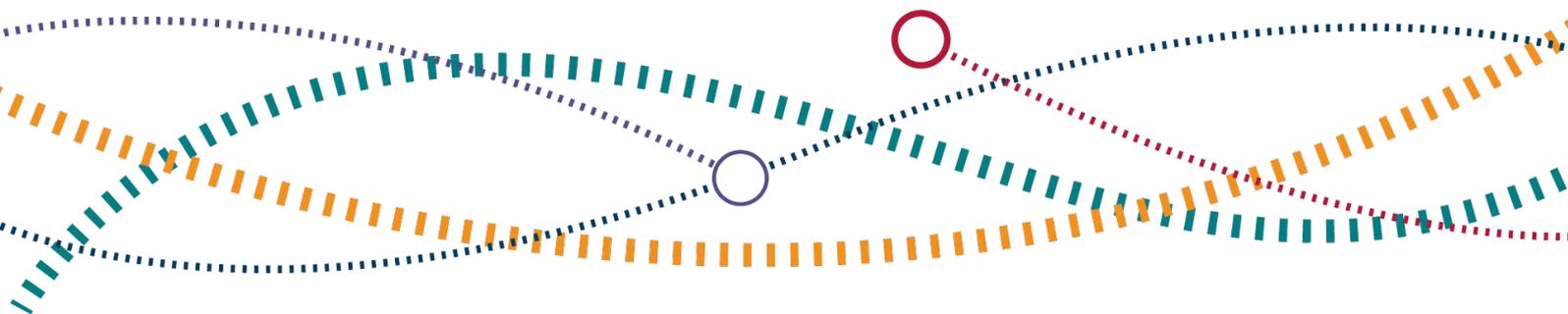




Consultation on The Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009

Consultation responses



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HS1 Limited

Thank you for providing the opportunity for HS1 to respond to ORR's consultation on the proposed amendments to the Passenger Access General Approval.

The HS1 network is independent of the network managed by Network Rail Infrastructure Limited. HS1 network is maintained by Network Rail High Speed and our relationship with the train operating companies using the HS1 railway is determined by the HS1 Network Code. The Passenger Access General Approval does not affect our operations.

We have examined the consultation and have no comments on the proposals.

As an aside – could you please add myself and my colleague Arthur (cc'd) to the ORR's stakeholder distribution list. James Mackay will be leaving shortly so this will help ensure continuity.

Kind regards,
Kathryn



Safety is no accident -
we all play our part

Kathryn Hardy | Senior Regulatory Manager

HS1 Limited



5th Floor, Kings Place, 90 York Way, London, N1 9AG



www.highspeed1.co.uk

Transport Focus

Thanks - no comments from us.

Best regards

Martin Clarke

Heathrow Airport Limited

No comments for Heathrow Airport Limited as Infrastructure Manager for the above consultation.

Heathrow Express as operator may provide their own response.

Thanks,

Paul Quilter

Freightliner Group Limited

About you

Full name: Chris Matthews

Job title: Timetable Strategy and Rail Industry Manager

Organisation: Freightliner Limited and Freightliner Heavy Haul Ltd

Questions

1. Do you agree with the changes we have proposed?

No

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

Paragraph 6.2 – this will erode the provisions contained within Network Code Conditions J4 and J5 – Network Rail’s stance is that application under Condition J5 is not valid if there are no Rights in place at the point of application. This amendment would give operators the ability to hold an unused path for 89 days, then under GA relinquish that Right for up to 90 days. This will have the effect of creating a disparity between passenger and freight operators in terms of the ability for other operators to enact the ‘Failure to Use’ process, as well as, essentially, increasing the period of time operators can reserve capacity on the Network for unused train slots. We see this as being in contravention of the various letters sent by System Operator during 2021 and 2022.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

The inclusion of footnotes relating to temporary relinquishment should be subject to a specific approval and industry consultation. Without this, it is not possible for operators or the industry to fully assess the impact in terms of capacity reservation in the future, and directly impacts the ability for other operators to seek to progress access rights applications.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

No specific comments

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

No specific comments

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

No specific comments

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

No specific comments

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

No specific comments

Are there any other comments you would like to make?

No specific comments

Heathrow Express

Thanks for the reminder! I have now had a proper look and I have a couple of questions on the paragraph below:

5. Bringing the TAC in line with clauses in the model contract

5.1 This inclusion would allow a TOC to bring their contract in line with the published model, in cases where the TAC was established before certain standard clauses were brought into

the model. These clauses include such items as standard On-Train Metering for Traction Electricity, which currently has to be consulted and submitted as a standard s22 application,

when it has no impact on any other operators and ORR carries out no meaningful review of the application once received.

5.2 During our consideration, it was suggested that there was a risk of bespoke clauses being submitted for inclusion as General Approvals under the guise of model clauses, but

the risk was felt to be quite low. It was also pointed out that the model contract for Open Access operators was different from the standard, and that this inclusion may not apply to them. We therefore include this suggestion in the proposed new General Approval, with the provision that it may not be used by Open Access operators. On-Train Metering has been

included as a separate provision in the existing paragraph 12, which deals specifically with Schedule 7 amendments

Questions:

Does this inclusion only relate to clauses relating to On Train Metering?

What is the risk that is referred to and why are Open Access Operators treated differently?

Where is the provision set out that it may not be used by OA operators included?

I'm probably missing something obvious, but as OA operators and contracts are not mentioned at all in the update General Approval draft and there don't appear to be any guidance notes, how is anyone supposed to know that OA and Standard contracts are treated differently.

Cheers

Andy

Andrew Darbyshire

HS2 / Rail Stakeholder Lead

heathrowexpress.com



Amey Infrastructure Wales

About you

Full name: Nick Rowe

Job title: Rheolwr Rheoleiddio a Chysylltiadau Cwsmeriaid / Regulatory & Customer Manager

Organisation: Amey Infrastructure Wales

Questions

1. Do you agree with the changes we have proposed?

No not all the changes see question 2.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

PART 1 CHANGES

1. Added/improved definitions of “service” and “additional” in part 2(1)

We believe that the wording in the consultation document at para 1.1 is confusing when compared to what the drafting in Annex C relates to.

In the consultation document at Para 1.1 the ORR has stated that

“1.1 During PCD 2021, a difference of opinion arose between ORR and Network Rail customer teams on the definitions of the words “service” and “additional”. Network Rail believed that adding a new station call (where a TOC had not previously held calling rights there) constituted a “service” in its own right, whereas we did not. “

We believe that adding a new station call (where a TOC had not previously held calling rights there) will create the potential to undermine a train operators franchise revenues or undermine the revenues of an open access operator.

The ORR in making track access decisions is required to consider its duties to have regard to the funds available to the Secretary of State in relation to railways and to protect the interests of users of railway services. We do not understand why the ORR does not think it is necessary to protect the users of railway services if an operator decides to add a new station call – this would very likely affect competition which could have been subject to the Not Primarily Abstraction test and approval by the ORR. The impact of this change could be significant for open access operators who may find their business case revenues negatively impacted, albeit for 90 days.

3. Temporal service extensions

At Para 3.4 of the consultation it states:

“If the access party wishes for the rights to remain in place for longer, it must start a standard application for a supplemental agreement to formalise them within the TAC after the General Approval has expired. It will still not be possible to use the General Approval to extend rights that were put in place or extended with one previously.”

We agree with this position, however this can create problems for the Infrastructure Manager. Where an operator has bid for services and these have been accepted in the timetabling process, but the operator does not seek the necessary access rights, then the IM is faced with either letting the trains operate without rights or refusing to let the trains operate. In reality the politics of the situation are that the trains will operate without rights. What would be helpful in such circumstances is for the IM to be able to progress an application to the ORR to put the necessary rights in place. Currently the IM has to agree to a supplemental agreement with the Train Operator. If that train operator refuses to progress a supplemental to put in place the necessary access rights, there is little option for the IM. There is we feel considerable risk in allowing services to operate without rights for both the IM and the Train Operator, however the IM is relatively powerless to resolve the issue.

We would like to discuss with the ORR further options where the IM could progress access rights in such circumstances.

4. Station calls

In Paragraph 4.3 of the consultation document it states:

“4.3 Our proposal is again to allow contingent station calls (in the additional station calls section of Table 4.1 of Schedule 5) to be instigated by General Approval, but only for 90 days and while the full process is carried out to instigate permanent rights into the TAC. We are conscious that once rights have been granted by whatever means, it is more difficult to remove them if objections arise, so the wording of this clause is explicit that rights can and must be removed from the TAC if steps have not been taken to make them permanent.”

We do not support the position that the GA will allow new station calls for 90 days as this in our opinion could negatively impact on other train operators revenues. We also note that that the ORR states:

“ so the wording of this clause is explicit that rights can and must be removed from the TAC if steps have not been taken to make them permanent.”

In the case of contingent rights issued under the GA, the rights will fall away after 90 days, so there is no need to remove the rights. The problem is one where trains will have run for 90 days and passengers will have got used to these services and where the Train Operator has already bid for the same services. These services may also have been offered. In such circumstances it is unrealistic to expect that the train paths will be

removed from the timetable . Please can the ORR clarify if it means that it expects that the train paths will be removed as the rights will have fallen away?

PART 2 CHANGES

2. Changing references to PCD/SCD into equivalent dates

AIW notes that Network Rail has suggested allowing the GA to amend the PCD/SCD to its actual equivalent date. This might seem sensible on the face of it, however in the past the Track Access Contracts used to have a definitive calendar date. This was changed to the present method of defining dates / PCD /SCD. The reason for changing the description of PCD was because Network Rail / Railtrack was unable to work to the specified dates. The current definition was developed to allow the contract date to vary in line with the PCD/SCD dates.

Alignment of access rights is important between two networks. We note that if the GA were to allow the PCD/SCD definitions to be amended for Network Rail's network, it would not apply on other independent Infrastructure Manager Networks. AIW believes that consideration should be given for the revised GA to apply to all Infrastructure Managers rather than just Network Rail.

4. Rollover of contingent rights on East Coast Main Line/Castlefield Corridor in accordance with Network Rail policy

We agree with the ORR that the access rights remain open to scrutiny. However, AIW does not support the notion that there will be an automatic rollover of rights as there is nothing in law that suggests that this should happen. A rollover of access rights would give precedence to existing users and in our view could lead to claims that the ORR has fettered its decision. Access to the network in our view should be in accordance with the law. We are therefore supportive of the ORR position that the process remains open to scrutiny.

5. Responding to passenger demand, i.e., unexpected increase in passenger numbers

We note that the present provisions in the model track access contracts allows relief trains 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.”*

While this drafting would seem to cover all eventualities we feel it does not. For example, if there is greater demand on trains for which there is no associated special or seasonal event, the clause would not allow a relief train to be operated. We therefore feel that the GA is developed to allow the track access contracts to be amended so that a train operator can operate relief train slots without the caveat of these being for special or seasonal events.

7. Transfer of services/station calls between TOCs with the same funder, or within the same TOC's TAC

With regard to the proposal to transfer access rights between TOCs, we are surprised that the ORR states that this option was “*given serious consideration during the process of drafting and finalising the consultation document*”. The law in this area is clear.

With regard to transferring services /station calls within the same Train Operator’s TAC. On the face of it this might appear logical. However, where we feel this would run into problems is if a train operator created substantially different service patterns by swapping its access rights around. This could for example allow a train operator to diverge from the services that the rights were approved for and the business and economic assessments that were used.

AIW would not be supportive of the GA being used to allow access rights to be reconstructed in a manner for which they were not intended. This approach would avoid the proper scrutiny, economic assessments and operational assessments.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

Yes we believe that the General Approval should be extended to cover all other independent Infrastructure Managers networks. This is important so that changes can be made to align contracts that cross between two different networks. In addition with regard to train operators not progressing access rights for the services that they run or intend to run. Some train operators will bid for rights in the timetabling process and yet not seek to progress an application for rights with the IM. The timetabling process and the rights application process should operate together but this isn’t always the case. It is possible for train paths to be offered and yet the train operator does not seek rights. This presents a problem for the IM as it has accepted the bid under the timetable process but yet it cannot make an application as an IM alone to amend the track access contract. AIW believes that the ideal option would be for IM’s to be able to make an application to amend the contract to add rights. We would like to discuss the options with the ORR.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

Yes we have identified these under question 2 of this consultation. In summary the areas are :

1. Added/improved definitions of “service” and “additional” in part 2(1)
2. We do not support the position that the GA will allow new station calls for 90 days

Our reasons why are provided in response to question 2 of this consultation.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

The GA should apply to all IMs rather than just Network Rail. This revision is the ideal opportunity to reflect that there are now multiple IMs. We believe that changes to the GA to reflect this would involve the replacement of “Network Rail” with “the Infrastructure Manager”.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

The changes to the definition of PCD/SCD are likely to need changes to the TACs and the Network Codes applicable to each of the networks.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

No we believe that the explanatory text is necessary as it does help to clarify what was intended. In our opinion, the explanatory text should be revised and retained to clarify the use of the GA. This is because it is not always easy to determine the intention behind the legal drafting.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

Yes see below:

Para 9.1

In Annex C (at page 9) the proposed new content is shown as:

“additional” means, in the context of services, either a new service that was not previously in the contract, or a physical (not temporal) extension of an existing service to a further start/end point; in the context of station calls it means an extra call at a station for which the beneficiary already holds calling rights or a new call at a station that the beneficiary does not currently serve;”

With regard to the part relating to station calls we do not believe that this is sufficiently clear. We have explained why this is the case below:

1 *“it means an extra call at a station for which the beneficiary already holds calling rights”.*

If the Train Operator holds calling rights then there will be no need to include this in the GA as their right already exists. It therefore should not be described as “additional”.

2 *“..or a new call at a station that the beneficiary does not currently serve;”*

We agree that this would be “additional” but do not agree that a Train Operator should be allowed to get access to a station where the ORR has not conducted its economic analysis. We have stated our reasons why we believe that this is not appropriate in our response to question 2 of this consultation questionnaire (see above)

Clause 6.1

In Annex C (at page 10) the proposed new content relating to Clause 6.1 is shown as:

“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;*
- (b) an additional station call;*
- (c) the extension of services that would otherwise expire, subject to the exclusions set out in paragraph (2); and*
- (d) the making of train movements which are necessary or reasonably required to enable such services to be provided (including the provision of stabling). “*

We do not agree that the GA be used to grant a right to a new station call without having been subject to the ORR economic analysis.

Clause 6.2

In Annex C (at page 11) the proposed drafting states in relation to 6.2

*“(2) Sub-paragraph (1) above does not apply to any amendment where:
(a) the amendment lasts longer than 90 days [one timetable period];
(b) the amendment confers a Firm Right;
(c) the amendment 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) the amendment involves a change to the types of railway vehicles which may be used on any track under the access agreement, except where this change is within the scope of paragraph 8 below;
(e) the right conferred 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; or
(f) the amendment does not result in a disbenefit being conferred on any other operator.”*

AIW notes the addition of:

“(f) the amendment does not result in a disbenefit being conferred on any other operator.”

We agree with this addition, but wonder how this would be assessed by a Train Operator and Network Rail?. We believe that this part of the drafting requires some further explanation and guidance.

Clause 8.1

In Annex C (at page 13) the proposed drafting states in relation to clause 8.1:

“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 relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2; and*
- (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.”*

AIW believe that the train Operator should have a right that is not just limited to “special or seasonal events”. There may be perfectly legitimate reasons for a train operator to want to operate a relief train that is not associated with such events. For example, if a train operator notes that there is additional demand during certain time periods or on certain days. However, the demand could arise at short notice part way through a timetable and it

may not be associated with being “special or seasonal” . In such circumstances the train operator could not operate a relief service.

Clause 9.3

In Annex C (at page 14) the proposed drafting states in relation to clause 9.3:

“9.3 Where an amendment is made under sub-paragraph (1)(d), the parties to the access agreement may reinstate the previous quantum of rights only if the reduction is effective for a maximum of 90 days. If the reduction has exceeded this period the parties must reapply for the rights by means of a specific approval under Section 22 of the Act. “

AIW believes that this clause is not clear and needs further development, we have explained why we believe this to be the case below:

The reduction in quantum is proposed under 9.1(d) This states:

“(d) insert footnotes to effect the temporary reduction of service quantum in any of the tables in Schedule 5 for a maximum of 90 days.”

This element of the drafting is clear in that the temporary reduction is for up to 90 days. After 90 days the logical assumption is that the temporary reduction will cease and that the contract reverts to the original content. This would be that the footnotes disappear.

However, the proposed para 9.3 confuses the issue where it states:

“the parties to the access agreement may reinstate the previous quantum of rights only if the reduction is effective for a maximum of 90 days.”

What happens if the reduction is not effective for the maximum of 90 days ? Does that mean that the parties cannot reinstate the reduction ? The drafting would seem to suggest this but we do not believe that was its intention.

In addition, as the drafting under 9.1(d) will fall away after the period specified in the footnote (up to a maximum of 90 days) there would be no need for the parties to reinstate anything as it would be reinstated by the footnote falling away.

We also note that the drafting also states:

“. If the reduction has exceeded this period the parties must reapply for the rights by means of a specific approval under Section 22 of the Act. “

Firstly, the reduction in quantum cannot exceed 90 days by this method as this is stated in 9.1(d) see below:

“(d) insert footnotes to effect the temporary reduction of service quantum in any of the tables in Schedule 5 for a maximum of 90 days.”

As the reduction proposed under 9.1(d) cannot exceed 90 days the drafting does not work. For clarity this part of the drafting is:

“If the reduction has exceeded this period the parties must reapply for the rights by means of a specific approval under Section 22 of the Act.”

We believe that para 9.3 should be amended to be

“9.3 Where an amendment is made under sub-paragraph (1)(d), the parties to the access agreement may reinstate the previous quantum of rights only if the reduction in rights is effective up to a maximum of 90 days.”

Clause 17.

The proposed clause 17 relates to changes to the PCD/SCD and allows the train operator to insert a definitive date for the purposes of bringing their contract into line with the most recent timetable planning schedule. While we understand the rationale behind this, we also note that the current contract definitions of PCD/SCD dates were deliberately devised because these dates were fluid and subject to change.

By allowing train operators contracts to contain definitive dates, there is a risk if the planning dates are changed (as has happened many times in the past) that the contract dates would no longer align. This could impact on how bids and offers dealt with by Network Rail and the level of priority an operator enjoys.

We also note that the clause only allows the dates to be inserted if these reduce the contract length or are the same. The present use of the contract definitions allows for PCD/SCD allow flexibility both ways.

AIW also believe that if it is necessary to amend the contract dates to make the timetable planning contractual elements work that this should be a requirement that applies to all contracts mandated by the ORR and not something that is subject to Operator and IM agreement. In addition we also note as this GA does not apply to the other Infrastructure Managers there is the potential for operators who cross more than one network to have different dates specified in each of the track access contracts. This should be avoided.

AIW believes that there is merit in retaining the PCD/SCD flexibility and we believe that this could be done by developing PCD/SCD definitions that reflect the proposed 3 timetable periods rather than specific dates.

Proposal to delete the existing Explanatory text

The explanatory text contains information as to the intention of the ORR at the time that the clauses were approved. We would not support the removal of the text as it contains information that isn't contained in the actual GA clauses. It serves as a useful aide to clarify what the intention was and is of the drafting. We note that the ORR state in the consultation document that “much of it seems to be redundant”. Please can the ORR set out which parts it believes to be redundant. We have reviewed the explanatory note and do not believe this to be the case. We believe that it adds clarity and is not redundant.

Are there any other comments you would like to make?

As these are complex areas AIW would be willing to meet and discuss the contents of our response if necessary.

GB Railfreight Limited (GBRf)

About you

Full name: Ian Kapur

Job title: Head of Strategic Access Planning

Organisation: GB Railfreight Limited (GBRf)

Questions

1. Do you agree with the changes we have proposed?

No, not all of them. GB Railfreight does agree with many of the proposed changes however there is one change and some aspects with which we disagree.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

Paragraph 9.1 in Annex C: GB Railfreight does not agree with the formation of a new proposal to permit a TOC to voluntarily relinquish firm access rights where they are not required for a period of 90 days, without consultation from ORR, then automatically have said access rights effective again from day 91 onwards. Network Code Part J2 is already in place, for all passenger and freight operators, providing a current obligation for operators to voluntarily surrender access rights when not being used. It is clear and unequivocal. Condition 2.3.1(d) mandates an operator to provide the dates at which surrender ought to take place and Condition 2.3.1(f) is also pertinent to a temporary Specified Relevant Surrender or Specified Relevant Adjustment. The vitally important point to make is that Network Code Condition J.2 is already active and applicable, equally and fairly, to every Track Access Contract holder or Freight Customer Track Access Contract holder. The new proposal in Paragraph 9.1 would not currently apply to freight operating companies (& freight customer TACs) which would not be fair or reasonable, and which would likely be deemed to be discriminatory. This new process would grant passenger operators an advantage in keeping its firm access rights, when not exercising them in part of any given timetable, only to have them available to exercise in a future timetable. That is not impartial or fair across all types of operators with regard to the Part J “Use it or Lose it” process. Access rights policy, as regulated by the ORR, is the cornerstone of a freight operator’s business and must be fair and impartial. This proposal would not make it so. Note that the current Priority Date Notification Statement (“PDNS” submitted at D-40 weeks out from a Timetable Change Date) already permits all passenger and freight operators to not exercise firm access rights for a given timetable.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

No.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

No. GB Railfreight (GBRf) fully agrees with the sentiment and stance ORR has taken with all aspects of Part 2 of this consultation. Firstly, GBRf is clear that no part of what might come from the current BTPF Proposals for Change ought to be incorporated into any of the thinking proposed in this particular consultation as nothing is yet definite and specific current items of detail might not be incorporated or might change in the not too distant future. Also, as BTPF might come only into effect from the December 2024 timetable, many of the proposed changes are needed before then. There is always scope for additional changes to Passenger & Freight General Approval documentation going forward. Secondly, were any of the proposals in Part 2 to go forward to be approved, GBRf believes there would be far too much lack of transparency of Network Rail's thinking on important specific access rights, with no checks & measures from ORR. That must not be permitted to occur.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

Paragraph 3.3: It needs to be noted that General Approvals do not receive the desired scrutiny (from other potentially affected Timetable Participants and also Freight Customer Track Access Contract holders) that the more regular Section 18/18/22/22A applications do. That is a concern to GB Railfreight, although it understands the desire for having a speedier process for "less important" and non-controversial access decisions. For example, the extension of a/several firm access right(s) or a full track access contract, even for one Timetable Period, is a proposed further use of capacity that must be tested against other known and imminent uses of capacity. The General Approval process is, therefore, not the appropriate way forward for securing this type of network access.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

GB Railfreight believes there would need to be scrutiny of passenger and freight model track access contracts and, at the very least, were the Paragraph 9.1 access rights change proposal to go ahead for TOCs, it would also need to be incorporated in FOC track access contracts, for the new process to be non-discriminatory.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

Yes. GBRf believes the proposed wording to be included in these amendments is clear enough for all to interpret.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

Paragraph 9.1(d): GB Railfreight does not believe the proposal for voluntarily surrendering access rights for a period of up to 90 days should go forward as written (with no

consultation with ORR as proposed) as this would make the firm access rights, and Network Code Part J2 process, open to abuse.

Are there any other comments you would like to make?

A key point to note in the “General Approval” process is that what might deem to be low risk and low impact (by Network Rail and an operator) can definitely not be low impact to other potentially affected parties (i.e. other operators requiring the access released by a successful Part J4 or J5 “Use it or Lose it” notice. Any new proposal on access/access rights to be incorporated into the General Approval process, therefore, needs to be scrutinised with great care.

MTR Elizabeth Line

About you

Full name: Jonathan James

Job title: Head of Contract Management Organisation: MTR Elizabeth Line

Questions

1. Do you agree with the changes we have proposed? Yes

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position. n/a

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

Given that we are expected to move to three timetable changes per year (about every 120 days), consideration should be given to amending the 90-day period for general approvals to one timetable period (i.e. about 120 days).

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why. n/a

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole? n/a

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC? n/a

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes? I think updated guidance notes would be helpful.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C? n/a

Are there any other comments you would like to make? In order to enable the introduction of three timetable changes per year, I think it would be helpful if the ORR amended the period that they need for approval of Supplemental Agreements (I believe that this is currently 6-weeks for non-contentious changes and 12-weeks for contentious or complicated changes). Allowing for the Network Rail SOAR Panel Process (minimum 4-weeks), Industry Consultation (6-weeks, including time for resolving any queries) and then ORR approval (between 6 and 12 weeks), it is going to be very difficult to manage three timetable changes per year unless these timescales are compressed.

Northern Trains Limited

About you

Full name: Alex Bateman

Job title: Track Access Manager

Organisation: Northern Trains Limited

Questions

1. Do you agree with the changes we have proposed?

Northern Trains Limited (NTL) are generally supportive of the proposal to streamline the General Approval process and welcome the plans to simplify the process when making changes to the Track Access Contract (TAC). NTL agrees that as the industry transitions, in particular with the forthcoming change from Network Rail to Great British Railways (GBR) that the current process could be improved, ensuring that the circumstances where a General Approval can be utilised is unambiguous. NTL are also supportive of the view that the General Approval process should not be used as a fallback for failures in the planning process but is supportive where it can be utilised to minimise the impact of any such failures on our customers, by ensuring the continuity of services expected by our passengers. NTL is also supportive of the extension of the reasons that either party may amend the access agreement to include the extension of services that would have expired and to include movements that are required to deliver the service, which includes the provision of stabling. NTL feel that these additions help to legitimise practice that has been commonplace throughout the industry.

NTL would further support the proposal for the extension of contingent rights for a period of 90 days. Although NTL note that this could cause a lack of transparency and forgo the option to provide input to the consultation, NTL recognise that the 90-day period for temporary service extensions allows for a reduction in workload for all parties, and due to the short term nature of the extension, would allow for full and thorough consultation of any further extension of the rights beyond the 90 day period in line with a standard supplementary agreement application.

NTL agree with ORR's position on of station calls being included within the General Approval remit. NTL would have concerns regarding potential economic impacts of additional services calling at stations not previously accommodated without industry consultation having taken place.

NTL is supportive the 90-day temporary extension of access rights for station calls, noting that this allows for robust delivery of timetables in the short term whilst the full regulatory procedure is prepared and undertaken.

We note the proposed monitoring of General Approvals received by the ORR and believe that the proposed 20% audit target is justified in that it would discourage any misuse of the provision within the General Approvals. As NTL progresses towards its decarbonisation targets, we are pleased with the proposal that on-train metering will be dealt with via general approval which makes sense as these changes have no material impact on other operators,

NTL welcome amendments to VTP tables being included within the General Approval scope. Similarly, with the amendments proposed to Schedule 8 Appendix 1, NTL are content that, if agreed by both TAC parties, that these should be dealt with via a general approval.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

NTL are concerned with the proposal to limit any temporary reduction in quantum access rights to 90 days. The Covid 19 Pandemic has demonstrated altered working practices that the industry has had to adopt in order that it can react to major events, and the temporary surrender of rights has helped to preserve business models throughout the pandemic where passenger demand has been drastically reduced. NTL is mandated by its funders, Rail North Partnership (RNP) on which services must be provided to maintain a suitable level of connectivity across the North of England. By imposing a 90-day limit on the temporary surrender of quantum access rights, NTL are concerned that should services subject to a temporary surrender of rights need to be reinstated as demand recovers beyond the 90 day period that previously available capacity may be lost and that long term service aspirations will be undeliverable. By allowing operators to temporary surrender access rights for an extended period of time in cases where there is reduced demand or a short-term lack of funding to deliver a service, it opens up opportunity for other operators/freight to utilise the capacity for a set period of time allowing a period of certainty for those operators. We would suggest that temporary surrender of access rights should be available for a time period of 2 years rather than the proposed 90-day limit which does not allow sufficient time for operators to discuss and agree changes to its service agreement with funders. Although NTL recognises that the proposal is intended to make best use of the available capacity on an already congested network, we are concerned that we will be unable to fulfil the ambitions of funders and reduce the attractiveness of rail as an alternative to private modes of transport.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

NTL currently have no additional changes that we wish to propose as part of this consultation.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

Although NTL have some reservations regarding the decision not to change the 90-day time limit to one timetable period, we understand the requirement to understand the outcome of the BTPF workstream before this is considered by the ORR. We are also supportive of the ORR's view that the rollover of contingent rights relating to the East Coast Mainline Policy

and the Castlefield Corridor policy need to be subject consultation. NTL believe that there should be an opportunity for industry to scrutinise the any roll over of contingent rights.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

NTL are largely supportive of the changes proposed, recognising the need to streamline the process. By reflecting changes in working practices, and clauses that were previously not included in the model TAC, NTL are content with the proposal and welcome the reduction in workload for all parties that this could help to generate.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

NTL would welcome the opportunity for the model TAC to be updated to reflect the changes to the General Approval items.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

NTL are content that the proposed changes to the body of the Passenger Access General Approval 2009 is clear and does not feel as though a guidance note will need to be produced to aid understanding within the track access community.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

NTL have no further comments

Arriva UK Trains

About you

Full name: Craig Peters

Job title: Strategy and Transformation

Organisation: Arriva UK Trains

Questions

1. Do you agree with the changes we have proposed?

In general, we agree with the proposed changes to the General Approval. However, the proposed changes must be implemented in a way which does not discriminate against Open Access Operators. We have set out some specific concerns regarding this in section 2 below.

We agree with the proposals to issue to temporal service extensions through general approval where appropriate, although the terms on which an extension can be granted are restrictive and unlikely to offer much benefit other than where timescales have become too tight to ensure full access rights are in place prior to the end of the existing access rights.

We agree that the ability to amend the Variable Transfer Points (VTP) and Appendix 1 to Schedule 8 is sensible and will be a time saving measure which is low risk for TAC parties.

In the case of using general approvals for expiring rights, we believe it would not lack transparency or be controversial to use the general approvals where the expiring right comes about as a result of a franchise end and there is a grant of a new contract by the SoS where there is not a change to those rights/stations being called at.

We are comfortable with the proposed elements which will be removed from the General Approval templated agreement.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

Paragraph 4 – Station Calls

In the case of using general approvals for adding additional station calls, we support the ORR's view that additional station calls should not be allowed except on a contingent basis. The proposal to allow contingent rights for additional station calls is sensible and in principle we would support this approach if it is applied consistently by Network Rail. It is important to note that we would support this for contingent rights only, otherwise our view is this would potentially lack transparency and could be prejudicial (particularly to open

access operators), there should be consultation and transparency around TOCs being granted additional station calls.

As such, we do have some concerns over the way in which this could be utilised in practice. As acknowledged in the consultation document, once access rights have been granted by whatever means, it is more difficult to remove them if objections arise. Our concern is primarily around competing applications and specifically those which involve Open Access Operator's.

NR must approach general approvals in a consistent way and the utilisation of general approval to speed up due process or to achieve some level of access rights prior to that of a competitor must be closely monitored.

The wording in (6)(2)(F) goes some way towards addressing the misuse and we appreciate the proposal from the ORR for the introduction of an audit regime as a protection against misuse, however additional guidance on avoiding a disbenefit being conferred on another operator may also be useful.

For example, it should not be possible for another operator to seek to speed up the access rights process through a general approval if a competing application already exists or is being discussed with NR.

Paragraph 5 – Bringing TAC in line with clauses in the model contract

We do agree with using general approvals in order for a TOC to bring their contract in line with the published model clauses. This is sensible and saves needless consultation when making the required amendments. However, we do not agree with exclusion of Open Access Operator's from using it for this purpose.

Currently, there is no Open Access model contract published on the ORR website and prospective OA operators would use the standard Track Access passenger model contract and amend as required. Any model clauses sought to be included in Open Access Track Access agreements should therefore be able to be concluded under a general approval, recognising the proposed intention of the process.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

No further proposed changes.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

The change of a 90 day time limit to 1 timetable period is interesting and warrants further consideration once the BTPF workstream has concluded. The alignment with a timetable period would allow better inclusion within the timetable planning process.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

No further comments.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

Not that we are aware of.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

We agree there is no requirement for additional guidance notes.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

No further comments.

Are there any other comments you would like to make?

No further comments.

DB Cargo (UK)

About you

Full name: Quentin Hedderly

Job title: Regulatory Specialist Organisation: DB Cargo (UK)

Questions

1. Do you agree with the changes we have proposed? DB Cargo is supportive of the high level aims of this proposal, particularly where removal of ambiguity and confusion can be achieved.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position. DB Cargo does not support the proposed amendment to paragraph 9, specifically the insertion of 9.(1) (d). This would allow passenger operators to relinquish Access Rights voluntarily where they are not required, for a period of 90 days. This would not be subject to consultation or review. Were an operator to submit a Failure to Use Notice under Part J5, Network Rail will reject any J5 Notice where an incumbent operator has temporarily relinquished Access Rights. There is no Access Right for the Failure to Use to relate to once an incumbent operator has (temporarily) relinquished them. One of the consequences of this amendment will be to provide passenger operators with a significant elongation of the Failure to Use process, where they are protected from removal of a train slot under J4 or J5. In the extreme, an incumbent operator could cease to operate for 89 days, at this point temporarily Page 2 of 4 relinquishing an Access Right for up to 90 days. On day 179 the incumbent operator could then re-instate the Access Right. This would place freight and open access operators at a disadvantage in comparison with the current process. It would also have the effect of neutering the existing J5 process. Presumably once an Access Right has been re-instated an operator would need to wait a further 90 days (were the train slot unused) before being able to issue a J5 Notice for Failure to Use.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included? DB Cargo has no suggestions for additional changes. It was helpful to see the change proposals not currently supported and associated explanations. If the industry chooses to progress reforms under the BTPF initiative, then some changes will be necessary.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why. No comments to add.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole? No other comments to add.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC? No changes required.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes? DB Cargo believes the proposed changes are sufficiently clear.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C? DB Cargo is content with the revised drafting of Annex C, with the exception of the content of paragraph 9.(1) (d) and paragraph 9.(3) as per the explanation provided in response to Q.2 above.

Are there any other comments you would like to make? DB Cargo hopes that the comments made in this response to the ORR's consultation document are helpful. It looks forward to continuing to work with ORR and the rest of the Page 3 of 4 industry to take forward any changes ORR decides to make to the Passenger Access General Approval.

First Greater Western Limited

About you

Full name: Robert Holder

Job title: Network Access Manager

Organisation: First Greater Western Limited (“GWR”)

Questions

1. Do you agree with the changes we have proposed?

GWR feels it understands the ORR need and supports its philosophy, however it disagrees fundamentally with all but a few changes proposed and supports the ORR in declining proposals made by others.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

GWR: Please see attached mark up of the consultation document.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

GWR: 1: Because it appears the terms of the GA are not always readily understood there needs to be a requirement to seek ORR advice as to whether a draft Supplemental Agreement fits the terms of the GA. This should be a simple non time consuming task;

GWR 2: A separate GA may be useful in permitting certain changes in connection with the proposed new timetable process if this comes in. This needs to be a separate GA (or other mechanism) because the new process may not come in at all or may be significantly amended before it comes in. (It may be better to issue directions in this regard however as with periodic reviews as this may aid funding and flow through of moneys.) Some new timetable process implied changes like changing an expiry of firm right from being at a flexible anchor such as a timetable change date to a calendar date require ORR scrutiny to avoid overselling of rights.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

GWR: No.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

GWR: it is an extremely valuable tool as (a) it is saving the ORR and the rest of the industry time for minimised risk; and (b) it allows the securing of the train services fare

paying customers and industry funders require (some of which would run illegally (or not at all) if such a facility did not exist). It is unrealistic to assume that funders will provide instruction to train operators sooner if the GA facility is removed or frowned upon. Misuse of the GA should not lead to withdrawal or easement of conditions.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

GWR: No.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

GWR: The document is perfectly clear as it is and was in 2009. The guidance is not used by GWR as the legal text is the seen as the core

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

GWR: It is unnecessary, and will cause further problems.

Are there any other comments you would like to make?

GWR: Thank you for consulting us. This is an essential tool, and all that is required if it can't be understood readily is for a clause to be added that says a Supplemental Agreement is only Approved under this General Approval if the ORR has indicated in correspondence that it is compliant with the GA's terms. That is not a recipe for a full review as required for other Supplemental Approvals just a need for a quick early check that things like contingent / 90 days / not there before / consultation for full timetable etc. exist.

London North Eastern Railway (LNER)

About you

Full name: Name

Job title: Malcolm Knight

Organisation: LNER

Questions

1. Do you agree with the changes we have proposed?

LNER is not currently in a position to agree to the changes proposed and believes that further detail is required in order to understand the implications of the proposals in particular those detailed below.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

LNER's main concern relates to the proposed changes to in 9.(1) and 9.(3). The impact of the pandemic saw significant reductions in passenger services in order to reflect the significant reduction in industry demand, support the safety of the staff on the railway and manage industry costs. Service reductions were implemented for an extended period and at very short notice to reflect this. It was also necessary to step service back up as demand recovered to support the economic recovery of the industry and the UK economy. LNER would like to understand further how this process would have been affected by the proposed changes. If the proposed changes mean that rights would need to be re-applied for the re-introduction of those services temporarily withdrawn, this would have added significant additional bureaucracy and delayed the industry recovery. This would not seem to represent a simplification.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

n/a

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

n/a

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

As noted in our earlier comments, the proposed changes would benefit from the inclusion of case study examples to understand how the processes will work.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

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Govia Thameslink Railway Ltd

About you

Full name: Darren Gay

Job title: Track Access Contracts Manager

Organisation: Govia Thameslink Railway Ltd

Questions

1. Do you agree with the changes we have proposed?

Having reviewed the ORR's proposals, I can advise that I am in agreement with the proposals. The changes to allow the use of General Approval for amendments to Schedule 4 VTP tables and/or Schedule 8 Appendix 1 (column J) Monitoring Points is particularly welcome.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

No

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

No

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

No

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

No

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

No

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

Yes, however, the provision of the guidance notes would provide that extra layer of clarity and certainty which could prove beneficial.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

No

Are there any other comments you would like to make?

No

Network Rail

About you

Full name: Garry White
Job title: Head of Network Reform
Organisation: System Operator, Network Rail

Questions

1. Do you agree with the changes we have proposed?

In respect of the ORR's proposals:

- We find ourselves in general support of sections; 1, 4, 5, 7, 8 and 10.
- While not disagreeing with the intentions behind the proposal in section 2, we do query whether the suggested definition is fit for purpose. Likewise, we have questions regarding the detail of the proposals in sections 3 and 6 – and we comment on each of these below.
- Finally, we do not support the current proposals in section 9 – see answer to Question 2.

We envisage these proposals as delivering key changes we have previously identified in discussion as necessary areas for redress including the ability of the General Approval to allow for additional station stops both where there are rights to call or where there is a new call, and the ability to utilise the General Approval (where necessary) to limit the impact of late notice changes, including extensions, which have been directed without sufficient notice to implement the full supplementary agreement procedure.

2. If you disagree with any of the proposed changes, please tell us why, quoting the relevant paragraph number. Please provide economic, contractual, legal, operational, regulatory or performance-based evidence to support your position.

Section 2 – We welcome placing passenger benefit and continuity of service at the heart of the explanatory note on General Approvals. However, whilst the industry should make sure that rights are in place at the published timescales set out in Network Code and ORR guidance, experience shows that for many reasons, often outside of the industry's direct control, this is often not possible.

Whilst we appreciate the message that the amended explanatory note seeks to convey – it should still recognise that there are a potential range of drivers (not just directions) that might cause this to occur. The revised wording might be seen as implying that directions (by which it is assumed you mean ‘instructions’ from a specifier, rather than ‘directions’ which in the context of access rights usually refers to an ORR Direction) would be the only eligible cause.

Network Rail will continue to encourage its customer teams to plan to have rights in place as early as possible, but the ability to use an applicable General Approval as an “emergency fallback” should be recognised in the language of the explanatory note where exceptional circumstances or unpredicted situations arise.

Section 3 – We agree that “The relevant clause of the General Approval itself seems to allow it...”. However, the proposal doesn’t make clear the ORR’s perception of the benefit of doing so on a contingent only basis. We would also draw to ORR’s attention the potential impact of where the extension is across the priority date of a timetable. The implication could be significant on how the timetable application by that operator will be treated under the priority rules in Network Code D4.2.2(d).

If an operator or customer team realises that firm rights are due to expire and there is not time to commence and complete the supplemental process, this proposal should enable existing right to continue to be exercised. While the existing General Approval does require the beneficiary to apply for these on a permanent basis by means of a specific approval under Section 22, should this also now be recognised in the language of paragraphs 3 and 4 of the GA (presumably Section 17 or 18 if the Act may now also be next steps if the GA will not permit an access contract to be extended in its entirety – even with contingent rights).

In the event that there is a difficulty in processing the rights of an operator that has extended their contract in this way, the wording in Section 3 appears to give the ORR no resolution in the event that services might, due to some unforeseen delay, not have rights at the end of the GA period.

Sections 3 & 4 – the new provision inserted in the GA as 6(2)(f) raises questions that we would like to explore further with regards interpretation. It could be argued that any amendment that increases or extends the rights of one operator constitutes a potential disbenefit to other operators on that part of the network should they lose a degree of flexibility in the application of their existing rights. It would be useful to understand ORR’s view on how and where judgment would be exercised in such cases, given the intended functioning of a General Approval, and how would such decisions be held to account?

Section 6 – We are unconvinced of the need for this proposal given that the Network Code allows for the temporary surrender of rights and further provisions exist in Part J to manage unused rights. Indeed, there are potential conflicts between the proposal and J2.1. The wording of the proposed paragraph 9(3) states what should happen if a GA is incorrectly used (“If the reduction has exceeded this period the parties must reapply for the rights by means of a specific approval under Section 22 of the Act”). 9(1)(d) as drafted clearly states that this kind of amendment may only be “for a maximum of 90 days”. If circumstances arose where the reduction made under a GA exceeded this period then the amendment would be void, the reduction would not exist; in which case a s22 would not be required to reinstate the quantum.

Instead, if it is the intention of the proposal, it might be preferable if 9(3) made it clear that a reduction for more than 90 days would only be valid if made under a full s22. This would help to clarify the relationship between Part J and the GA and could be included either in the provisions or as explanatory note specifically for para 9.

Section 9 – An explanatory note can be helpful for adding clarity on the application of the General Approval allows. However, if notes do remain, they should be clear enough to prevent misinterpretation.

3. Do you have any suggestions for additional changes to the Passenger Access General Approval 2009 that you wish us to consider that we have not included?

We note that the consultation states that “before implementing any changes from this consultation, we will take account of industry reform... In particular, the Better Timetabling for Passenger and Freight (BTPF) programme may entail changes to the length of a timetable period and the number of timetable changes per year.

We believe it would be useful to allow the timings and lengths of General Approvals periods to better align with timetable periods in order to prevent additional applications being required for periods of days / a few weeks ahead of what may be new patterns of rights being prepared or already in place for a forthcoming timetable. We note the consultation indicates that on this topic the ORR intend to want to wait for the outcome of the BTPF workstream before considering this further.

In either eventuality we would suggest that a GA should be able to have effect for at least a minimum period and should the currently proposed changes to the Network Code not be adopted, a mechanism or rule by which the 90 days could be extended by a short period would be a potential sensible, efficient improvement.

4. Do you believe that we should reconsider our stance on any of the suggested changes that we decided NOT to take forward? If so, please also explain why.

Paragraph 2 – Changing references to PCD/SCD into equivalent dates

Disagree that this issue can be addressed quicker through agreed changes to the TAC. If this was a General Approval, internal and external processes (assuming no industry consultation would be required and no informal/formal submission to ORR would be required). This change could therefore be made much more quickly through a GA route.

5. Are there any other comments you wish to make in relation to the Passenger Access General Approval 2009 as a whole?

Overall, we welcome ORR's stated objectives to:

- simplify the process of amending the TAC in circumstances where the proposed revisions are low risk and low impact,
- reflect the changed nature of industry since the General Approval's introduction,
- anticipate the need for greater flexibility in the future access application process, and
- clarify the circumstances in which the General Approval can be used.

There is a need to make the existing General Approvals better suited for the real-world experiences that we have found ourselves working with customers and the ORR to manage, and we believe many of the changes set out here would move us in that direction.

6. Will any of these proposed amendments necessitate changes to other public documents, e.g., the model TAC?

As described above, some changes may have unanticipated impacts on the Network Code.

7. Do you believe that the proposed changes to the body of the Passenger Access General Approval 2009 make it sufficiently clear in itself without the need for an accompanying set of guidance notes?

If an explanatory note is maintained as part of the General Approval site of documents, then an additional guidance note on changes vis-à-vis the 2009 GA should not be necessary.

8. Do you have any comments on the revised drafting of the proposed Passenger Access General Approval 2009 at Annex C?

None

Are there any other comments you would like to make?

None



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