



ORR Stations/Depots access consultation

The Office of Rail Regulation ('ORR') recently issued their proposed criteria and procedures for the approval of station and depot access agreements. The consultation remains open until 29 October 2010.

The proposed criteria and procedures follow previous consultations in relation to access that have brought about the General Approval (Stations) 2010 and the General Approval (Depots) 2010 as well updated template station access documentation. Much of the proposed criteria and procedures are necessarily dedicated to a summary of the General Approvals and how the expanded ambit of General Approvals will work. Otherwise, the criteria looks at the procedures under sections 18 and 22 of the Railway Act 1993 (the 'Act') for approving new or amended agreements with ORR, and sections 17 and 22A of the Act where applications are made for determination of disputed new or amended access agreements.

In practice the consultation does not introduce anything which is a major departure from the current procedure but instead tries to codify what the procedures are, not least for the benefit of ORR themselves. Below we outline some of our initial thoughts on the draft criteria.

One key aspect operators and facility owners will be looking for, are the timescales for directions or a decision in relation to submissions so that they can then be firmly built into project timetables and relied upon. Generally, ORR has stopped short of committing to robust timescales, instead offering some guidance:

1. **General Approvals** - Under a General Approval submission ORR "expect" to be able to process a submission within two weeks of receipt of all required information but their processing of the submission will not effect the date on which the generally approved agreement comes into force.

2. **New Access Agreements** - A submission to enter a new agreement under section 18 of the Act should be "at least" six weeks before the proposed commencement date. ORR state that they cannot ensure approval by any date specified, should this condition not be met.
3. **Amending Agreements** - The timescale for approving amendments under section 22 of the Act is "within" six weeks of receiving all relevant information.
4. **ORR Determinations** - Submissions under either section 17 or section 22A are given timescales for consultation with interested persons, however the timescale for ORR themselves to make their decision is not stated. It would be helpful if operators knew the potential timescale for a decision to be reached and, ideally, ORR would commit to providing a decision within a specific timeframe following the close of consultation with interested persons. They could provide two options for where a hearing either is or is not required. Likewise, if a hearing is required, ORR need to provide further detail as to when that is likely to take place during the process: would it be instead of seeking written submissions from interested persons or in addition to written submissions?

Furthermore, the criteria for when a hearing is necessary could be strengthened from where it would simply "add value" to where it would be of 'significant value' or there is 'a material commercial interest' to be determined. Hearings use up valuable internal resources and external consultants costs and so should be avoided where possible.

Therefore, whilst the document is a useful codification of the current position there are aspects where further detail can be added or where firmer procedures can be imposed and operators should look carefully at the proposed criteria and procedures.

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