

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):

22nd Supplemental Agreement to the TRACK ACCESS CONTRACT (PASSENGER SERVICES) between Network Rail Infrastructure Limited ("NR") and First TransPennine Express Limited ("FTPE") relating to changes to Schedule 5 of the Track Access Contract.

This is a Section 22 Application.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail	Company: First TransPennine Express Limited
Contact individual: Tamzin Cloke	Contact individual: Chris Hassall
Job title: Route Contracts Manager, LNW Route	Job title: Head of Commercial Contracts
Address: Baskerville House, Centenary Square, Broad St, Birmingham B1 2ND	Address: 8th Floor, Bridgewater House 60 Whitworth Street, Manchester M1 6LT
Telephone number: 07702 402 651	Telephone number: 07712 550 183
Fax number:	Fax number:
E-mail address: Tamzin.Cloke@networkrail.co.uk	E-mail address: chris.hassall@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

First TransPennine Express Limited (FTPE) holds a valid European Passenger Licence (with GB Passenger Statement of National Regulatory Provisions) and Station Licence all dated 17 March 2016 and a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 dated 08 March 2016.

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: SCD 2019
End date: SCD 2020

TPE have a number of rights, which expire in SCD 2019 owing to the ECML Access Rights Policy. At a similar time, TPE sought additional access rights for services into Scotland from Manchester (Airport and Piccadilly). These were only granted until SCD 2019,

A table summarising the affected services is below. At present the rights are expressed as firm, time-limited access rights. It is proposed to remove the rights currently expressed in Table 2.1 and insert a new Table 2.2 (contingent rights) to Schedule 5 of the TAC, to expire in SCD 2020. This would therefore give TPE a continuation of rights in accordance with the ECML policy. Additionally, those rights that are only on LNW all traverse the Castlefield Corridor.

The Castlefield Corridor is an area of extremely poor performance following the May 2018 timetable change. For this reason, and until there is a clear conclusion to the current situation, LNW Route believes the most feasible, pragmatic option is to renew TPE's Track Access Rights that are solely on LNW and are due to expire in SCD 2019 as contingent rights, in Table 2.2, to SCD 2020. The proposed Table 2.2 accompanies this application.

From	To	Weekday	Saturday	Sunday
Manchester Piccadilly	Hull	2	4	7
Manchester Victoria	Hull			1
Manchester Airport	Middlesborough	3	2	5
Liverpool Lime Street	Newcastle	1		1
Manchester Airport	Newcastle	2	1	4
Liverpool Lime Street	Scarborough	1	1	
Manchester Airport	Scarborough		1	2
Manchester Airport	York			2
York	Newcastle	11	14	7
Hull	Huddersfield			1

Hull	Manchester Piccadilly	4	4	5
Middlesborough	York	1		
Middlesborough	Manchester Airport	1	1	6
Newcastle	Liverpool Lime St	1		1
Newcastle	Manchester Airport		2	4
Newcastle	Durham		1	
Scarborough	Manchester Airport	2	3	2
York	Manchester Airport	1		
York	Liverpool Lime St		1	
Newcastle	York	13	14	6
Manchester Airport	Cleethorpes			2
Manchester Airport	Doncaster	1	1	1
Cleethorpes	Doncaster	1		
Manchester Airport	Edinburgh Waverley		1	2
Manchester Airport	Glasgow Central			1
Manchester Piccadilly	Glasgow Central		1	
Edinburgh Waverley	Manchester Airport	1		1
Glasgow Central	Manchester Airport			1
Glasgow Central	Manchester Piccadilly		1	

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**

N/A

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**

This application is made as a Supplemental Agreement to FTPE's Track Access Contract dated 03 March 2016 which was based on the Track Access Passenger Model Contract available from the ORR's website. The changes in this Supplemental Agreement are consistent with the format of the model contract and no departures from the charging and/or performance regimes are evident.

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**

Approving these rights would allow a continuation of the current benefits seen from these services, which run today and provide vital connectivity across the north of England, into Scotland. A fully marked up Schedule 5 Tables 2.1 and 2.2 for the 22nd and 23rd Supplementals accompanies this application.

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 relevant TCRAAGs did not raise any concerns about the continuation of these services. The services will not affect Network Rail's ability to safely maintain the Network.

Whilst acknowledging that performance on the Castlefield Corridor is poor, Network Rail feels that the continuation of these rights would not lead to a further drop in performance and notes the ongoing work outlined in Sections 5.1 and 5.2 of this application. Having considered not selling the rights, which would lead to a reduced service for passengers and reduced connectivity, as well as a business impact for TPE, but without – at this stage – clearly defined benefits from the removal of services that outweigh the disbenefits, Network Rail instead believes that selling the rights as time-limited, contingent rights, provides some level of business continuity to TPE whilst allowing maximum flexibility for the May 2019 and Dec 2019 timetable planning.

For a similar reason, the rights proposed to continue on LNE are contingent and time-limited in accordance with the ECML Access Rights Policy, providing LNE Route with the assurance as to adequacy of Network capacity to accommodate the proposal.

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 are all contingent, quantum only rights and provide Network Rail with the maximum flexibility possible in order to aid the development of an optimised industry timetable.

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**

This supplemental does not require any changes to 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 continuation of these services meet the TSR included as an obligation within TPE's Franchise Agreement, as specified by Rail North and 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**

N/A - The proposed services are not subject to financial support from any central or local government body.

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**

TPE has had discussions with key stakeholders on its May 2019 timetable proposals and maintains dialogue with Transport Focus and other representative bodies. The passenger service connection improvements and overall benefits of these changes are fully understood and supported.

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**

This proposal is deemed to be consistent with the conclusions and recommendations of the relevant documents for the North of England.

The application aligns with existing Network studies. The LNE&EM Network Specification (2016) outlines enhanced “train frequencies, linking the six principal city regions and the North’s biggest airport (Liverpool, Manchester, Manchester Airport, Leeds, Sheffield, Newcastle and Hull)” that these proposals deliver.

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**

The existing services are subject to existing and ongoing performance improvement initiatives, including along the Castlefield Corridor.

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**

FTPE has been working with Network Rail and to mitigate all performance issues arising from its service enhancements. The performance changes made in the December 2018 timetable act as good supporting evidence for the success of the process.

FTPE is committed via its joint Performance Delivery Strategy with Network Rail to ensure the delivery of strong performance through its May 2019 timetable proposals. This will support the achievement of joint targets during the remainder of CP5 and CP6 as the industry applies a greater focus on Right Time, with ‘On Time’ Performance already a fundamental tenet of the Strategy.

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**

The services run currently and no changes to performance monitoring are envisaged.

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**

N/A

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 access rights being sought through this application are not dependent on the completion of any infrastructure enhancements.

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**

There are no enhancement charges.

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**

The 23rd and 24th Supplemental Agreements also relate to SCD 2019 timetable changes.

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**

N/A

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**

ATW, CrossCounty, East Midlands, London North Eastern Railway, Grand Central, Hull Trains, West Midland Trains, Merseyrail, Nexus (formerly Tyne & Wear Metro/PTE), Arrive Rail Northern, Scotrail, Caledonian Sleeper, West Coast Trains, DB Cargo, Freightliner Group, Colas Rail, DRS, Harsco, Devon & Cornwall, GBR, Hutchinson Ports, MDS Transmodal, West Coast Railways, Maritime Transport Limited, Rail Freight Group, 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, ORR, DfT, Transport for Scotland, Merseytravel, Transport for Greater Manchester, South Yorkshire PTE, West Yorkshire PTE "Metro", Transport Focus.

The period of consultation will be 28 days (excluding Bank Holidays) from 23rd December 2018 to 24th January 2019.

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.

Please note that we reference the separate Industry Consultation summary document that details all responses received.

South Yorkshire PTE raised a query in relation to the Castlefield Corridor, which Network Rail responded to.

LNER raised a number of queries regarding access rights and performance on the ECML. At time of submission Network Rail and TPE believe these have been resolved by our subsequent responses.

CrossCountry raised some questions about the detail of the application. TPE responded in January. Nothing further has been raised so we believe they have been satisfactorily answered.

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.

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 1st March 2019

Name (in caps) TAMZIN CLOKE

Job title LNW Route Contracts Manager

For (company) Network Rail Infrastructure 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

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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