

APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A PASSENGER TRACK ACCESS AGREEMENT, OR AMENDMENT TO A PASSENGER TRACK ACCESS AGREEMENT UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

1. Introduction

Please use this form to apply to the Office of Rail and Road (ORR) for:

- directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.3. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps). The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model passenger track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: www.orr.gov.uk

2. The application

2.1 Title of proposed contract or supplemental agreement (please also include the section of the Railways Act 1993 under which you are applying):

Virgin West Coast Trains Limited 21st Supplemental, applied for under Section 22A of the 1993 Act

2.2 Contact details (Company and named individual for queries):

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail	Company: West Coast Trains Limited
Contact individual: Carew Satchwell	Contact individual: Darren Horley
Job title: Route Contracts Manager (LNW)	Job title: Head of Commercial Operations
Address: Network Rail Baskerville House Centenary Square Broad Street Birmingham B1 2ND	Address: Ground Floor Victoria Square House Victoria House Birmingham B2 4DN
Telephone number:	Telephone number: [REDACTED]
Fax number: [REDACTED]	E-mail address: [REDACTED]
E-mail address: [REDACTED]	

2.3 Licence and railway safety certificate: please state whether you intend to operate the services yourself or have them operated on your behalf.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. If the answer to (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate.

C&Ps paras 3.9-3.15

Train operating licence: West Coast Trains Limited (the "Train Operator") holds a valid train operating licence under section 8 of the Railways Act 1993 and a European licence for the purposes of the Railways (Licensing of Railways Undertakings) Regulations 2006.

Railway Safety Case: The Train Operator holds a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

3. The proposed contract or amendment

3.1 Executive summary: please provide an executive summary of the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely, and fully highlight the changes from the previous version of the contract (in the case of an amendment). **C&Ps para 3.22-3.28**

Please also explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate). **C&Ps paras 4.9-4.11**

Please also state the commencement and end dates for the proposal, and for new agreements or extensions to existing agreements, provide justification for the proposed length of the application, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#). If you are a franchised operator, please state the expiry date of your franchise. **C&Ps paras 4.72-4.79**

The additional rights are being sought to operate additional services from London Euston to/from Blackpool North. Since we began operations to/from Blackpool North in December 2014 demand has increased and this application seeks to cater for this growth, which is expected to increase further post-electrification. There is also a potential opportunity to consider acceleration of some Anglo-Scottish services, because of the operation of these new services.

The proposed date of commencement is the May 2018 Subsidiary Change Date (SCD). The rights will terminate or expire in accordance with the existing provisions within the Track Access Contract.

The Train Operator is proposing to introduce three additional services a day in each direction, Monday to Saturday. The services depart at 0646, 0853 and 1053, calling at Rugby, Warrington Bank Quay, Wigan North Western, Preston, and Blackpool North. The return services from Blackpool North depart at 1045, 1245 and 1445, calling at Preston, Wigan North Western, Warrington Bank Quay, Rugby, and London Euston. We will discuss with DfT options to stop additionally at Watford Junction and Milton Keynes Central.

The amendments to Schedule 5 of the Contract necessitate consequential amendments to Schedule 7.

This application seeks to make the following amendments to the TAC:

Schedule 5

Amendments to Table 2.1 "Passenger Train Slots" to provide three additional return services per day to Blackpool North (Monday to Saturday). The services are to be operated using 9-car and 11-car Class 390 rolling stock.

Schedule 7

Amendments to Appendix 7C, Default Train Consist Data to identify Blackpool North as an origin and destination.

3.2 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): please set out here any areas of the application which have **not** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions. **C&Ps para 3.102**

Network Rail cannot agree to the Section 22 because performance modelling has not been completed (being undertaken currently).

3.3 Departures from ORR's model passenger track access contract: please set out and explain here any:

- areas where the drafting of the application changes ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made. **C&Ps paras 2.34-2.37**
- instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate). **C&Ps paras 5.1-5.44**
- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete. **C&Ps paras 6.2-6.3**

Not Applicable

4. The expression of access rights and the use of capacity

4.1 Benefits: please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also describe any significant changes in the pattern of services, their benefits to passengers and any impact on other operators, including freight operators. Where appropriate, please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application. **C&Ps paras 4.26-4.35**

The proposed services provide additional direct journey opportunities between London and Blackpool North. The services also provide crowding relief to existing services, and take advantage of the route enhancements provided under the North West Electrification Scheme (electrification and upgrade of the Preston – Blackpool North route).

4.2 Adequacy: please set out how you have satisfied yourself that there is enough network capacity for the services in the proposal. Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. **C&Ps paras 4.12-4.45**

The paths we are seeking are, in part, already used in other hours of the day. Those that are not already used in other hours have been identified taking into consideration both our own, and other operators' train services, and we believe do not conflict with current access rights. Whilst NR has not yet identified how to make use of its flexing rights to resolve any timetable conflicts, it is a reasonable assumption to make (as we did with the Lancaster to Glasgow extensions and new services to Blackpool and Shrewsbury), that there is sufficient capacity for these services as we operate in a standard pattern timetable.

Network Rail has previously agreed a greater number of similar access rights with GNWR but that contract has now expired.

We are modelling the performance implications of the additional services in terms of their impact upon our own operation, but expect this to be negligible on the basis that we are only seeking an additional 6 paths per day and we will be using proven, high performing, tilting rolling stock to operate the services.

4.3 Flexing rights: please provide a general description of the extent of any limitations on the facility owner's flexing rights in the proposal. Please provide the rationale for the extent of any limitation on the flex provided, including any changes to pre-existing services, and the extent to which the provisions have been agreed with the facility owner. **C&Ps paras 2.27-2.33**

Not Applicable

4.4 Journey time protection: please describe whether the proposed contract gives journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the reasons for this, with reference to ORR's criteria. **C&Ps paras 8.90-8.103**

Not Applicable

4.5 Specified equipment: please give full details of any changes to specified equipment (rolling stock), including timescales, and how much of the vehicle and route acceptance procedure in the Network Code (Part F) has been completed. Please explain whether you have, or will have, the rolling stock necessary to exercise the rights being sought. **C&Ps paras 8.87-8.90**

The additional services are to be operated using 9-car and 11-car Class 390 'Pendolino', rolling stock. The Class 390 will be authorised to operate over the route to Blackpool North on completion of the electrification scheme.

4.6 Franchise obligations: please explain whether the proposed services are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps paras 4.3-4.4**

Not Applicable

4.7 Public funding: please state whether (and if so to what extent) the proposed services are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives. Please also provide a point of contact at that body. **C&Ps paras 3.52, 4.25, 4.35-4.39**

Not Applicable

4.8 Passenger Focus and, where applicable, London TravelWatch: please state whether (and if so to what extent) the proposed services have been discussed with these bodies. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

Passenger Focus has not been consulted but they will be as part of this consultation.

4.9 Route utilisation strategies (RUSs): if applicable, please state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

The proposed services are consistent with the West Coast and North West RUS documents, to support growth in developing markets, and well as forecast growth in demand between London Euston and the North West.

5. Incentives

5.1 Train operator performance: please describe any planned projects associated with the operation of the proposed services aimed at improving your performance. **C&Ps paras 4.26-4.36**

Not Applicable

5.2 Facility owner performance: please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's own performance. **C&Ps paras 4.26-4.36, 5.1**

Not Applicable

5.3 Monitoring of services: would all proposed services be monitored for performance throughout their journeys, consistent with our policy in paragraph 5.50 of the criteria and procedures? If not, please state the reasons for this is in line with the permissible circumstances described in paragraph 5.51 of the criteria and procedures. **C&Ps paras 5.50-5.56**

Not Applicable

5.4 Performance regime changes (for applications under sections 17 or 22A only): where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed. **C&Ps para 5.38-5.40**

The proposal does not depart from the established Schedule 8 in the TAC.

6. Enhancement

6.1 Enhancement details: where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework). **C&Ps paras 4.80**

The proposal is subject to NR delivering planned enhancements (electrification and associated route enhancements) to enable electric services to operate to/from Blackpool North from the commencement date of these rights (the May 2018 Subsidiary Change Date).

6.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's [Policy Framework for Investments](#), and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document). **C&Ps paras 5.6, 5.12-5.14**

Not Applicable.

7. Other

7.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, station or light maintenance depot access contracts). **C&Ps paras 3.18-3.19**

Not Applicable.

7.2 Supporting information, side letters and collateral agreements: please:

- state here any relevant information in support of the proposal, including a list and explanation of any other material being submitted (and supply copies with the application). **C&Ps para 4.33**
- confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it. **C&Ps paras 6.12-6.16, 6.21**

Supporting Documents

F3 Prints
Table 2.1 – Passenger Train Slots
SoAR Form
Appendix 7C – Default Train Consist Data

7.3 Confidentiality exclusions: please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the proposed contract sent to consultees for any pre-application consultation process, and provide reasons. If there has been no pre-application consultation, you should state any parts of the application and proposed contract you want us to exclude from publication. **C&Ps paras 3.29-3.34**

Not applicable

Note: Where a pre-application consultation is to be undertaken in line with the Code of Practice, the remainder of this application should not be completed until after that consultation has been completed

8. Pre-application consultation

8.1 The consultation: has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state who conducted the consultation;
- list all train operators, franchising authorities and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. If this was less than 28 days, please explain the reasons for this.

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **C&Ps paras 3.62**

The consultation was conducted by Network Rail and involved the following consultees: Arriva Rail North, Transport Focus, Alliance Rail, TransPennine Express & Transport for Greater Manchester. Please see attached responses.

8.2 Resolved issues: please set out any issues raised by consultees which have been satisfactorily resolved. You may wish to refer to responses attached to this form. Please explain any changes as a result of the consultation.

Northern Railway

Northern Railway raised four main points:

1/Proposed paths haven't been validated against the May 2018 timetable – we have advised Northern that Network Rail are currently carrying out this validation process.

2/Requirement for a more robust regulation policy between Euxton Jn and Preston – we have advised that this will be reviewed, but that it can only happen once the May 2018 timetable has been finalized.

3/Servicing and stabling at Blackpool North Station – we have advised that we have no current plans to either service or stable our sets at Blackpool North Station.

4/Operational details of serving Kirkham & Wesham and Poulton Le Fylde Stations – Northern have acknowledged in their response that VTWC are investigating this with the DfT. Results of this process will be available in due course.

TransPennine Express(TPE)

TPE asked about performance analysis and available capacity – we have advised that Network Rail are carrying out a Performance Assessment and that the results of this will be available in due course.

Transport for Greater Manchester(TfGM)

TfGM asked about how these services may affect punctuality and performance of services from May 2018 – we have advised that Network Rail are currently validating our proposed paths against May 2018 timetable data, and also carrying out a Performance Assessment, the results of which will be available in due course.

Please see attached documents for all correspondence.

8.3 Unresolved issues: please set out any issues raised by consultees which have ***not*** been satisfactorily resolved, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you think these issues should not stop ORR approving the application.

Alliance Rail Holdings

Extract from Alliance's Response:

“Alliance is concerned that Virgin Trains is seeking to provide open access services using franchised assets. We alert our concerns to the ORR as competition regulator, as the provision of these services using franchised assets would clearly give Virgin an unfair competitive advantage, while the use of franchise assets in this manner raises immediate concerns regarding illegal state aid.”


Please see attached documents.

9. Certification

*Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution **C&Ps para 3.40***

In the case of agreed applications under section 18 or 22, Network Rail should fill in the required information in the box below. For disputed applications under section 17 or 22A, the applicant should fill in the required information.

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed ...  Date14/09/17.....

Name (in caps) DARREN HORLEY..... Job title Head of Commercial Operations

For (company)West Coast Trains Limited.....

10. Submission

10.1 What to send: please supply, in hard copy, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information. **C&Ps para 3.39**

Please also supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting). **C&Ps para 3.37-3.38**

10.2 Where to send it:

Manager, Track Access Team
Directorate of Railway Markets and Economics
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

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Form **P**

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