

1.

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) and, where appropriate, to the [Industry Code of Practice](#) for track access application consultations (the Code of Practice). 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:

Track Access Contract (Passenger Services) between Network Rail Infrastructure Limited ("NR") and East Midlands Trains Ltd ("EMT"), made under Section 17 of the Railway Act 1993

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

Facility Owner

Company: Network Rail

Contact individual: ✕

Job title: Route Commercial Manager

Address: 4th Floor, George Stephenson House

Toft Green

York

YO1 6JT

Telephone number: ✕

Fax number: NA

E-mail

✕

address:

Beneficiary

Company: East Midlands Trains

Contact individual: ✕

Job title: Track Access & Network Change Manager

Address: Prospect House

Prospect Place

Millennium Way

Derby DE24 8HG

Telephone number: ✕

Fax number: ✕

E-mail address:

✕

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

East Midlands Trains Ltd will be operating the services and is the holder of a Safety Certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. This certificate was issued on 11 October 2012.

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: December 2020 (PCD 2020)

End date: December 2021 (PCD 2021)

The purpose of this application is to extend the duration of the current Track Access Contract between Network Rail and East Midlands Trains from the PCD 2020 to the PCD 2021. It seeks to do this by changing the definition of 'Expiry Date' in clause 1.1 of the contract, from its current definition of 'Principal Change Date 2020 to 'Principal Change Date 2021'.

East Midlands Trains (EMT) has been directed by the Department for Transport (DfT) to extend the current Track Access Agreement by a year to PCD 2021 which will allow business continuity. This is consistent with the Office of Rail and Road's guidance on the orderly transfer to a new franchisee to ensure the continuation of priority bidding rights, and reflects the delay in [the planned start date of the new East Midlands franchise which is now anticipated to take place by 18 August 2019 at the earliest and 2 February 2020 at the latest.](#) It will provide EMT, DfT and the successor franchisee with the ability to plan their businesses with a reasonable degree of certainty while the timetable development processes is ongoing.

No changes are proposed to train services through this application.

No new safety risks have been identified because there are no proposed changes to services that currently operate. The existing controls will continue to apply.

Note: further updates (as on 10th May 2019) since Industry Consultation:

It is confirmed that the winning bidder Abellio will run the next East Midlands rail franchise from 18th August 2019 (to 2027).

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's Sale of Access Rights Panel in December 2018 and November 2018 have stated they are unable to support this application as they wish to wait for the DfT to announce the outcome of the East Midlands Franchise Award.

East Midlands Trains does not believe that the outcome of the EM Franchise award should have a material bearing on the application for an extension to the Track Access Agreement as all bidders would fulfil the requirements of Para 2.3. The reasonable extension of track access agreements to give incoming franchisees business certainty is a long standing and accepted part of the regulatory approach to dealing with franchise change and EMT believes it should continue to apply here.

Note: further updates (as on 10th May 2019) since Industry Consultation:

Since the initial announcement and confirmation of the new EM franchise on 10th of April, EMT has had several discussions with Network Rail (the Route Commercial Manager) on NR's SoAR position in terms of its support of EMT's proposal given that the EM franchise is confirmed. At the time of the verbal enquiry to SoAR about its position, the standstill period for the EM franchise had been extended indefinitely; hence Network Rail's position remained the same as being non-supportive.

We have had further conversations today (10th May 2019) after it was announced yesterday (9th May 2019) that the DfT has signed with Abellio for the next EM franchise. Network Rail's position remains that it wants to go back to SoAR panel and furthermore a question was raised around Network Rail wishing to clarify its stance around the application and capacity on the Castleford Corridor.

Ultimately, we have now been holding on to the submission of the application to ORR since March after the Industry Consultation come to end, whilst we were in dialogues with Network Rail trying to turn the application to Section 22. However, it comes to the point where we need to submit the application to allow the process to move on to ensure that rights are secured ahead of the timetable bidding process for December 2020 as directed by the DfT. Therefore, as Network Rail's SoAR Panel is still unable to confirm its support for our application and there is no guarantee that it will do so without delay, it is agreed that the submission to ORR under Section 17 is a reasonable step to take. Ultimately if NR does later find themselves able to actively support this application, EMT would be happy to see it modified to become a Section 22 application if this would ultimately lead to a quicker resolution.

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**

No departures from the ORR model clauses are proposed.

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

4.1 Benefits: please set out what specific benefits the proposal will achieve. 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. 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**

Extending the current Track Access Contract will provide EMT, DfT and the successor franchisee with business continuity and allow all parties to plan with a reasonable degree of certainty through the timetable development process.

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**

Not applicable.

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**

Not applicable.

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: 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**

Not applicable.

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**

Not applicable.

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**

Not applicable.

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**

Not applicable.

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**

A letter of support from the DfT is attached outlining how this application is in support of their planned process for orderly transfer of the franchise.

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, Code of Practice: 18-22**

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. **Code of Practice: 11-15,**

Industry Consultation was carried out by Network Rail, with copies of the new track access contract, Form P and a support letter from the DfT sent via email on Tuesday 11th February 2019. The proposed agreement is also available on the Network Rail website.

Consultation lasted 4 weeks, closing on 11th March 2019, with 5 parties providing a response; these being Charter Train Services, TfW Rail, Transport Focus, Department for Transport and Northern (copies of email responses are attached on a separate file). Charter Train Services and TfW Rail had no comments. Both Transport Focus and Department for Transport are supportive of the proposal for EMT's track access contract to be extended to PCD 2021 as the extension is a vital part of the process of maintaining the existing timetable offer to passengers from the current franchise to the next. Northern is concerned that any extension of rights could impact on its ability to obtain rights in the future and queried how Network Rail would manage this.

The following were directly consulted (included within the email of 11th February 2019):

Department for Transport, Transport for Wales Rail Services, Chiltern Railways, Govia Thameslink Railway, Great Western Railway, Mersey Rail, East Coast Trains, Hull Trains, Grand Central, Freightliner Heavy Haul, Freightliner Group, DB Schenker, Cross Country Trains, Virgin Trains, LNER, First Group, West Midlands Trains, Northern Railway, Southern Railway, South Eastern Railway, South West Trains, Direct Rail Services, London Overground, BAA, Colas Rail, Transport for London, Trans Pennine Express, GB Railfreight, Railfreight Group, Maritime Transport Ltd, Transport Focus (formerly Passenger Focus), London Travel Watch, Centro, Mersey Travel, High Speed 1, High Speed 2, Transport for Greater Manchester, Rail Operations Group, Mayor of London, Devon and Cornwall Railways, Peak Rail, Hutchinson Ports (UK), DP World, MDS Transmodal, Roadways Container Logistics, Alliance Rail, Go Co-op, Pre Metro Operations, South Yorkshire PTE and the ORR.

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. **Code of Practice: 47-48**

Queries raised by Northern have been responded to by Network Rail directly and no further issues have been raised.

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. **Code of Practice: 45**

There are no unresolved issues outstanding.

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: 10 th May 2019
Name (in caps): ✕	Job title: Track Access & Network Change Manager
For (company): East Midlands Trains Ltd	

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