

General Approval

for depots (2017)

1. This general approval applies to new and amended depot access agreements (DAA). The Office of Rail and Road (ORR) makes this general approval under sections 18(1)(c) and 22(3) of the Railways Act 1993 (the Act). This general approval comes into force on 6 February 2017. It replaces the General Approval (Depots) 2013 which is revoked from the same date.

Interpretation

2. In this general approval:

“Depot Access Agreement” (DAA) means an agreement for access to a depot made on the same terms as a model DAA published by ORR, and includes the Depot Access Conditions (DACs), schedules and Annexes incorporated by reference into that agreement;

“Depot Access Conditions” (DACs) means the depot access conditions which have been endorsed by ORR prior to being incorporated into and forming part of any DAA, including the Annexes relating to that depot, as each has been or is modified in respect of that depot from time to time with the approval of ORR.

Scope

3. ORR gives its approval to the matters set out in paragraphs 4 to 10 below.

New Depot Access Agreements

4. Parties may enter into a DAA provided it is entered into on the same terms as a model DAA published by ORR, subject to the following permitted alterations:

- (a) completion of square brackets, tables or other areas left blank for completion; and
- (b) choosing from various words and phrases,

except where such alteration changes the meaning of any other provision in the DAA, inserts a formula for calculating a figure or inserts a reference to an external price list for calculating a cost of providing goods or services.

Existing Depot Access Agreements

5. Subject to the exclusion set out in paragraph 11 below, parties to a DAA may make alterations to it as set out in paragraphs 6 to 10 below.

Factual modifications to Depot Access Agreements

6. Parties may make the following factual modifications to the DAA:

- (a) change information entered into tables;
- (b) insert or alter numbers or monetary figures;

- (c) insert or alter facts, dates, diagrams, plans, maps, routes, performance criteria, descriptions of a service level or specification, charges or amounts to be paid;
- (d) describe a relevant “notifiable condition” in Schedule 18 of the DAA;
- (e) provide registered company names or addresses and related information;
- (f) provide names and addresses for service and related information;
- (g) signify the parties’ acceptance of the terms of the contract, such as inserting signatures;
- (h) insert the words “not used” where appropriate to indicate that a schedule or appendix has not been used;
- (i) insert, substitute or delete a word or words where a choice of alternative words has been provided, provided at least one of the original alternative words remains;
- (j) change the name of the light maintenance depot facility set out at paragraph 4 of Schedule 1; and
- (l) change the name of the light maintenance depot facility in Annex 1 of the DACs.

Alterations to the Equipment Inventory

7. In relation to the Equipment Inventory at Appendix 3 to Annex 1 of the DACs, the parties may:

- a. alter any existing entry in the “Present at Depot” column and/or the “Quantity” column, but only where
 - i. the alteration is the amendment of an entry under the “Present at Depot” column from “No” to “Yes”; or
 - ii. the alteration is an increase to an entry in the “Quantity” column; and
- b. revise an entry in the “Description” column of the Equipment, but only where such revision is designed to update the description of an existing asset

Alterations to the Elements Inventory

8. Parties may revise the description of entries in the Elements Inventory at Appendix 4 to Annex 1 of the DACs, but only where such revision is designed to update the description of an existing asset and does not add new items to the Inventory.

Alterations to a DAA governed by Scots law

9. Parties may alter a DAA to make it compliant with Scots law including:
 - (a) deleting any governing law clause and replacing it with:

“This Agreement shall be governed by and construed in accordance with Scots law”; and
 - (b) deleting any jurisdiction clause and replacing it with:

“Subject to the DACs, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement”.

Alterations where a party to the DAA is also party to a concession agreement

10. Parties may alter a DAA to give effect to a concession agreement by:
 - (a) inserting any new definitions or altering any existing definitions which define the concession agreement and the parties to the same or define a concession awarding body;
 - (b) inserting a new provision or altering any existing provision dealing with events of default to provide that an event of default shall arise under the DAA in connection with termination of the concession agreement;
 - (c) inserting a new provision or altering any existing provision dealing with termination notices to provide that a party to the concession agreement shall receive any termination notice relating to termination of the DAA;
 - (d) inserting a new provision or altering any existing provision dealing with novation to provide that the DAA shall be novated to a third party where such third party is a party to the concession agreement or is nominated by a party to the concession agreement but only where such novation and the terms of the same shall have been approved by the ORR;
 - (e) altering any rights of third parties clause in a DAA by naming a party to the concession agreement as a third party directly able to enforce such rights as have been granted to it under such DAA;
 - (f) inserting a new provision or altering any existing provision dealing

with references in the DACs to allow for a party to the concession agreement to be named alongside the Franchising Director and the Strategic Rail Authority, (in each case interpreted as a reference to the Secretary of State, Scottish Ministers or Welsh Government) where applicable; and

- (g) inserting or altering the name and address of a party to the concession agreement in any schedule dealing with contract particulars or addresses for service.

11. Parties may not make any alterations to an existing DAA where a Consultee has an outstanding objection to a Network Rail Change Proposal or to a Proposal for Change in relation to the DACs which are incorporated into that DAA.

Miscellaneous

12. Section 72(5) of the Act says a copy of all new and amended contracts must be sent to ORR within 14 days of being made, including those approved under this general approval. Subject to the requirement in section 72(3) of the Act that ORR have regard to the need to exclude certain information, ORR will enter such copies into the public register.
13. Unless the context otherwise requires, terms defined in the Act, the Interpretation Act 1978, model DAAs and model DACs published by ORR shall have the same meaning in this general approval.



ROBERT PLASKITT
Signed by authority of the ORR
26 January 2017

