

Responses to consultation on new General Approval and guidance for freight facility access contracts

19 February 2018

Respondent	Page
DB Cargo Limited	2
Freightliner Group Limited	6
Geldard Consulting Limited	7
Greater Western	11
Network Rail	13
Rail Freight Group	15
The Welsh Government	18



Katherine Goulding
Senior Executive, Access & Licensing
Office of Rail and Road
One Kemble Street
London WC2B 4AN

DB Cargo (UK) Limited
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

Nigel Oatway
Access Manager

Dear Katherine,

22 September 2017

NEW GENERAL APPROVAL FOR FREIGHT FACILITY ACCESS CONTRACTS

This letter constitutes the response of DB Cargo (UK) Limited (“DBC UK”) to ORR’s consultation document dated 24 July 2017 and entitled “New General Approval for freight facility access contracts”.

General Comments

DBC UK welcomes ORR’s intention to publish a new General Approval for freight facility access contracts (“FFACs”) to replace the current Freight Facility (Ports and Terminals) General Approval 2011. DBC UK supports the use of General Approvals as they can greatly reduce the time and effort required for entering into standard access contracts or making non-contentious changes to existing contracts.

ORR’s specific questions

Q1. Is the proposal to allow contracts of longer duration under the proposed GA suitable? If not, how long a duration should be allowed and why?

DBC UK accepts that in certain circumstances FFACs with durations of longer than 5-years can be warranted (for example, to support specific investments relating to the facility). However, it considers that such FFACs should remain subject to ORR’s specific approval as other long term access contracts in respect of other types of facilities are (for example, a network operated by an infrastructure manager). DB Cargo believes that specific regulatory scrutiny is essential in such cases to ensure that capacity at a facility is not being unduly reserved for long periods of time to the detriment of other beneficiaries and potential future use. Consequently, DBC UK considers that the maximum duration of FFACs (and indeed any other access contracts) entered into by way of General Approval should remain at 5-years as is currently the case.

Other reasons for DBC UK’s view in this respect are as follows:

- Unlike most access contracts for other facilities (i.e. stations, infrastructure manager operated networks and depots), that can be approved by way of a



General Approval, there is no ORR approved model contract in place that ensures that FFACs remain in a standard format and include all of the relevant provisions that would be expected to be included in any access contract. Usually, any deviation from a model contract in respect of other facilities would prevent use of a General Approval and instead require ORR's specific approval. Under ORR's proposals, however, provided that the broad provisos of the General Approval are met, it appears that FFACs can be entered into for up to 10 years in all manner of formats and differing provisions with seemingly little regulatory oversight.

However, whilst DBC UK acknowledges that the consultation document reflects ORR's expectation that 'generally approved' FFACs should include standard access terms, this expectation is not carried forward as a requirement into the General Approval itself. It seems to DBC UK that the only check in place to ensure unsuitable provisions are not included or, on the other hand, essential provisions are not omitted in FFACs for up to 10 years is trusting that a consultee raises relevant concerns during the industry consultation process.

- As stated earlier, there appear to be no limits on the quantum of capacity that can be granted in a FFAC that can be approved by way of a General Approval. Therefore, a beneficiary could conceivably agree with a facility owner to reserve the majority of the available capacity of a freight facility for up to 10 years thereby preventing any possible potential other future use that may not have been envisaged when the agreement was entered into. In DBC UK's view, retaining the maximum duration of 'generally approved' FFACs to 5 years better guards against the possibility of this happening.

In conclusion and for the above reasons, until such time that there is a template model contract in place, the format and provisions of which have been approved by ORR, DBC UK would not support extending the maximum duration of 'generally approved' FFACs beyond 5-years.

Q2. Do you have any comments on the other proposed changes to the GA, or any amendments we have not included which you think we should consider?

DBC UK notes that contracts granting access to Light and Heavy Maintenance Depots are quite rightly excluded from the scope of the proposed General Approval. However, it is becoming increasingly common that many freight facilities are beginning to offer a limited range of light maintenance services (for example, refuelling) as an 'add on' to their normal services such as marshalling, stabling and handling. DBC UK considers that such extensions to services offered at freight facilities should not be discouraged as they can contribute significantly to making efficiency savings both in terms of resources (train crew and locomotives) and network capacity given the ability to reduce the number of light engine movements to and from traditional light maintenance depots ("LMD") for refuelling.

Consequently, DBC UK considers that freight facilities that also offer a limited range of light maintenance services should not be excluded from this General Approval as their

...



prime purpose is operation as a freight facility (i.e. by providing marshalling, stabling and terminal services) and not as a LMD. To treat them as LMDs in terms of access arrangements, thereby requiring the use of the template depot access agreement would not be proportionate in DBC UK's view, particularly as that template does not contemplate the full range of services offered by freight facilities. This would, therefore, leave those freight facilities also offering a limited range of light maintenance services unable to use the freight facilities General Approval as they are not 'pure' freight facilities, and unable to use the template depot access contract without significant modification as they are not 'pure' LMDs. This would imply, therefore, that all access contracts for such facilities would require ORR specific approval in every case, thereby reducing the benefits of the General Approval.

The General Approval provides that any FFAC with a duration of greater than five years must be justified by a related Framework Agreement to the connected network with the Infrastructure Manager. DBC UK has a number of comments on this proviso as follows:

- It does not seem to take account of facilities that are not connected to an infrastructure manager's network but instead are connected to an intermediate facility operated by a third party facility owner (who in turn is connected to the infrastructure manager's network).
- It connects the FFAC with the duration of the Framework Agreement rather than the duration of the relevant rights contained in that Framework Agreement giving access to and from the freight facility concerned. Freight operator Framework Agreements cover a wide range of rights to/from many origins and destinations, some of which can have expiry dates that are shorter than the Framework Agreement within which they are contained. DBC UK considers, therefore, that it should be made more explicit in the General Approval that the duration of the FFAC (if in excess of 5 years) is linked to the duration of the relevant rights to/from that freight facility. Furthermore, there should be a mechanism for the FFAC to terminate or be appropriately amended if the relevant rights in the Framework Agreement which support the longer duration of the 'generally approved' FFAC are surrendered, lost or transferred.

Q3. Would the proposed guidance be useful to you when making an application or when considering the regulatory regime for your facility? Are there any changes or additions to the guidance you think we should consider?

Subject to the concerns raised in this response, DBC UK considers that the proposed General Approval would generally have a positive impact on its business because it will greatly contribute in many cases to reducing the time and effort in either entering into FFACs with facility owners or granting FFACs to beneficiaries requiring access to DBC UK's own facilities.

Given the proposal to no longer include any explanatory notes as part of the General Approval, DBC UK notes that references to 'confidentiality exclusions' will no longer appear. Given that such information is helpful for new entrants and other parties

...



unfamiliar with the public registration process, DBC UK believes that consideration should be given to including appropriate references covering such matters in the guidance module accompanying the General Approval.

As highlighted in DBC UK's comments under Question 1 above, DBC UK is concerned that there remains no ORR approved template FFAC that could form the basis of any new FFAC General Approval. DBC UK considers the absence of a template has resulted in additional legal and management time costs, particularly for those facility owners not experienced in railway access procedures and, therefore, urges ORR to consider developing such a template in collaboration with relevant facility owners who wish to be involved.

DBC UK hopes these comments are helpful. If you require any further information or clarification of DBC UK's views, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Oatway', with a horizontal line underneath.

Nigel Oatway
Access Manager

cc Gordon Herbert ORR

Katherine Goulding
Senior Executive, Access & Licensing
Office of Rail and Road
One Kemble Street
London WC2B 4AN

Freightliner Group Limited
3rd Floor, The Podium
1 Eversholt Street
London NW1 2FL

Web: www.freightliner.co.uk

25 September 2017

Dear Katherine,

This letter constitutes the response of Freightliner Group to the ORR consultation on 'New General Approval for freight facility access contracts'.

Support longer duration contracts under GA

Freightliner supports the proposal to increase the maximum duration of contracts under the Ports & Terminals GA to up to ten years. We note that contracts longer than five years must have a corresponding track access contract for an equivalent or longer duration. In practice that means it is highly unlikely that ten year access contracts will be entered into from the outset. Instead, by increasing the maximum duration that contracts can be 'generally approved', there will be greater opportunity for contracts to roll forwards as business develops. This recognises the practical realities of the market.

Model contract

Freightliner notes that there is currently no ORR approved model contract in place for freight facility access contracts. Freightliner would support the development of such a model contract to ensure consistency and alignment of provisions. We would suggest that this could be an appropriate opportunity to develop such a model contract, alongside the extension of the maximum duration of contracts under the Ports & Terminals GA.

Light-maintenance activities

Many freight facilities also provide a range of other light-maintenance services, for example refuelling. Where such services are offered, but where the prime purpose of the site is for the operation of a freight facility, Freightliner would support the General Approval provisions being extended to include such facilities.

Further discussions

If you require clarification on any of the points raised in this response, or would like to discuss any areas in more detail, please do not hesitate to get in contact with me.

Yours sincerely,



Peter Graham
Rail Strategy Manager
Freightliner Group Limited

Geldard Consulting Ltd – Response to Consultation

(Comments in red)

New General Approval and guidance for freight facility access contracts

1) We are consulting you on a proposal for a new General Approval (GA) for freight facility access contracts. It will replace the Freight Facility (Ports and Terminals) General Approval 2011 (Ports & Terminals GA). The proposed update incorporates changes in the relevant legislation, expands the scope to cover networks not owned by an Infrastructure Manager within Great Britain and includes modifications to make the GA more user friendly.

2) We will also publish a new guidance module for freight facility access alongside the new GA. A draft of our GA for freight facility access contracts and the proposed guidance module are available on our website. The existing Ports & Terminals GA is also on our website.

3) Please email your comments on these new documents to:

Track.Access@orr.gsi.gov.uk by 5pm on 24 September 2017 so that we can take them into account before publishing the final versions.

Background

4) Access contracts relating to access to and the provision of services at many freight facilities do not require ORR's approval given the exemption provided from that requirement by The Railways (Class & Miscellaneous Exemptions) Order 1994. Where that exemption does not apply, access contracts will need approval from ORR. If they are not approved, they will be void.

If a facility is not exempt under RCMEO is it now mandatory that a FOC must enter into an access contract with a facility owner? This was not the case three years ago and despite lengthy intervention by the ORR the FOC in question has still not entered into an FAC with two separate service providers.

Expansion from ports and terminals to all freight facilities

5) Our Ports & Terminals GA provides our approval without requiring a specific application to us, of access contracts and amendments to them, under certain conditions, at such facilities. In light of applications we have received for our specific approval of access to sidings where our Ports & Terminals GA does not apply, we propose to introduce a new, wider-ranging, freight facility GA. We also need to revise it to take into account recent legislative changes. The new GA will replace the current Ports & Terminals GA. It will provide greater flexibility for freight facility owners and their customers to enter into access contracts at freight facilities, reducing the associated transaction costs and timescales.

6) Light Maintenance Depots and Heavy Maintenance Depots are not in the scope of the proposed GA. Light Maintenance Depots have a different access regime and Heavy Maintenance Depots are outside the scope of the Railways Act 1993 (the Act).

This creates a difficulty as several service providers at port and inland terminals provide static refuelling facilities for the use of FOCs. As such under current licencing regulations, they must hold an LMD licence or licence exemption. How does this requirement fit with paragraph 6 above? There is clearly some inconsistency here.

Proposed changes

7) We have also taken the opportunity to consider whether certain terms within the Ports & Terminals GA should be brought forward into the proposed GA. These are identified below and we explain our reasons for these changes.

Duration of contracts

8) We are considering whether freight facility access contracts approved under the proposed GA should be allowed to have long term durations. Currently, we allow for the duration of these contracts under our Ports & Terminals GA for up to five years. We took our lead for this maximum duration from provisions on the duration of framework agreements in The Railways Infrastructure (Access & Management) Regulations 2005. These Regulations are superseded by The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations).

9) The 2016 Regulations create a distinction between Infrastructure Managers and service providers. Infrastructure Managers are bodies such as Network Rail Infrastructure Limited (Network Rail), HS1 and Crossrail. Regulation 21(1), (7), (8) and (9) of the 2016 Regulations relate to the duration of framework agreements between an Infrastructure Manager and an 'applicant' seeking infrastructure capacity. There is no similar restriction on freight facility access contracts between a service provider and its access beneficiaries, but we apply our existing policy of requiring justification for long term access contracts.

10) Therefore we are proposing that longer contracts can be generally approved, with certain restrictions. There will be a limit of ten years and for contracts longer than five years there must be a corresponding track access contract with the Infrastructure Manager (in most cases that will be Network Rail) of the same or greater length of the freight facility access contract. This is to ensure that the parties have mainline network capacity for the services for the whole of the contract. This also allows ORR to retain our overview of longer access contracts through track access contracts we approve.

Q1. Is the proposal to allow contracts of longer duration under the proposed GA suitable? If not, how long a duration should be allowed and why?

This is a welcome change. The length of the track access contract is a valid practical matter but in general there is no need to overly restrict the duration of the FAC. 5 years with a possible extension to 10 years seems about right. As a matter of existing practice, for a service provider operating from multiple sites with a portfolio of FACs there are practical benefits for having a common expiry date for all the Access Contracts.

Consultations

11) We updated the provisions for consultations in the proposed GA to make it clearer and to refer to our established policy on track access consultations. While this policy refers to Network Rail's obligations, it gives a framework for facility owners to use for their own consultations.

This is a valid benefit. Standardising the consultation simplifies the process and avoids unnecessary delays.

Office of Rail and Road

12) We have updated references to "Office of Rail Regulation" to "Office of Rail and Road" throughout the GA. This reflects our change of name, which came into effect in October 2015.

Yes

Refinement of definitions

13) Definitions given in the Interpretation clause as being the same as in the Network Code and model freight contracts have been removed to reduce the number of definitions in the GA itself. The new paragraph 4 states that all terms used which are defined in the Act, Network Code and model freight contracts have the same meaning in the GA.

This seems very sensible and serves to unclutter the GA.

Explanatory notes

14) We removed the explanatory notes as in our view, they did not add any value to the GA, and would expect applicants to refer to our guidance when using the GA.

Wise move

Redactions

15) We have not included in our proposed GA a reference to confidentiality exclusions. We will consider any requested redactions to any and all contracts before placing them on our website and public register under section 71(2) of the Act.

Yes

Q2. Do you have any comments on the other proposed changes to the GA, or any amendments we have not included which you think we should consider?

Terms in freight facility access contracts

16) While there is no model contract for freight facility access contracts, we would expect such contracts to include standard access terms such as conditions precedent, expiry date, charging and performance regimes, a use-it-or-lose-it provision, and termination provisions for non-use.

In the widely used ABP style FAC template some of the above are not included. These are mainly applicable when there is limited capacity on a terminal and optimising usage is an issue. Were this to be the case it would be wise to incorporate provisions for use-it-or-lose-it and non-use. In reality service providers are usually able to accommodate services providing there is some timing flexibility.

17) We expect the same terms and conditions to be offered to all access beneficiaries at the same facility or for there to be good reasons where a service provider differs from that approach. Where agreement over terms of access and the provision of services cannot be reached between a service provider and a prospective access beneficiary, an application can be made to ORR under section 17 of the Railways Act 1993 (the Act) or, where the Act does not apply, regulation 32 of the 2016 Regulations.

Following the fundamental principles of transparency and non-discrimination it is agreed that terms and conditions should be standardised to all access beneficiaries accessing a facility. The point regarding failure to agree terms of access; does this cover the comment made in paragraph 4?

Proposed guidance module

18) We have also taken this opportunity to consult on a new guidance module for freight facility access contracts, as we do not currently have guidance for such contracts. This guidance sets out how we will deal with applications for new contracts and amendments to existing contracts.

The guidance module is a useful guide and covers the main points. The following are noted:

- There is still ongoing inconsistency in ORR terminology between Facility Access Contract and Facility Access Agreement

- Para 11. This seems to answer the question in paragraph 4 above in that “Operators are advised to enter into ORR approved facility access agreements”. The ORR does not state that they must enter.....
- Para 12. This is unwise see paragraph 6 above as terminals offering refuelling facilities offer this service as a minor part of their operation. A Facility Access Contract is far more appropriate and relevant than a Depot Access Contract in these circumstances.
- Para 15. The matter of disputes is well made and is likely to be an unexpected cost for those entering into a new FAC. Only recently has the ADC commenced charging the levy to non-FOC service providers and this has only occurred for holders of FCTACs. Thus far the holders of FACs, despite reference to ADRR in the contracts, have not been required to pay the levy. This is likely to change.

Q3. Would the proposed guidance be useful to you when making an application or when considering the regulatory regime for your facility? Are there any changes or additions to the guidance you think we should consider?

Business Impact assessment

19) We are required to review the impact of any regulatory changes on businesses. We have included a short survey for consultees to help us assess the potential impact of these proposals on businesses. We also welcome any additional comments on how these proposals would affect your business.

To follow

Christopher J Geldard

Director

Geldard Consulting Ltd



From: Rob holder
Sent: Friday, September 22, 2017 1:49 PM
To: Goulding, Katherine Track Access Managers <Track.Access@orr.gov.uk>
Subject: RE: Consultation: New General Approval for freight facility access contracts

Good afternoon Katherine,

Thank you for your email.

GWR supports the proposed General Approval.

It welcomes the requirement that longer duration contracts are available under the GA only to those with a corresponding track access contract with the Infrastructure Manager. In this way the duration justifications applying to the tac automatically apply to the facility access contract. (Should the corresponding tac be one Approved by the ORR?)

Re the business impact assessment (intended for freight companies), in so far as GWR (a non-freight company) is concerned one person will read the final GA and guidance; this will be when published and again if needed to check proper use; the benefit to GWR is likely to be within £5,000 pa. The General Approval system is welcomed (the prime benefit from passenger tac GA is speed of implementation for late notice issues), as is the detail of this proposal.

Many thanks for consulting us.

Rob

Robert Holder | Network Access Manager | Great Western Railway
1 Milford Street | Swindon | SN1 1HL

First Greater Western Limited | Registered in England and Wales number 05113733
Registered office: Milford House, 1 Milford Street, Swindon SN1 1HL.

From: Goulding, Katherine
Sent: 24 July 2017 13:52
To: Track Access Managers <Track.Access@orr.gov.uk>
Subject: Consultation: New General Approval for freight facility access contracts

Dear all (by bcc email),

Consultation: New General Approval for freight facility access contracts

We are consulting you on a proposal for a new General Approval for freight facility access contracts. The purpose of this consultation is to seek views on a proposed new General Approval to replace the Freight Facility (Ports and Terminals) General Approval 2011, and on a new guidance module for freight facility access.

The proposed update incorporates changes in the relevant legislation, expands the scope to cover networks not owned by an Infrastructure Manager within Great Britain and are not heavy or light maintenance depots, and includes modifications to make the General Approval more user friendly.

This consultation is aimed at all Freight Operating Companies, Service Facility Owners, Freight Customer Track Access Contract holders and potential holders of such contracts, Infrastructure Managers and Train operating companies. The closing date is **24 September 2017 at 5pm** .

The consultation letter and the associated documents can be found here on our website:

<http://www.orr.gov.uk/rail/consultations/open-consultations/new-general-approval-and-guidance-for-freight-facility-access-contracts>

Please send any comments you may have to track.access@orr.gsi.gov.uk . If you do not have any comments, you do not need to reply. Please note that you might not be the only person in your organisation on our list who has received this email.

Thank you for your assistance.

Regards,

Katherine Goulding | Senior Executive, Access and Licensing

Office of Rail and Road | One Kemble Street | London | WC2B 4AN

Tel:

Web: www.orr.gov.uk | Twitter: [@railandroad](https://twitter.com/railandroad)





Katherine Goulding
Senior Executive, Access and Licensing
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Network Rail The
Quadrant MK
Elder Gate
Milton Keynes
MK9 1EN

22 September 2017

Dear Katherine

Consultation on New General Approval and guidance for freight facility access contracts

Network Rail welcomes the opportunity to respond to ORR's consultation on its proposal for a new General Approval (GA) for freight facility access contracts which will replace the Freight Facility (Ports and Terminals) General Approval 2011. No part of this response is confidential and we are content for it to be published in full.

Network Rail recognises that the proposed update incorporates changes in the relevant legislation, expands the scope to cover networks not owned by an Infrastructure Manager within Great Britain and includes modifications to make the GA more user friendly. Network Rail, recognises that the new GA will provide greater flexibility for freight facility owners and their customers to enter into access contracts at freight facilities and reduce associated transaction costs and timescales. For these reasons, Network Rail supports ORR's proposal to introduce a new GA for freight facility access contracts.

For clarity, we respond to the specific questions raised in ORR's conclusion below.

Q1. Is the proposal to allow contracts of longer duration under the proposed GA suitable? If not, how long a duration should be allowed and why?

Network Rail supports ORR's proposition to allow parties to enter into freight facility access contracts with duration of up to ten years under the proposed GA. ORR's proposal fits well with the provisions on the duration of framework agreements in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. We note that for contracts longer than five years there must be a corresponding track access contract with the Infrastructure Manager of the same or greater length of the freight facility access contract. We recognise that this will allow ORR to retain its overview of longer access contracts through track access contracts that it approves and ensure that the parties have mainline network capacity for the services for the duration of the contract.

Q2. Do you have any comments on the other proposed changes to the GA, or any amendments we have not included which you think we should consider?

Network Rail does not have any other comments on the other proposed changes to the General Approval.

Q3. Would the proposed guidance be useful to you when making an application or when considering the regulatory regime for your facility? Are there any changes or additions to the guidance you think we should consider?

Network Rail believes the proposed guidance document would be useful when making an application. We do not believe that any further changes or additions to the guidance are required.

We welcome the ORR consultation on the New General Approval and guidance for freight facility access contracts and look forward to working with ORR going forward to ensure the approach is joined up.

Yours sincerely

Kush Desai

Kush Desai
Senior Reform Specialist
Network Rail

Rail Freight Group – Response to Consultation

(RFG comments are shown in red)

Background

4) Access contracts relating to access to and the provision of services at many freight facilities do not require ORR's approval given the exemption provided from that requirement by The Railways (Class & Miscellaneous Exemptions) Order 1994. Where that exemption does not apply, access contracts will need approval from ORR. If they are not approved, they will be void.

It should be clarified whether, if a facility is not exempt under RCMEO is it now mandatory that a FOC must enter into an access contract with a facility owner? There appears to be some uncertainty on this.

Expansion from ports and terminals to all freight facilities

5) Our Ports & Terminals GA provides our approval without requiring a specific application to us, of access contracts and amendments to them, under certain conditions, at such facilities. In light of applications we have received for our specific approval of access to sidings where our Ports & Terminals GA does not apply, we propose to introduce a new, wider-ranging, freight facility GA. We also need to revise it to take into account recent legislative changes. The new GA will replace the current Ports & Terminals GA. It will provide greater flexibility for freight facility owners and their customers to enter into access contracts at freight facilities, reducing the associated transaction costs and timescales.

6) Light Maintenance Depots and Heavy Maintenance Depots are not in the scope of the proposed GA. Light Maintenance Depots have a different access regime and Heavy Maintenance Depots are outside the scope of the Railways Act 1993 (the Act).

Although we support the aims of creating a wider GA including sidings, this creates a specific difficulty as several service providers at port and inland terminals provide static refuelling facilities for the use of FOCs. As such under current licencing regulations, they must hold an LMD licence or licence exemption. This conflicts with paragraph 6 above and must be clarified.

Proposed changes

7) We have also taken the opportunity to consider whether certain terms within the Ports & Terminals GA should be brought forward into the proposed GA. These are identified below and we explain our reasons for these changes.

Duration of contracts

8) We are considering whether freight facility access contracts approved under the proposed GA should be allowed to have long term durations. Currently, we allow for the duration of these contracts under our Ports & Terminals GA for up to five years. We took our lead for this maximum duration from provisions on the duration of framework agreements in The Railways Infrastructure (Access & Management) Regulations 2005. These Regulations are superseded by The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations).

9) The 2016 Regulations create a distinction between Infrastructure Managers and service providers. Infrastructure Managers are bodies such as Network Rail Infrastructure Limited (Network Rail), HS1 and Crossrail. Regulation 21(1), (7), (8) and (9) of the 2016 Regulations relate to the duration of framework agreements between an Infrastructure Manager and an 'applicant' seeking infrastructure capacity. There is no similar restriction on freight facility access contracts between a service provider

and its access beneficiaries, but we apply our existing policy of requiring justification for long term access contracts.

10) Therefore we are proposing that longer contracts can be generally approved, with certain restrictions. There will be a limit of ten years and for contracts longer than five years there must be a corresponding track access contract with the Infrastructure Manager (in most cases that will be Network Rail) of the same or greater length of the freight facility access contract. This is to ensure that the parties have mainline network capacity for the services for the whole of the contract. This also allows ORR to retain our overview of longer access contracts through track access contracts we approve.

Q1. Is the proposal to allow contracts of longer duration under the proposed GA suitable? If not, how long a duration should be allowed and why?

We support this change.

Consultations

11) We updated the provisions for consultations in the proposed GA to make it clearer and to refer to our established policy on track access consultations. While this policy refers to Network Rail's obligations, it gives a framework for facility owners to use for their own consultations.

We support this change.

Office of Rail and Road

12) We have updated references to "Office of Rail Regulation" to "Office of Rail and Road" throughout the GA. This reflects our change of name, which came into effect in October 2015.

Refinement of definitions

13) Definitions given in the Interpretation clause as being the same as in the Network Code and model freight contracts have been removed to reduce the number of definitions in the GA itself. The new paragraph 4 states that all terms used which are defined in the Act, Network Code and model freight contracts have the same meaning in the GA.

We support this change.

Explanatory notes

14) We removed the explanatory notes as in our view, they did not add any value to the GA, and would expect applicants to refer to our guidance when using the GA.

Redactions

15) We have not included in our proposed GA a reference to confidentiality exclusions. We will consider any requested redactions to any and all contracts before placing them on our website and public register under section 71(2) of the Act.

Q2. Do you have any comments on the other proposed changes to the GA, or any amendments we have not included which you think we should consider?

Terms in freight facility access contracts

16) While there is no model contract for freight facility access contracts, we would expect such contracts to include standard access terms such as conditions precedent, expiry date, charging and performance regimes, a use-it-or-lose-it provision, and termination provisions for non-use.

17) We expect the same terms and conditions to be offered to all access beneficiaries at the same facility or for there to be good reasons where a service provider differs from that approach. Where agreement over terms of access and the provision of services cannot be reached between a service provider and a prospective access beneficiary, an application can be made to ORR under section 17 of the Railways Act 1993 (the Act) or, where the Act does not apply, regulation 32 of the 2016 Regulations.

We support this approach, subject to a flexible and pragmatic approach being taken. For example, performance regimes may not be enforced by facility operators, and if facilities are not close to capacity then certain provisions may not need to be expressed in detail.

Proposed guidance module

18) We have also taken this opportunity to consult on a new guidance module for freight facility access contracts, as we do not currently have guidance for such contracts. This guidance sets out how we will deal with applications for new contracts and amendments to existing contracts.

The guidance module is a useful guide and covers the main points. The following comments have been received from users;

- There is still ongoing inconsistency in ORR terminology between Facility Access Contract and Facility Access Agreement
- Para 11. This seems to answer the question in paragraph 4 above in that “Operators are advised to enter into ORR approved facility access agreements”. The ORR does not state that they must enter.....
- Para 12. This is unwise see paragraph 6 above as terminals offering refuelling facilities offer this service as a minor part of their operation. A Facility Access Contract is far more appropriate and relevant than a Depot Access Contract in these circumstances.
- Para 15. The matter of disputes is well made and is likely to be an unexpected cost for those entering into a new FAC. Only recently has the ADC commenced charging the levy to non-FOC service providers and this has only occurred for holders of FCTACs. Thus far the holders of FACs, despite reference to ADRR in the contracts, have not been required to pay the levy. This is likely to change.

Q3. Would the proposed guidance be useful to you when making an application or when considering the regulatory regime for your facility? Are there any changes or additions to the guidance you think we should consider?

Business Impact assessment

19) We are required to review the impact of any regulatory changes on businesses. We have included a short survey for consultees to help us assess the potential impact of these proposals on businesses. We also welcome any additional comments on how these proposals would affect your business.

No further comments.

From: Ann.Thomas

Sent: Wednesday, September 20, 2017 1:16 PM

To: Goulding, Katherine **Subject:** FW: Consultation: New General Approval for freight facility access contracts

Good Afternoon Katherine

The Welsh Government are content and have no further comments to make on this proposal.

Regards

Ann

Ann Thomas

Yr Uned Rheilffyrdd/Rail Unit

Adran yr Economi a'r Seilwaith – Department for Economy & Infrastructure

Llywodraeth Cymru/Welsh Government

From: Goulding, Katherine

Sent: Monday, July 24, 2017 01:52 PM

To: Track Access Managers <Track.Access@orr.gov.uk>

Subject: Consultation: New General Approval for freight facility access contracts

Dear all (by bcc email),

Consultation: New General Approval for freight facility access contracts

We are consulting you on a proposal for a new General Approval for freight facility access contracts. The purpose of this consultation is to seek views on a proposed new General Approval to replace the Freight Facility (Ports and Terminals) General Approval 2011 and on a new guidance module for freight facility access.

The proposed update incorporates changes in the relevant legislation, expands the scope to cover networks not owned by an Infrastructure Manager within Great Britain and are not heavy or light maintenance depots, and includes modifications to make the General Approval more user friendly.

This consultation is aimed at all Freight Operating Companies, Service Facility Owners, Freight Customer Track Access Contract holders and potential holders of such contracts, Infrastructure Managers and Train operating companies. The closing date is **24 September 2017 at 5pm** .

The consultation letter and the associated documents can be found here on our website:

<http://www.orr.gov.uk/rail/consultations/open-consultations/new-general-approval-and-guidance-for-freight-facility-access-contracts>

Please send any comments you may have to track.access@orr.gsi.gov.uk . If you do not have any comments, you do not need to reply. Please note that you might not be the only person in your organisation on our list who has received this email.

Thank you for your assistance.

Regards,

Katherine Goulding | Senior Executive, Access and Licensing

Office of Rail and Road | One Kemble Street | London | WC2B 4AN

Tel:

Web: www.orr.gov.uk | Twitter: [@railandroad](https://twitter.com/railandroad)