

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):

1st Supplemental Agreement between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited ("West Midlands Trains"), under Section 22A of the Railways Act 1993

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: West Midlands Trains Limited
Contact individual: Paul Harris	Contact individual: James Carter
Job title: Customer Manager	Job title: Network Access Manager
Address: Baskerville House, Centenary Square, Broad St, Birmingham B1 2ND	Address: West Midlands Trains Limited 134 Edmund Street Birmingham B3 2ES
Telephone number: Redacted	Telephone number: Redacted
Fax number:	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

(a) West Midlands Trains holds a valid train operating licence dated 10th December 2017
(b) West Midlands Trains also has a 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 purpose of this proposed Supplemental Agreement is to update the Track Access Contract ('the Contract') between West Midlands Trains and Network Rail to provide West Midlands Trains with the rights to operate a number of train service enhancements from the start of the December 2019 timetable. These rights will expire on Principle Change Date 2026 (to coincide with the duration of the West Midlands Franchise).

A summary of the key service changes, compared to the current May 2019 timetable, is provided on a route-by-route basis below:

EJ03

- (SX) An additional AM peak service from Coventry – Birmingham New St (departs COV 07:20 then continues to form the 07:49 BHM-RUG service).

EJ05

- (SX) Additional 1605, 1705, 1805, 1906 and 21:04 Northampton-Euston Slow-Line services (to facilitate the speeding-up of Liverpool services – see note below)
- (SX) One Euston-Watford Junction ECS contra-peak train will be converted to a passenger service (ex. EUS 08:12)

(Note that the existing xx.05 Liverpool – Euston (via Birmingham) services will be accelerated on the WCML South by reducing the dwell time at Northampton from (current) 12 minutes to 7 minutes, then running non-stop (Fast Lines) to Euston. To replace the missed calls south of Northampton, these additional xx.05 services from Northampton will then call at WOL, MKC, BLY, LBZ, BKH, HML and WFJ).

No safety risks have been identified as part of this proposal.

West Midlands Trains' franchise is due to expire on 1st April 2026.

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**

A submission was made to Network Rail's Sale of Access Rights ('SOAR') panel in August 2019. SOAR were willing to support the proposed changes to EJ05 however this support was contingent on the outcome of an Access Dispute lodged by Freightliner Ltd in respect of the New Working Timetable Publication for December 2019 (TTP1520), and whether the outcome of this dispute had the potential to affect the timetable offer made to WMT.

SOAR were unwilling to support the additional 07:20 Coventry – Birmingham New St service in EJ03 due to performance concerns.

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 operation of the new Northampton – Euston 'Slow Line' services will enable the acceleration of the Liverpool – Euston (via Birmingham) services, which will run express to Euston – arriving 32 minutes earlier than present. This will help to move towards a position of separating WMT's Slow Line 'stopping' services from longer-distance Fast Line services on the WCML, segregating the rolling stock cycling and reducing the risk of performance issues 'spilling' between the Fast and Slow lines.

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**

All of the services will operate in paths validated by Network Rail as part of the December 2019 offer.

Schedule 5 of the proposed Contract will be specified on a 'quantum-only' basis to provide Network Rail with maximum flexibility to modify the timetable in future.

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**

The rights sought in this Contract are quantum-only and do not contain any flexing rights.

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

The Contract contains no provisions for Journey Time Protection.

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**

The additional AM Coventry – New St service is required to deliver WMT's capacity metrics to the DfT.

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**

Transport Focus and London TravelWatch will be included in the wider industry 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 rights are considered to be consistent with the established WM&C Route Study (2017) and the WCML RUS (2011).

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**

West Midlands Trains are developing a number of tactical and strategic performance improvement initiatives to address some of the challenges experienced following the introduction of the May 2019 timetable. This is split between short-term 'tactical' initiatives and medium / long-term 'strategic' initiatives. The shorter-term initiatives are potentially deliverable before the December 2019

timetable change and relate to opportunities to improve 'on the day' service delivery. The medium-term 'strategic' initiatives are then assessing the structural operation of the train plan and developing proposed improvements for May 2020 or Dec 2019 if some elements can be brought forwards.

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**

There will be no change to the current level of performance monitoring.

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

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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**

The proposed 2nd Supplemental Agreement has been submitted to ORR for informal approval under Section 22 of the Railways Act. The 2nd SA contains the elements of the industry consultation for the 1st SA that Network Rail was willing to support, and have therefore been withdrawn and separated-out from this application.

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**

The following supporting documents are attached to this Form P:

- The proposed draft 1st Supplemental Agreement
- Marked up Schedule 5 Tables (2.1)

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**

A preapplication consultation was carried out by Network Rail between 18th July 2019 and 15th August 2019.

The following parties were consulted:

Keolis Amey (TfW Rail); Chiltern Railways; CrossCountry; East Midlands Trains; GTR; Heathrow Airport Limited; Arriva Rail London; Merseyrail; Northern Rail; Scotrail; Caledonian Sleeper; South Western Railway; First TransPennine Express; West Coast Trains; ORR; DfT; TfL & Mayor; Merseytravel; WMRE; London Travel Watch; Transport Focus; Go-Op; Britamrail, DB Cargo, Freightliner Group, Colas Rail, DRS, Harsco, Devon & Cornwall, GBRf, Hutchinson Ports, MDS Transmodal, West Coast Railways, Maritime Transport Limited, Rail Freight Group, Liverpool CA, Thames Gateway, Victa Railfreight, ROG, Vintage Trains, Alliance Rail, HS2, High Speed 1, RES, Locomotive Services (TOC) Limited, First Greater Western, Pre Metro Operations, Renaissance Trains, PD Ports, Rail Ops Group, Grand Central, Harsco, SCS Railways, Vintage Trains,

An e-mail of support was received from Transport Focus

GWR responded and confirmed no objections

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.

Chiltern Railways replied to the consultation with a query regarding timing loads in EJ01 and the status of WMT's access rights. WMT responded and confirmed that this Supplemental Agreement was proposing no changes to the status of access rights of services on the Snow Hill lines in EJ01, therefore this issue is considered to be resolved.

Liverpool Combined Authority replied with a query regarding the impact on Liverpool services. Network Rail confirmed that the proposed changes to the Liverpool – Birmingham – Euston services were confined to reducing station calls on the route south of Northampton, hence no contractual change to the Liverpool rights (EJ04). This is therefore also considered resolved.

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.

WCTL replied to the consultation with a query regarding the performance impact of the proposed changes on the WCML and Coventry corridor. WMT responded and confirmed that the EJ05 changes are being implemented as an initiative to improve performance on the WCML, and that performance modelling had been commissioned to support the changes. Also the supplementary changes that WMT are currently progressing for the Coventry corridor (to be consulted as part of a separate application) should yield an overall performance benefit on this particular route also.

XCTL asked about the performance impact of the additional Walsall services and the proposed changes to EJ05. WMT responded and confirmed that the additional Walsall services (previously included and consulted on as part of this application) had now been withdrawn. In reference to the proposed changes to EJ05, WMT responded and explained how the changes were being progressed with the intention of actually improving performance on the WCML, therefore were considered to be a potential benefit rather than risk.

XCTL further responded (e-mail dated 28/08/19) with a query regarding the performance impact of the 07:20 Coventry service.

Given the relatively recent correspondence with WCTL and WCTL over these performance challenges, it would be premature to consider the issues to be resolved. WMT will therefore continue


to work with both operators to try and resolve these concerns.

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 ...30/08/19.....

Name (in caps) ...JAMES CARTER..... Job title ...NETWORK ACCESS MANAGER.....

For (company)WEST 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**

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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
WC2B 4AN