

Application to the Office of Rail Regulation 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 Regulation (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.rail-reg.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):

Extension and expansion of Edinburgh to Dunbar services to Berwick upon Tweed.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Ltd	Company: Abellio ScotRail Limited
Contact individual: Nicholas Prag	Contact individual: Sam Price
Job title: Customer Relationship Executive	Job title: Head of Contracts
Address: 151 St Vincent Street	Address: Atrium Court
Glasgow	50 Waterloo Street
G2 5NW	Glasgow
	G2 6HQ
Telephone number: 0141 555 4133	Telephone number: 07730750938
Fax number: 0141 555 4931	Fax number: 0141 335 4206
E-mail address: nicholas.prag@networkrail.co.uk	E-mail address: sam.price@firstgroup.com

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

Abellio ScotRail Limited has a valid train operating licence and an accepted Railway Safety Case 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**

Date of commencement: The commencement date for the service changes will be 15 May 2016.

End date: Service changes are for the duration of Abellio ScotRail's Track Access Agreement

This Supplemental Agreement relates to;

- a change incorporating the extension of existing access rights between Edinburgh and Dunbar to Berwick upon Tweed;
- new access rights to run a Sunday service between Edinburgh and Berwick upon Tweed;

Schedule 4

Annex B to Part 3 of Schedule 4 to be amended to reflect new VTP at Berwick upon Tweed vice Dunbar.

Schedule 5

Edinburgh to Berwick upon Tweed

The service changes would see the 5 current Edinburgh to Dunbar services extended to Berwick upon Tweed.

Berwick upon Tweed to Edinburgh

The service changes would see the 5 current Dunbar to Edinburgh services to start back from Berwick upon Tweed – this presumes that this occurs after Abellio receive rights to run the 07:00 Dunbar to Edinburgh currently held by Cross Country as the current rights are for 4 services between Dunbar and Edinburgh.

Sunday Services

Additional access rights are sought to run 4 services in each direction between Edinburgh and Berwick upon Tweed on Sundays from the service change date.

Calling Patterns

The normal calling pattern for the services would be Dunbar and Musselburgh.

Additional Passenger Train Slots

The Train Operator's existing Contingent Rights for the Edinburgh to Dunbar route would be extended to Berwick upon Tweed.

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***

We have informally engaged with Network Rail to seek access rights and have been advised that there are a number of competing applications for capacity on this route. With the recent change in franchise operator our recent discussions with Transport Scotland have indicated that this service enhancement is a key aspiration of the Scottish Government.

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**

N/A

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 changes will provide an enhanced passenger service between Berwick upon Tweed and Edinburgh and will include future service provision for the new stations at Reston and East Linton. Similarly the introduction of a Sunday service on this route will allow future provision at the two new stations.

Providing communities remote to the rail network with a direct rail connection in line with Scottish Government policy.

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**

Validated train paths have been produced for the timetable changes. These are based on the May 2015 timetables. Services are looped at various points to accommodate the existing train paths. There are some possible journey time improvements if Network Rail is willing to relinquish certain strategic freight paths.

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**

N/A

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**

N/A

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**

There will be no change in the specified equipment.

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**

The service changes are required to fulfil obligations under Abellio ScotRail's new franchise agreement with Transport Scotland, or a request from same. There is a priced option within the Abellio ScotRail Franchise Agreement (PO1) which requires the introduction of an enhanced two-hourly service between Edinburgh and Berwick-upon-Tweed. Copy of priced option text attached.

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**

N/A

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

Passenger Focus are aware of the aspiration as a priced option within the Franchise Agreement.

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**

All major amendments are in line with the Scotland RUS, and are consistent with the emerging route plan.

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**

N/A

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**

N/A

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**

Yes

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**

No changes are proposed.

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**

New stations at East Linton and Reston are under development and are currently at GRIP 2. These stations will be funded through SEStran's with support from the Scottish Station Fund. They are planned to be open by 2018.

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**

N/A

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**

Station Access rights for Berwick upon Tweed.

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**

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- 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**

Draft timetable attached with supporting letter.

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**

N/A

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**

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.

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.

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N/A

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 Date

Name (in caps) Job title

For (company)

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 Regulation
One Kemble Street
London
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