

## APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT, 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* (the Act) for a new track access contract. This is for companies who want to use Network Rail's network where the parties are not able (for whatever reason) to reach agreement.
- Approval for a new track access contract under section 18 of the Act. This is for use where terms have been agreed by the parties.
- Approval of a proposed amendment to an existing track access contract, agreed by both parties, under section 22 of the Act.
- Directions under section 22A of the Act for an amendment to an existing track access contract. This is for someone seeking an amendment to an existing track access contract to permit more extensive use of the railway facility if the parties are not able, for whatever reason, to reach agreement.

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 7. You should fill in the rest of the form after the consultation and before applying to ORR.

If, in the case of section 17 and 22A applications, the beneficiary and Network Rail have been unable to agree terms, the beneficiary should:

- (a) ask Network Rail to conduct a pre-application consultation in line with the code of practice; or
- (b) conduct a pre-application consultation itself, in line with the code of practice; or
- (c) submit the application to ORR and ask ORR to conduct the consultation, in which case, please complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timings and the issues we will consider. You should use our current [model freight track access contract](#) as your starting point. Please read the guidance before completing the contract and this form.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#).

You may also use and adapt this form to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

## 2. The application

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

GB Railfreight Limited 10<sup>th</sup> Supplemental Agreement  
to the December 2016 Track Access Contract – Section 22 Application.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited.	Company: GB Railfreight Limited.
Contact individual: Robert Williamson. Job title: Customer Relationship Executive.	Contact individual: Ian Kapur. Job title: Head of Capacity Planning.
Telephone number: [redacted]	Telephone number: [redacted]
E-mail address: [redacted]	E-mail address: [redacted]
Address: 6 <sup>th</sup> Floor, One Eversholt Street, London, NW1 2DN.	Address: 3 <sup>rd</sup> Floor, 55 Old Broad Street, London, EC2M 1RX.

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

GB Railfreight (GBRf) intends to operate the services itself.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Act or an exemption under section 7, or a European licence with a GB Statement of National Regulatory Provisions issued under the *The Railway (Licensing of Railway Undertakings) Regulations 2005* **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006?

If the answer to either (a) or (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate (as relevant).

GB Railfreight (GBRf) holds a valid operating licence under Section 8 of the Railways Acts 1993. GBRf also holds safety certificates, Part A and Part B, under Regulation 7 of 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, in the case of an amendment, fully highlight the changes from the previous version of the contract.

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).

Please also state the commencement and expiry dates for the proposal, and, for new contracts or extensions to existing contracts, provide justification for the proposed duration of the contract where the total exceeds five years.

Date of commencement: As soon as this supplemental is approved.

Expiry date: December 2026 (PCD 2026).

Since December 2016, GB Railfreight's business (measured in train miles) has grown by 48.3%, with a huge 28.1% growth over the last twelve months alone. Breaking these figures down a little, over the last two years, our Intermodal business has expanded by 32.4% and our aggregates business by 103.5%, by train miles.

To cater for this large increase in our freight business, GB Railfreight has invested in an additional ten Class 66 locomotives, thirteen Class 60 locomotives, three Class 47 locomotives and several hundred freight wagons. GB Railfreight has also employed over 150 new people, including many new drivers and ground staff, to support these new long-term contracts.

To secure this large growth and changes to its many traffic flows, GB Railfreight is applying for 154 new Firm Rights, extinguishing 164 Firm Rights, and amending 308 existing Firm Rights. In many of these flows, newer efficient rights are being requested, with the older redundant rights being extinguished. This is all against the background of GBRf's strong freight growth over the last two years.

This Supplemental Agreement represents changes to the following GBRf freight flows: Intermodal, aggregates, coal, biomass, gypsum, cement, automotive, infrastructure services, MoD movements, rail services stock transfers and scrap metal services.

The changes, as shown in the attached Schedule 5 Rights Table, are being proposed to facilitate and protect GB Railfreight's long-term legitimate business and investments, described above, whilst maintaining a reasonable balance of flex for operational practicability on the whole of the network. There are contracts involved with these flows, that extend through to 2027, tying in with the current expiry date of this contract.

No material safety risks have been identified as arising from this application.

**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. Please state the efforts you are making to resolve any disputes.

Not applicable.

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

- Areas where the drafting is different to ORR's published template freight track access contract. Please explain why these departures have been made.
- 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 freight track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate).
- New processes (e.g. self-modification provisions) which have been added. Please demonstrate how these new processes are robust and complete.

No departures from the model freight track access contract.

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

**4.1 Benefits:** Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Why do you need these new rights (if any)? Please describe any significant changes in the pattern of services and any impact on other operators, including other 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.

Compared with its current track access contract (up to and including the 9<sup>th</sup> Supplemental Agreement), GB Railfreight is proposing to apply for 154 new Firm Rights, extinguishing 164 Firm Rights, and amending 308 existing Firm Rights as per the detail set out in ORR's *Criteria and Procedures for the Approval of Track Access Contracts* document which supports having a clear and transparent rights application process.

The rights being sought are all with 60 minute windows and a full description of the deleted, new and amended rights can be found in Appendix A, a rights table purely showing the changes to rights that are being sought. These are also colour-coded to clearly show "new", "deleted" and "amended" firm rights. Note – this is not a full rights table showing GB Railfreight's other unaffected rights.

Making use of various Strategic Freight Network enhancements, and matching privately-funded freight terminal enhancements, these rights support brand new Intermodal flows from the Ports of Felixstowe, Southampton and London Gateway to and from the West Midlands, Rotherham and the new Doncaster i-Port terminals.

Improved and more efficient coal paths have been produced between Port of Immingham and Drax Power Station, the vast majority of which also avoid the East Coast Main Line.

There are also changes to rights for coal services to and from Scotland, between the Port of Immingham and Ratcliffe Power Station, and finally between Redcar and Drax Power Station.

New aggregates traffics include Ribbleshead Sidings to Hunslet, Shap Quarry to Ashton-in-Makerfield and Rylstone to Wellingborough & Hunslet, There are new rights for Bardon Hill, Cliffe Hill to Wellingborough thence to Luton, and also Isle of Grain to Harlow Mill.

New GBRf gypsum services from the Port of Hull are catered for, and new-to-rail spoil flows from Angerstein Wharf, Collyhurst Street (Manchester) and Leeds to Roxby.

The extinguishing of some Firm Rights is no less dramatic. Old, inefficient Immingham-Drax rights, many now unused Doncaster to Cottam/West Burton Power Station coal rights and no longer needed Immingham to Eggborough Power Station coal rights are all deleted. Surplus Port of Tyne to Drax rights, and those between Doncaster/Tyne and Hunterston are also removed.

The deletion of old ECML gypsum rights between Doncaster and Mountfield, and also from Portbury Dock to West Burton and Doncaster is taking place, along with Rylstone to Small Heath and the Immingham to Bedworth petroleum services. Some Croft Quarry to Neasden and Bow rights are also removed, along with those from Pengam to Avonmouth.

All of these additions, deletions and alterations are colour-coded in the attached Schedule 5 Rights Table (Appendix A) for clarity.

This supplemental, if approved, would release valuable network capacity, where it is no longer needed, and seeks to secure capacity only where it is now needed. A large amount of work has been carried out by GB Railfreight planners to totally re-write paths into efficient and optimal train slots, thus releasing valuable capacity along many main line routes including the East Coast Main Line, West Coast Main Line, Great Western Main Line and Midland Main Line.

For running off the Network on to private infrastructure, there are defined requirements in Section 6.4.1 of the model Track Access Contract (Freight Services).

GB Railfreight has, therefore, agreed specified timings at both the listed ports and inland terminals. Indeed, GBRf's end customers have been closely involved with these changes, ensuring that many freight operators' re-written timetables are entering and leaving their premises at the correct time and in the desired order.

The listed, off-network, locations have multiple rail operators using the facilities and, therefore, a quite rigid daily loading and unloading plan must be adhered to for these inter-connected trains. These freight terminal plans, all over the country, is what drives GB Railfreight to require a maximum limit of 60 minute windows in this rights application.

When multiplied by the number of services run by several freight operating companies, it's clear that a limit on total flexibility is needed for services to run in a robust manner.

As detailed below, GB Railfreight believes the 60 minute flexing window is an appropriate and measured window.

Without the level of specificity that the proposed Firm Rights offer, a change to one particular service, greater than within the 60 minute window, will lead to required changes for all other freight services using specific terminals. Re-timings of all services could lead to considerable change to the timetable, nationally, as alterations would ripple far and wide.

Biomass and coal services require minimum possibility of change due to the complexity of terminal workings described above and other specific reasons.

The movement and burning of different types of coal (e.g. high and low sulphur varieties) at power stations, and specifically the importance of the delivery order of various coals to be blended before burning, means that the timing of these pathways needs to be protected as far as possible.

Drax produces 8% of the UK's energy feed into the National Grid, with the winter peak usage in the UK working to a margin of no more than 4% surplus. The "insurance policy" of 60 minute windows for paths to Drax is needed to ensure the supply chain is not drastically altered between timetables.

In addition, the use of specified robust and little-changing time slots, at off-network locations, can only be good for performance on the network.

In the fully marked up version of the Schedule 5 Rights Table (Appendix A), the 60 minutes of requested flex, for each of the arrival and departure windows, initially gives Network Rail two hours-worth of available flexing. This, immediately, is a generous flex and gives a reasonable balance between giving Network Rail flexibility to create new timetables but not destroying GBRf's service patterns and, therefore, its whole asset base.

On top of the proposed two 60 minute flexing windows, and despite optimisation work, the vast majority of GB Railfreight's schedules still contain an amount of pathing time, as they follow other slower stopping services and also time spent in loops for other passenger trains to pass. These pathing and looping times are already built in to the schedules and offer yet more flexibility if everyone's current flexing rights are used as necessary.

In addition to all of the above, yet more flexing is currently available to capacity planners. Under Condition 10 of Part J of the Network Code, Network Rail is able to give notice of a proposed Access Right Change if it reasonably believes this will achieve better use of the Network and also that the positive impact of the change was not reasonably foreseeable when the relevant Firm Right took effect.

This condition is already in place and gives Network Rail its flexibility, were the current Part D and J conditions not to be suitable for Network Rail to create a "better" timetable.

It is for these reasons that GB Railfreight believes that 60 minute windows for all manner of freight, including bulk traffic such as biomass and aggregates, is the right balance and that it doesn't believe there is any effect on other freight operators.

With regard to amendments to existing Contract Miles, there are a large number of alterations to existing Contract Miles in GB Railfreight's Track Access Contract. This is because, in many cases, Network Rail's schedules in its TRUST system, and therefore its billing system, count non-Network mileage and has been billing GBRf for that. The changes correct Contract Miles to show only Network Rail track mileage. Therefore, many TRUST schedule mileages will not match the Contract Miles.

**4.2 Adequacy:** please set out how you have satisfied yourself that there is enough network capacity for the proposed and/or amended services (or will be at the time of service operation). Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. Please confirm whether the proposed Rights will involve operation over an area subject to a Declaration of Congested Infrastructure, or whether the capacity requirement will result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code).

All of the Rights sought in the proposed supplemental agreement have WTT paths offered in the current timetable. They take into account the Operating Constraints, consisting of the Engineering Access Statement detailing possession opportunities for the Infrastructure Maintainer, the Timetable Planning Rules, also the Working Timetable and associated Sectional Appendices to ensure trains run within the capability of the Network.

In offering validated paths, Network Rail will have satisfied itself that the slots are fully Timetable Planning Rules compliant and that appropriate use has been made of available capacity taking into account the Decision Criteria.

The slots are in currently recognised freight pathways (as the timetable is currently constructed) and therefore capacity does exist for these services.

Sufficient network capacity, and also pre-agreed off-network capacity, has been found without any infrastructure enhancements currently being required.

With regard to previous discussions on East Coast Main Line enhancements, and any future potential mix of passenger and freight services, GB Railfreight is aware of LNE Route's latest view on firm access rights within its area.

Network Rail's Sales of Access Rights Panel has approved all the additions, amendments and deletion of firm rights contained in this Section 22 application and shown in detail in the attached rights table (Appendix A) in its meeting on Monday 22<sup>nd</sup> July 2019.

This application for firm rights has been made as per the process set out in ORR's *Criteria and Procedures for the Approval of Track Access Contracts (December 2011)*. Combined with Network Rail's Network Licence conditions, GB Railfreight believes all is in place for ORR to approve these proposed new rights so that GB Railfreight can plan its legitimate business in a timely, efficient and economical matter so as to satisfy its reasonable requirements in providing services with a reasonable degree of certainty.

**4.3 Firm Rights:** Do these Firm Rights in the proposal contract relate to service freight haulage contracts which you hold or will hold? If so, how? How does the duration of these haulage contracts compare with the duration of the proposed track access contract?

The proposed Freight Access Rights, with 60 minute windows at each end, are to support new and on-going time-critical freight services for just-in-time Intermodal services, electricity supply industry (ESI) services, and a variety of many other contracts already held by GB Railfreight. Intermodal and Biomass services are particularly time-sensitive although the combined timing of a mix of coal and biomass trains discharging is also critical to successful UK energy generation.

These services, many of these six days a week in each direction, require clearly defined arrival and departure times to tie into port and inland terminal slots at each end of the route. Tightly defined train slots (60 minute windows) also help to ensure that the very large investment in infrastructure and newly-built locomotives and wagons are used to their maximum and that there are no stranded investments over



the course of their 30 year life for either GBRf or many 3<sup>rd</sup> party investments. This is also paramount to both delivery of product and on-going network performance.

There are contracts involved with these flows, that extend through to 2027, tying in with the current expiry date of this contract. Approving these rights for the full period of GBRf's track access contract gives GBRf and its customers the confidence to service their contracts, some of which are beyond the length of this contract and also to confidently renegotiate said contracts, when due, on an equal basis with other freight operators.

It is worth noting that the long term need for these traffics extends beyond any existing freight haulier track access contract expiry date. When any of the Freight Access Rights are no longer required during the course of this contract, there are two processes that currently cater for changes to be made to GBRf's track access contract and, therefore, the removal of rights and train slots on a regular basis:

Condition J9 – The Rights Review Meeting: This states that Network Rail shall hold Rights Review Meetings with operators as frequently as necessary in order for it to ensure that capacity on the network is shared in the most efficient and economical manner in the overall interests of users, providers, potential providers and funders of railway services.

This condition exists now and should be the main driver of always ensuring maximum capacity. In essence, this application is exactly the result of such a review.

Capacity Management Review Group: This is the joint Freight Operating Companies & Network Rail capacity working group, having started on 9<sup>th</sup> April 2014 as a result of the CP5 Freight Access Charges determination. Its purpose is to review and amend current and future rail freight paths based on a "usefulness" and "reasonableness" test. After discussion, GB Railfreight train slots are either removed from the timetable or turned into strategic capacity.

From 9<sup>th</sup> April 2014 up to the current date, 7016 freight paths have been reviewed. 5726 have been completely removed from the timetable and 1290 have been put into the Strategic Capacity Statement.

This system is the correct way forward and strikes the right balance between removal of unused rights & paths and keeping relevant and useful paths for strategic capacity and future freight use.

The Capacity Management Review Group convenes every three months to ensure correct industry decisions are made. These two mechanisms are how any rights that are not being exercised are removed from GB Railfreight's long-term track access contract.

**4.4 Contingent Rights:** please set out the extent to which you expect to use the Contingent Rights in the application. In particular, please state whether the proposed rights are seasonal (e.g. 3 months each year) or occasional (eg MO, SX, etc).

There are no contingent rights in this application.

**4.5 Window size:** Please set out the reasons for the origin and destination window sizes used in the Rights Table in Schedule 5.

As stated in paragraph 76 of ORR's "*Directions in respect of a track access contract between Network Rail Infrastructure Limited and GB Railfreight Limited*" document, dated 29<sup>th</sup> February 2016, ORR expects the default position for window size of freight Firm Rights, backed by commercial contracts with end users, to effectively be one hour windows.

One hour windows will preserve each of GBRf's end-users' confidence in its ability to provide the train services and timings they need, and enables GBRf to plan the future of its business with a reasonable degree of assurance.

In addition, GBRf believes that the detailed explanations given in Sections 4.1 – 4.3 articulate the reasoning why a 60 minute window is fair and reasonable for GBRf in managing its business with a reasonable degree of certainty.

**4.6 Long term planning process:** please state which Route Studies are relevant and whether the proposed rights are consistent with them. If they are not consistent please give the reasons. See Network Rail's [website](#). What consideration has been given to any issues emerging from relevant Event Steering Groups concerning capacity on the routes covered by the application (if Network Rail network).

This application is consistent with all established Route Studies on the UK Rail network. Additionally, the *Long Term Planning Process: Freight Market Study*, established in December 2013, has stated that, overall, rail freight is expected to continue to grow strongly with, for example, biomass traffic predicted to grow from approx. 0.8 billion tonne km in 2014 to approx. 2.3 billion tonne km in 2023, representing huge growth in under 10 years. This application is also consistent with the new Freight Network Study which states that average annual rail freight growth is approximately 3%.

## 5. Incentives

**5.1 Train operator performance:** please describe any planned projects or initiatives associated with the operation of the proposed services aimed at improving your performance (including faster or longer trains).

Contained in the agreements between GB Railfreight and its customers are new and altered performance regimes which include right time arrivals and departures as KPIs with financial penalty. GBRf's twelve Operations Managers are now responsible, and

directly accountable, for right-time departures (and arrivals) for the terminals served by GBRf services.

The use of i-Pad is being used for remote condition monitoring, mainly for levels of fuel, sand, brake blocks and coolant with a view to reducing main line failures and delays. This is a novel way to anticipate faults before they occur and using technology to help improvement performance over all routes. Additionally, in recent months, more “intelligent” remote data downloading has come into use of GBRf’s Class 66 locomotives.

All of GBRf’s train lists are now produced using mobile-consisting technology, leading to fewer delays due to paperwork issues.

The aim of all of these is to realise a better operational plan and to deliver more robust freight performance throughout the network. They also help to provide more accurate Sectional Running Times and offer an increased level of clarity for unexplained delays.

In addition to the above, performance regime briefs are regularly given to all GBRf staff, including drivers, ground staff and controllers and all new performance incentives have been introduced with GB Railfreight’s locomotive and wagon maintenance suppliers.

All of these will help improve network performance for a large percentage of trains that GB Railfreight runs.

**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 performance.

No planned projects for services in this application.

**5.3 Restrictions of Use:** set out and explain the reasons for any changes from the Restrictions of Use regime in the model freight track access contract (Schedule 4).

There are no changes to the Restrictions of Use regime.

## 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).

There are no network enhancements associated with this application nor are any of the proposed services subject to network enhancements. All of the Firm Rights in this application have associated train slots already offered to GB Railfreight.

**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).

Not relevant to this application.

## 7. Other

**7.1 Associated applications to ORR:** please state whether this proposal 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).

No other applications are applicable.

**7.2 Unregulated access:** please comment on whether any contracts are being negotiated for access to a facility adjoining Network Rail's network (e.g. to a freight light maintenance depot), including where ORR's approval is not required. For more information, see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). (This is relevant in the context of clause 6.4 of the model contract.)

Not relevant to this application.

**7.3 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).
- 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.

Appendix A – A marked up version of only the changes to GBRf's Schedule 5 Rights Table. The changes are colour-coded to aid clarity.

Appendix B – Latest correspondence between GB Railfreight and consultees regarding resolved and unresolved issues concerning this application.

**7.4 Confidentiality exclusions:** please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the application 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 you want us to exclude from publication.

No confidentiality exclusions necessary.

## 8. Pre-application consultation

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

**8.1 The consultation:** has a pre-application consultation been carried out in line with the [Code of practice for industry consultations](#)? If yes, please:

- state who conducted the consultation;
- list all train operators 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.

The following consultees have had the full 28 days consultation period (from 4<sup>th</sup> June to 2<sup>nd</sup> July 2019) for this application:

Greater Anglia; ScotRail; Transport Scotland; Arriva Rail London; Arriva Rail North; East Midlands Trains; Great Western Railway; South Western Railway; First Trans-Pennine Express; Govia Thameslink Railway; Transport for Wales Rail; South Eastern Railway; LNER; Merseyrail; Transport for London; MTR Crossrail; Serco; Chiltern Railways; c2c Rail; Virgin Trains; West Midlands Trains; Cross-Country Trains; Chinnor Railway; First Group Rail; Eurostar; Ffestiniog & Welsh Highland Railway; Grand Central; Heathrow; Heathrow Express; Hull Trains; Nexus; North Yorkshire Moors Railway; Peak Rail; Supertram; West Coast Railway Co.; Alliance Rail; Go-Op; Pre-Metro; First Class Partnerships; Direct Rail Services; Locomotive Services Ltd.; DB Cargo; Rail Operations Group; Vintage Trains; Colas Rail; Devon & Cornwall Railways; Freightliner Ltd; Freightliner Heavy Haul; Harsco Rail; Loram; Victa Railfreight; High Speed One Ltd; Hutchison Ports (UK) Ltd.; Maritime Transport; MDS Transmodal; London Travelwatch; Transport for Greater Manchester; Merseytravel; South Yorkshire PTE; Centro; West Yorkshire Combined Authority; Department for Transport; Office of Rail & Road; Rail Freight Group; Network Rail; Passenger Focus; Welsh Government.

**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.

**Arriva Rail London (ARL):** There were concerns from ARL that GBRf's 6M03 [SX] train slot clashes with one of its own trains in the December 2019 Timetable. GBRf replied that there has been a number of errors and omissions with the December

2019 Final Timetable and that we expect Network Rail to correct these. There are also other clashes that need resolving however neither GBRf nor ARL believes there is a conflict with the proposed firm rights. Issue resolved and paperwork attached.

**c2c:** c2c is in support of all of the proposed firm rights except one. This is 6X43, Dagenham Dock to Garston, due to it running in commuter peak hours. GBRf has altered the departure window from 07:45 - 08:45 to 08:45 – 09:15 and c2c has stated that its query is now resolved. Issue resolved and paperwork attached.

**8.3 Unresolved issues:** please set out any issues raised by consultees which have **not** been resolved to the consultee's satisfaction, 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.

**Arriva Rail North (ARL):** Arriva Rail North's (Northern) concerns centred around firm rights on the East Coast Main Line (ECML), with the LNE Route's current policy, and current and additional services on the Leeds to Skipton corridor. A detailed letter from Northern (28/6/19), along with GBRf's detailed response (8/7/19) is included in Appendix B.

In essence, GB Railfreight has stated that an ECML policy, which has slowed down normal access right activity over its route for almost six years, cannot be allowed to continue as it threatens the very business of an open-access Freight Operating Company as it cannot plan its business with any reasonable degree of certainty.

There is no financial "safety net" of Government intervention for a FOC and such incremental increases as those being proposed in this supplemental are not an unreasonable use of network capacity.

With regard to freight services on the Leeds to Skipton corridor, GBRf has responded that several of the firm rights alterations being proposed for Rylstone Quarry workings do not even have their arrival or departure windows altered so several of these proposals ought to have Northern's support.

GBRf has asked Northern for specific performance data for some Rylstone Quarry services, from 1/1/19 through to 18/5/19, so as to be able to respond to some specific concerns. As at 24/7/19, none had been received. GBRf has also stated how a new Skipton traincrew depot and a relatively simple signalling alteration to the Rylstone Quarry branch can improve productivity and performance along the Leeds-Skipton corridor.

In essence, GBRf believes there are no conflicts between the requested firm rights and other existing firm rights, given Network Rail's ability to flex services and the fact that there is capacity in the Working Timetable for an associated train slot. SOAR has agreed with this and has supported this application. Issue unresolved and paperwork attached.

**Great Western Railway:** GWR has concerns whether there is capacity for both GBRf's and its own aspirations in the December 2019 timetable. GBRf has made the

point that there are corresponding train slots for these rights already in the May 2019 Timetable and also now in the December 2019 Timetable.

GWR has proposed to Network Rail an alternative combination of passenger and freight train slots for the December 2019 Timetable that would permit more freight services to be accommodated. Up to now, there has been no more communication from Network Rail or GWR on this particular aspect. GWR's concern is still lodged.

In essence, GBRf believes there are no conflicts between the requested firm rights and other existing firm rights, given Network Rail's ability to flex services and the fact that there is capacity in the Working Timetable for an associated train slot. SOAR has agreed with this and has supported this application. Issue unresolved and paperwork attached.

**Greater Anglia:** Greater Anglia has many issues with any additional freight services on the Great Eastern Main Line and also on the Cross-Country route via Ely. They are too numerous to mention however detailed correspondence is attached.

Amongst other responses, GB Railfreight stated that a number of firm rights being applied for are for conversions of existing FOC train slots, and also the taking up of Strategic Capacity pathways already in the timetable. These show an excellent re-use of capacity and, indeed, taking up Strategic Capacity for its intended purpose.

Fundamentally, GB Railfreight believes that these services can be accommodated but with small alterations to Greater Anglia's current train slots, though still within the terms of its firm rights. SOAR has agreed with this and has supported this application.

There is no journey time protection in the Greater Anglia Track Access Contract, giving Network Rail an excellent opportunity to flex if it needs to. As Network Code Condition 4.2.2 clearly states – *“Network Rail shall endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions 2.4 and 2.5 and accommodate all Rolled Over Access Proposals, subject to.....”* Therefore, if there is room for an existing passenger service (24 hour window) and a new firm freight right requested (60 minute window), the inclusion of both train slots should be considered subject to the appropriate use of the Decision Criteria.  
Issue unresolved and paperwork attached.

**Cross Country Trains:** Cross Country Trains has concerns centred around firm rights on the East Coast Main Line (ECML), with the LNE Route's current policy, and performance concerns with specific train slots associated with the firm rights.

In essence, GB Railfreight has stated that an ECML policy, which has slowed down normal access right activity over its route for almost six years, cannot be allowed to continue as it threatens the very business of an open-access Freight Operating Company as it cannot plan its business with any reasonable degree of certainty.

There is no financial “safety net” of Government intervention for a FOC and such incremental increases as those being proposed in this supplemental are not an unreasonable use of network capacity.

GBRf also stated that franchised passenger TOCs and FOCs are set up in very different ways. Freight Operating Companies, as stand-alone commercial entities, must fight for business to continue to exist. They also have little protection against the outputs of any timetable change (e.g passing any additional costs on to funders and service specifiers). There is obviously a balance to be struck between how network capacity is shared and the certainty needed by FOCs for planning their businesses. SOAR has agreed with this and has supported this application.

Taking the above into account, and in deciding whether or not to approve additional firm rights for GB Railfreight on the ECML, ORR, as part of its Section 4 duties, will need to protect the interests of rail users and enable persons providing railway services to plan the future of their businesses with a reasonable degree of certainty and to promote the use of the railway network for the carriage of passengers and goods traffic. Some of the specific freight aspects that GBRf believes are relevant to ORR’s Section 4 duties are:

- causing minimum disruption to FOCs’ businesses, given these services are running at the moment.
- preserving end-users’ confidence in FOCs’ abilities to provide the train service and timings they need.
- providing certainty for freight terminals and other rail facilities when planning their operations.

Issue unresolved and paperwork attached.

**Govia Thameslink Railway:** Govia Thameslink Railway centred around firm rights on the East Coast Main Line (ECML), with the LNE Route’s current policy.

In essence, GB Railfreight has stated that an ECML policy, which has slowed down normal access right activity over its route for almost six years, cannot be allowed to continue as it threatens the very business of an open-access Freight Operating Company as it cannot plan its business with any reasonable degree of certainty.

There is no financial “safety net” of Government intervention for a FOC and such incremental increases as those being proposed in this supplemental are not an unreasonable use of network capacity. SOAR has agreed with this and has supported this application.

GBRf has requested that performance data and a set of train slot prints are sent to GTR. Issue unresolved and paperwork attached.




## 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*

**In the case of agreed applications under section 18 or 22, the facility owner should fill in the 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... 26.07.19  
Name (in caps) . ROBERT WILLIAMSEN Job title . CUSTOMER RELATIONSHIP  
For (company) ... NETWORK RAIL EXECUTIVE

For section 18/22 applications, please provide a letter of support from the beneficiary or ask them to sign here:

Signed .....  ..... Date... 24<sup>TH</sup> JULY 2019 .  
Name (in caps): IAN KAPUR Job title: Head of Capacity Planning  
For (company): GB Railfreight Limited.

## 10. Submission

**10.1 What to send:** please supply, in hard copy or electronic format, 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.

### 10.2 Where to send it:

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

Email: [track.access@orr.gsi.gov.uk](mailto:track.access@orr.gsi.gov.uk)