8. As with new agreements entered into by the parties, we require amendments to agreements to be signed and dated by the parties prior to submission to us.

### *Permitted alterations to Station Access Agreements*

- 2.9. The permitted alterations to Station Access Agreements are listed in the General Approval for stations (2017).
- 2.10. We consider that the list of alterations should be sufficient to cover most proposed amendments. Where a party finds that its proposed amendment is not covered it can submit it to ORR with a view to us considering our specific approval.

### *Operators functioning under a concession agreement*

- 2.11. We are aware that certain operators, for example, Arriva Rail London Limited and Merseyrail Electrics (2002) Limited, operate under concession agreements from Rail for London (RfL) and Merseytravel respectively.
- 2.12. It is usually necessary to make alterations to an access agreement to give effect to a concession agreement. To this end, the General Approval allows parties operating under a concession agreement to insert into their access agreements relevant references to concession agreements and concession awarding bodies and to make other necessary alterations to give proper effect to the agreement.

### *Restrictions on modifying access agreements*

- 2.13 We have imposed a number of specific restrictions on modifying agreements. These have been included in order to prevent standard terms and substantive clauses of model agreements being created, changed, deleted, overridden or redefined without our specific approval (unless such modification is expressly permitted by the General Approval).

### *Scope and application*

2.14 Please note that the General Approval will only apply if the new agreement, or the proposed amendments to an existing agreement, uses the relevant model agreement (available on our [website](#)), falls within the scope of the General Approval (that is, does not go beyond the permitted alterations from the model agreements) and/or does not go beyond the alterations specified in paragraphs 6 to 18 of the 2017 General Approval. It will also only apply if there are no unresolved objections.

2.15 Parties should be aware that the General Approval provides ORR's pre-approval of an Access Agreement or an amendment. ORR will acknowledge receipt of a submission made in accordance with the General Approval, will issue it a reference number and will arrange for the Agreement or amendment to be placed on our public register. This is an administrative process and does not constitute a formal approval; formal approval occurs at the point that the parties sign and date a new Agreement or, in the case of an amendment, once the parties sign and date the Amending Agreement or agree the terms of the Amendment Document and submit it to ORR. For this reason it is important that the parties to a new agreement or to an amendment of an existing agreement ensure that the agreement or amendment falls within the scope of the General Approval (see chapter 4 for more information).

### *Specific Approval of amendments to access agreements*

2.16 It is important to note that where any proposed amendments do not fall under the terms of the General Approval, the option of submitting them for specific approval is still available. The process for specific approval remains the same as before, and submitting parties can contact the [Stations & Depots team](#) either to discuss their proposed amendments, or if they are unsure about whether the General Approval applies.

### *Changes introduced to the General Approval for stations 2017*

2.17 Following consultation we introduced a provision in the General Approval to allow for the removal of a station or stations from a Station Access Agreement.

- 2.18 In addition we amended the General Approval by updating the definition of “Station Access Conditions” (SACs) to reflect the fact that many Station Access Agreements now incorporate non-standard versions of the SACs. This means that new agreements and amendments to existing agreements that each incorporate non-standard SACs can now rely on the General Approval, where applicable, as long as the non-standard SACs have been previously endorsed by ORR prior to being incorporated into an ORR-approved access agreement. However, as ORR does not currently set or review the station long term charge (LTC) at stations that incorporate non-standard SACs, we propose to retain regulatory scrutiny of any proposed alterations to the LTC at such stations. This means that the General Approval will not apply and ORR’s specific approval must be sought.
- 2.19 We also revised the provisions for making changes to the Equipment Inventory and Elements Inventory. The modified provisions for altering the Inventories would allow revision of entries in the “Description” column, but only where such revision is designed to update the description of an existing asset and does not add new items to the Inventory. In relation to the Equipment Inventory the following alterations will also be permitted; from “No” to “Yes” in the “Present at Station” column, and an increase in the figure in the “Quantity” column. A decrease in the figure in the “Quantity” column or a change from “Yes” to “No” in the “Present at Stations” column will require our specific approval.
- 2.20 To clarify the above, an item that is introduced into the Inventories as a new line (which does not already appear in the Annexes) will require our specific approval. However, it is permitted under the General Approval to revise the description of an item in the Inventory to group similar types of equipment as sub-items.
- 2.21 Finally, we have removed the concept of “Excluded Party” from the General Approval. We had not previously used the mechanism to exclude a party from using the General Approval as we had not encountered intentional misuse, and our audit process ensures that any errors we do identify are rectified quickly.



## 3. Model Station Access Agreements

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- 3.1 In order for new access agreements to be valid under the General Approval, parties must use one of the model Station Access Agreements available on our [website](#).
- 3.2 Parties can use one of five model agreements relating to a franchised station:
- (a) a standard franchised Station Access Agreement which covers general access at either:
    - (i) a single station; or
    - (ii) multiple stations;
  - (b) a freight Station Access Agreement for agreements between an SFO and a freight company;
  - (c) a charter Station Access Agreement, for agreements between an SFO and the operator of passenger train services that do not follow a regular scheduled pattern; and
  - (d) a diversionary Station Access Agreement for use when specific circumstances, e.g. engineering works, prevent access to a station or stations which a Beneficiary would otherwise call at under its existing franchised Station Access Agreement.
- 3.3 Parties can use one of four model agreements relating to independent stations (Network Rail managed stations):
- (a) a standard Independent Station Access Agreement which covers general access at single or multiple stations;
  - (b) a freight Station Access Agreement for agreements between Network Rail and a freight company;
  - (c) a charter Station Access Agreement, for agreements between Network Rail and the operator of passenger train services that do not follow a regular scheduled pattern; and
  - (d) a diversionary Station Access Agreement for use when specific circumstances, e.g. engineering works, prevent access to a station or stations which a Beneficiary would otherwise call at under its existing Independent Station Access Agreement.

- 3.4 Each of the model access agreements includes a condition precedent requiring a copy of the agreement to be sent to us within 14 days of the agreement being signed and dated by the parties. This is explained in more detail below. We have also amended a number of existing clauses, also described further below.

*Permitted alterations to the model access agreements*

- 3.5 There are a number of alterations to the model access agreements allowed under the General Approval. These include:

- (a) the insertion of information, as appropriate by the parties, in areas marked by square brackets or in areas left blank for the purposes of completion;
- (b) the insertion of information in tables, completed as appropriate by the parties, including substituting pre-printed table entries with equivalent entries where permitted; and
- (c) the parties choosing one option from various suggested alternative words or phrases.

- 3.6 These alterations to the model access agreements are only permitted where the alteration does not:

- (a) alter the meaning of any provision of the agreement;
- (b) insert a formula for calculating a figure; or
- (c) insert a reference to an external price list for calculating a cost of providing goods or services.

- 3.7 If a party wishes to depart from the model agreement in the manner of any alterations not contained in paragraph 3.5 above, or anything else not permitted by the General Approval, they will need to submit the agreement to us with a view to us considering granting specific approval.

### *Specific Approval of customised access agreements*

- 3.8 We recognise that there may be circumstances in which parties to a Station Access Agreement may want to make bespoke changes to that agreement which fall outside of the scope of the General Approval. We will consider giving our specific approval to customisations to a model agreement to include bespoke provisions that cater for particular circumstances, as long as they do not raise wider regulatory concerns. It is important to note that the existence of the General Approval does not mean that bespoke customisation cannot be considered.

## **Condition Precedent and amendments to clauses**

### *New agreements*

- 3.9 The model Station Access Agreements incorporate a condition precedent in clause 2 which requires parties to send a copy of the agreement to ORR in hard copy or by email within 14 days of the agreement being signed and dated by the parties. ORR will then place a copy of the agreement on its public register. The purpose of this condition precedent is to ensure that parties send to ORR copies of any new Station Access Agreements entered into so that contract information is publicly available on the public register, as prescribed by Section 72 of the Railways Act 1993.
- 3.10 We have not prescribed who should send the agreement to us. The submitting party could be the SFO, beneficiary or an agent of either. We recognise that in most cases it is likely to be the SFO which takes responsibility for submission of the agreement, thus also enabling it to satisfy its duty under Section 72(5) of the Act (which remains in place and is not overridden by these provisions).
- 3.11 Clause 2.3 (“Entry into effect”) makes it clear that the relevant clauses referred to in this provision only become binding when the agreement has been both signed *and* dated. This is to take into account a situation where an agreement is signed by the parties but is held in escrow before later being dated and hence finalised.

3.12 Clause 2.4.1 (“Non-satisfaction”) avoids parties with a “Commencement Date” falling within the 14 day period being under the impression they still had 14 days from finalising the agreement to send a copy to ORR. The clause is triggered on the later of the “Commencement Date” or the expiry of the 14 day period.

#### *Amendments to agreements*

3.13 Clause 7.3 which covers “whole agreement, variation and assignment” makes it clear in what circumstances agreements can be amended and requires parties to send a copy of any amendment, which has been signed and dated, to ORR within 14 days of such amendment being made.

3.14 Where an amending document template from our website is used for recording amendments to the Station Specific Annexes and Station Access Conditions, there is no need for all users at a station to formally sign the amending document. The process for recording amendments to Station Specific Annexes and Station Access Conditions has not changed. The submission should still include copies of emails or letters of consent to the proposed changes from the affected parties.

#### *Jurisdiction*

3.15 The clauses dealing with “governing law and submission to jurisdiction” in the Station Access Agreements, where the clauses provide for parties to elect between English and Scots law states that the agreement is governed by English law and the courts of England have exclusive jurisdiction. This is because the terms of the General Approval make specific provision for parties to amend any template Station Access Agreement to give effect to Scots law. This includes amending the clauses on “governing law and submission to jurisdiction”.

#### *2017 amendments to the model agreements*

3.17 The following further amendments have been made to the model Station Access Agreements:

- (a) Our template SAAs are now referred to as model agreements, though they will continue to appear on the Template Documentation page on our [website](#).

- (b) The termination clauses in the Stations Access Agreements for freight operators (clause 5.1.1(f)) and charter operators (clause 6.1.1(f)) have been updated to include a minimum time limit, in certain circumstances, before termination of the agreement becomes effective;
- (c) The references in the “Term and Termination” provisions in each of the model Station Access Agreements have been corrected to cross- refer to either Condition F11 of the National Station Access Conditions 2013 or Condition 41 of the Independent Station Access Conditions, as applicable;
- (c) The reference in clause 6 of the Station Supplement in the model Independent Station Access Agreement (freight operators) has been corrected to refer to the Independent Station Access Conditions; and
- (d) Contact details and instructions for issuing notices have been updated, to allow for correspondence by “electronic transmission” as well as by facsimile.

## 4. Our role in checking new access agreements and amendments to access agreements

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- 4.1 We will not routinely check the accuracy of submitted agreements and amendments to agreements. Therefore, parties should not assume that their entire agreement or amendments to an agreement have been checked by us.
- 4.2 Instead, we will undertake a review of a random sample of cases to monitor the use of the General Approval. Our process is outlined in Chapter 5. In line with this process, we will inform parties if we spot an error or consider that the General Approval has been used inappropriately. However, our main focus will be on determining whether the General Approval has been complied with and is working in policy terms.
- 4.3 It is therefore the responsibility of the parties concerned to make sure that their agreements make sense and are enforceable, and that their commercial interests are protected with a valid agreement.
- 4.4 We require proposers of new access agreements or of amendments to agreements to notify all relevant parties that the General Approval is to be used. We will expect to see within the submission to ORR, confirmation that this information has been given to all relevant parties. That confirmation can take the form of a letter or an email from the relevant parties.
- 4.5 We will continue to take any necessary and appropriate action if a party believes that it is being excluded from the market, and has evidence to support this. Beneficiaries seeking access to stations, or wishing to amend an agreement to make more extensive use of a station, will still be able to make applications to ORR under Sections 17 and 22A of the Act respectively, should they fail to reach agreement with an SFO on the terms of access to a station or stations.

### *Redaction*

- 4.6 New Station Access Agreements and amendments to access agreements will not be redacted prior to being placed on ORR's public register unless a request for redaction is made to us. We will consider any request for redaction in line with ORR's policy on redactions, which can be found [here](#).

### *Provision of reference numbers*

- 4.7 When parties use the General Approval for entering into new agreements, or for amending agreements, ORR will issue a reference number upon receipt of the signed and dated agreement or amendments. Please also refer to paragraph 2.15, which clarifies the point at which approval is achieved when parties rely on the General Approval.

### *Station Change*

- 4.8 The Station Change process for issuing and consulting on change proposals is detailed in the Station Access Conditions. ORR's Stations and Depots team will not usually make a formal response to a station change proposal until any subsequent amendments to the station contractual arrangements are submitted for our regulatory approval, or the accepted Station Change is submitted for Registration. However, ORR's Railway Safety Directorate must be consulted during a Material Change Consultation.

## 5. The audit process

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- 5.1 We will review a random sample of all submissions made under the General Approvals on a monthly basis, to assess the effectiveness of the General Approvals, and to ensure that they are being used appropriately. We will usually review a minimum of 50% of all submissions, although the percentage of submissions that we sample will be kept under review.
- 5.2 Should we decide to audit a new access agreement which has been entered into under the General Approval, we will require an electronic copy of the agreement in order to perform a contract comparison against the relevant published model agreement. Parties are welcome to submit either electronic or hard copies of signed and dated agreements in the first instance should they so wish, but they should also be aware that if only a hard copy is submitted, we may at a later date request an electronic version to assist in our audit.
- 5.3 So that our audit can be carried out effectively, and in a timely fashion, where we request an electronic copy of any documentation, the submitting party should provide this within 14 days of the request.