



GENERAL APPROVAL FOR DEPOTS (2017)
GUIDANCE

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1. Introduction

Background

- 1.1 We have now issued three sets of consolidated General Approvals for depots. First, the General Approval (Depots) 2010 was issued following our consultation on a 'more focused approach to stations and depots access'.¹ We then undertook a formal review of the 2010 General Approval, which led to the issue of the General Approval (Depots) 2013.² Then in summer 2016 we undertook a review of the General Approval (Depots) 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 depots General Approval, with revisions that would allow some minor uncontentious amendments to be made to the Equipment and Elements Inventories in the Depot Specific Annexes. Another revision means that the General Approval is disapplied where a Consultee has an unresolved objection to a Proposal. We have decided to refer to our template DAAs as model agreements, and to update the termination provisions in both model Depot Access Agreements. We have also taken the opportunity to update them 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.
- 1.3 The General Approval for depots (2017) can be found on our website [here](#). This new edition of the Depots 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.

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

² The 2013 consultation and conclusions are found [here](#).

How the guidance works

- 1.4 This guidance has been developed in conjunction with the General Approval for depots (2017). It explains the scope and application of the General Approval and describes the changes made to the model Depot Access Agreements.
- 1.5 The guidance should be referred to when parties are entering into new Depot 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 stations.depots@orr.gsi.gov.uk

2. Scope and application of the General Approval

- 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 depots (2017) is wide-ranging and provides for the approval of new Depot 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 it 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 Depot Access Agreement provided they use one of the ORR-approved model Depot 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 two 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 in to by the parties, we require amendments to agreements to be signed and dated by the parties prior to submission to us.

Permitted alterations to Depot Access Agreements

- 2.9 The permitted alterations to Depot Access Agreements are listed in the General Approval for depots (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, for example, by including relevant references to TfL, RfL or a PTE. To this end, the General Approval allows parties operating under a concession agreement to insert into their access agreement relevant references to concession agreements and concession awarding bodies and to make other necessary alterations to give proper effect to the agreements.

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). We have also included a new clause to ensure that the General Approval is dis-applied in the event that there is an unresolved objection by a party to the agreement.

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 10 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 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 depots 2017

- 2.17 Following consultation we introduced provisions to the General Approval to allow changes to the Equipment Inventory and Elements Inventory. The modified provisions for altering the Inventories allows the 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 Depot” 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 Depot” column will require our specific approval.

- 2.18 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.
- 2.19 In addition, we have removed the concept of “Excluded Party” from the General Approval as it is no longer necessary. 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.
- 2.20 Finally, we have strengthened the definition of “Depot Access Conditions” in line with changes made to the General Approval for stations, so that the General Approval for depots can only be relied on where the DACs have been previously endorsed by ORR prior to being incorporated into an ORR-approved access agreement.

3 Model Depot Access Agreements

- 3.1. In order for new access agreements to be valid under the General Approval, parties should use one of the model Depot Access Agreements available on our [website](#).
- 3.2. Parties can use one of two model agreements:
 - 3.2.1 a standard Depot Access Agreement which covers general access, or
 - 3.2.2 a non-TOC beneficiary Depot Access Agreement, for use when a third party is procuring depot services on behalf of another party.
- 3.3. 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 from the model access agreements

- 3.4. There are a number of alterations to the model access agreements allowed under the General Approval. These include:
 - 3.4.1 the insertion of information, as appropriate by the parties, in areas highlighted, marked by square brackets or in areas left blank for the purposes of completion;
 - 3.4.2 the insertion of information in tables, completed as appropriate by the parties, including substituting pre-printed table entries with equivalent entries where permitted; and
 - 3.4.3 the parties choosing one option from various suggested alternative words or phrases.
- 3.5. These alterations to model depot access agreements are only permitted where the alteration does not:
 - 3.5.1 alter the meaning of any provision of the agreement;
 - 3.5.2 insert a formula for calculating a figure; or
 - 3.5.3 insert a reference to an external price list for calculating a cost of providing goods or services.

- 3.6 If a party wishes to depart from the model agreement in the manner of any alterations not contained in paragraph 3.4 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

- 3.7 We recognise that there may be circumstances in which parties to a Depot 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 customisations cannot be considered.

Condition Precedent and amendments to clauses

New agreements

- 3.8 Both model Depot 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 inserting this condition precedent is to ensure that parties send to ORR copies of any new Depot 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.
- 3.9 We have not prescribed who should send the agreement to us. The submitting party could be the DFO, beneficiary or an agent of either. We recognise that in most cases it is likely to be the DFO 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).
- 3.10 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.

Amendments to agreements

- 3.11 Clause 9.2 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.
- 3.12 Where an amending document template from our website is used for recording amendments to the Depot Annexes and Depot Access Conditions, there is no need for all users at a depot to formally sign the amending document. The process for recording amendments to Depot Annexes and Depot 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

- 3.13 The clauses dealing with “governing law and submission to jurisdiction” in the Depot 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 Depot 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

- 3.14 The following amendments have been made to the model Depot Access Agreements:
- a) Our template DAAs are now referred to as model agreements, though they will continue to appear on the Template Documentation page on our [website](#).
 - b) The inclusion of a new clause 6.8 designed to suspend a termination notice served on the beneficiary under either of clauses 6.4 or 6.7 in the event that the beneficiary applies to ORR for directions under section 17 of the Railways Act 1993 (the Act) prior to the termination notice taking effect. This new clause serves to protect the beneficiary in circumstances where the Depot Facility Owner serves a termination notice without an Event of Default having occurred by allowing the

beneficiary to apply to ORR under section 17 of the Act for continued access. Until ORR has made a decision on the access application, the termination notice shall not take effect.

- c) Contact details and instructions for issuing notices have been updated, to allow for correspondence by “electronic transmission” as well as by facsimile.
- d) Clause 6.1.3 “Term” has been updated to make reference to the Department of Transport’s transfer scheme and to novation, to ensure that agreements survive being transferred or novated to a new operator.

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

- 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 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 depots, or wishing to amend an agreement to make more extensive use of a depot, 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 a DFO on the terms of access to a depot or depots.

Redaction

- 4.6 New Depot 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](#).

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.

Depot Change

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

5 The audit process

- 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.