

## Railways Act 1993

### Passenger Access (Model Charter Track Access Contract) General Approval 2019

#### 2019 No. 1

<i>Made</i>	<i>8 July 2019</i>
<i>Coming into force</i>	<i>9 July 2019</i>

The Office of Rail and Road, pursuant to sections 18(1)(c) and 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 (Model Charter Track Access Contract) General Approval 2019.

(2) This general approval comes into force on 9 July 2019.

(3) The Passenger Access (Model Charter Track Access Contract) General Approval 2009 is hereby revoked from 9 August 2019.

#### **Interpretation**

2.—(1) In this general approval—

“charter track access contract” means an access contract that is entered into on the same terms as the Model Contract in place at that time with the exception only of any permitted departures;

“Model Contract” means the model track access contract for charter 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 Rail” means Network Rail Infrastructure Limited, a company registered in England under number 2904587;

“ORR” means the Office of Rail and Road; and

“permitted departures” means any of the following departures from the Model Contract—

- (i) any change from the Model Contract that involves the completion of areas marked by square brackets, such areas being completed as appropriate by the parties;
  - (ii) the deletion of clause 19 where it is inapplicable;
  - (iii) in the case of an access contract that is to be governed by Scottish law, any changes necessary for the terms to comply with the laws of Scotland; and
  - (iv) in the case of a charter track access contract made prior to 20 December 2018, any departures that were applied on and from 1 April 2019 pursuant to the Review Implementation Notice: Charter Operator Track Access Agreements, published by ORR on 11 March 2019.
- (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.

**Types of agreement and amendment to which this general approval applies**

3. The ORR gives its approval to the matters set out in paragraphs 4 to 6 below.

*Making of access contracts for charter passenger services*

4.—(1) Subject to sub-paragraph (2), Network Rail and another party may enter into an access contract on the same terms as the Model Contract in place at that time with the exception only of any permitted departures.

(2) The expiry date of an access contract made under sub-paragraph (1) may fall no later than five years after the date that contract is made, unless subsequently amended in accordance with paragraph 5.

*Amendment of the expiry date of an access agreement*

**5.—**(1) Subject to sub-paragraph (2), the parties to a charter track access contract may amend the definition of the expiry date to—

- (a) bring forward the expiry of that contract; or
- (b) extend the duration of that contract, provided that the expiry date shall not fall more than five years after the date that such amendment is made.

(2) An amendment under sub-paragraph (1)(b) may only be made if the contract is already, or is amended to be, on the same terms as the most recent version of the Model Contract issued by ORR with the exception only of any permitted departures.

*Updates to contracts*

**6.—**(1) Subject to sub-paragraph (2), following any amendment and re-issue of the Model Contract by the ORR, the parties to a charter track access contract may amend that contract to be consistent with the provisions of that re-issued Model Contract (subject to any permitted departures).

(2) This paragraph 6 does not extend to permitting the amendment of the expiry date of a charter track access contract except to the extent provided for by paragraph 5.



**IAN WILLIAMS**

**Duly authorised by the Office of Rail and Road**

**8 July 2019**



**EXPLANATORY NOTE** *(this does not form part of the general approval)*

*Section 18(1)(c) of the Railways Act 1993 (“the Act”) provides that a facility owner may enter into an access contract if that access contract is of a class or description specified in a general approval given by the Office of Rail Regulation (“ORR”). Access contracts to which section 18 applies that are not within the scope of a general approval (or entered into pursuant to directions issued by ORR under section 17 or 18 of the Act) are void.*

*Section 22(3) of the Railways Act 1993 (“the Act”) enables 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 Network Rail and another party to enter into a track access contract for the operation of charter passenger services provided that this contract would have a duration of no longer than five years and would be on the same terms as the model charter track access contract issued by ORR (subject to any permitted departures as set out in paragraph 2). Permitted departures include, for any existing track access contracts that were amended pursuant to the 2018 periodic review (PR18), any transitional provisions applied to that contract as part of PR18 which are not included in the latest version of the model charter track access contract. Such departures maybe appropriate where the contract is being extended.*

*Paragraph 5 enables the parties to a charter track access contract to amend the expiry date of that contract. This permits the extension, as well as the reduction, of the duration of the contract provided that the remaining duration of the contract would be no longer than five years at any one time. An extension to duration may only be made if the contract is already, or is amended to be, on the same terms as the latest version of the Model Contract as issued by ORR.*

*Paragraph 6(1)(a) provides that if ORR re-issues the Model Contract at any point, the parties to a charter track access contract may update their contract to be on the same terms as the latest version of the Model Contract. It is a condition of paragraph 5(1)(b) that any extension of a contract may only occur if the contract would be on the same terms of the latest Model Contract.*

*Paragraph 6(2) clarifies that amendments to the expiry date of a track access contract may only be made pursuant to the provisions in paragraph 5.*

*Under section 72(5) of the Act a copy of all access agreements and amendments of access agreements, including those made 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 for ORR to have regard to the need for excluding certain information, such copies will be entered into the public register.*