

Rail - Freight Facility (Ports and Terminals) General Approval

August 2009

Introduction

In this Rail Briefing we look at the draft Freight Facility (Ports and Terminals) General Approval and its likely impact if introduced.

On 22 June 2009 the Office of Rail Regulation circulated a draft Freight Facility (Ports and Terminals) General Approval for comment by interested parties. Its stated aim is to help regularise contractual access arrangements at freight facilities whilst ORR continues to develop access exemptions.

Whilst the consultation process has now closed and a formal response is awaited from ORR we look at some of its key provisions.

Effect of the General Approval

The draft General Approval is relatively short (running to just over two pages) and most of the operative provisions are found in Regulation 5 which permits any Relevant Facility Owner to enter into a Facility Access Agreement provided that it complies with certain requirements. These key terms are:

- (a) The Facility Access Agreement requires a signed copy of the Facility Access Agreement to be sent by the Relevant Facility Owner to ORR within 14 days of being entered into;
- (b) The Facility Access Agreement must terminate no later than 31 December 2011 and no amendment to it shall have the effect of terminating the Facility Access Agreement after 31 December 2011; and
- (c) Any amendment to the Facility Access Agreement will only take effect 14 days after an amended copy has been sent by the Relevant Facility Owner to the ORR.

For the purposes of the draft General Approval a Facility Access Agreement is any access contract under which a beneficiary obtains permission from a relevant Facility Owner to use its Railway Facility for the purpose of operation of trains in connection with the transport of goods.

A Railway Facility itself is defined as any network which is located within a port or terminal and/or any network which adjoins a port or railway terminal.

It is therefore widely expressed and would (if implemented) seem to allow a port or terminal operator to enter into an access agreement with a beneficiary without the prior consent of ORR.

Implementation of the General Approval

ORR does not explicitly state a timetable for implantation, however since consultation on the provisions ended on 20 July 2009 and the draft provides for the general approval to expire on 31 December 2009, it is assumed that it will be introduced in short order.

It is interesting to note from the draft that ORR reserves the right to revoke it if required, although grounds for revocation are not specified and therefore it must be assumed this can take place at will.

Whether or not the General Exemption will be extended (and if so, in what form) will be dependent on the outcome of ORR's review of the ports and terminals freight facility market and whether a long term access exemptions policy is appropriate. ORR sets out no specific timetable for further consultation although it is expected to take place later on in the year.

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