



APPLICATION TO THE OFFICE OF RAIL REGULATION FOR A STATION ACCESS CONTRACT UNDER SECTION 17 OF THE RAILWAYS ACT 1993

1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 17 of the Railways Act 1993 (the Act) for a new station access contract. Section 17 is the means by which those seeking the right to use a railway facility apply for compulsory third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

The form sets out the ORR's standard information requirements for considering such applications.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Act, (Section 17 and Schedule 4).

The Stations and Depots Team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

A copy of ORR's template passenger station access contract, can be accessed electronically and downloaded via the ORR website (www.rail-reg.gov.uk).

2. The application

2.1 Title of proposed contract:

Station Access Agreement for Operators of Passenger Services for Glasgow Prestwick International Airport Station

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

Company: First ScotRail Limited

Contact individual: Bil McGregor

Job title: Contracts Manager

Address: Caledonian Chambers, 87 Union Street, Glasgow, G1 3TA

Telephone number: 0141 335 4217

Fax number: 0141 335 4206

E-mail address: bil.mcgregor@firstgroup.com

2.3 Licence and railway safety case Please state whether the applicant intends to use the station himself or whether someone else will use the station on his behalf

Please state whether the proposed user of the station (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000. If the answer to (a) or (b) is no, please state the point which that person has reached in his obtaining of the licence, exemption or railway safety case (as the case may be)

The applicant First ScotRail Limited (**FSR**) intends to use the station itself.

FSR:

(a) holds a valid train operating licence granted under section 8 of the Railways Act 1993 and now pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005; and

(b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000.

3. The proposed contract

3.1 Executive summary Please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract;
- any aspects in which the proposed contract contains bespoke provisions departing from the published template station access contract; and
- any material safety risks that have been identified arising from the proposed contract and the arrangements for their control and mitigation (by reference to the provisions of the operator's railway safety case and, so far as is possible, the safety case of the facility owner)

The proposed contract is to allow FSR station access at Glasgow Prestwick International Airport Station (**Station**), operated by Glasgow Prestwick Airport Limited (**GPA**).

The proposed contract is primarily on the same commercial terms and is in the same format as the previous agreement between the parties which expired in October 2005. The proposed contract is marked "Schedule A".

Proposed contract and previous agreement

There was no access charge payable under the previous Station access agreement. A separate Travel Scheme Agreement had been entered into with Strathclyde Passenger Transport Executive (**SPTE**) under which a grant was paid.

The Travel Scheme Agreement was terminated on or around the 3 October 2004. This was prior to FSR taking over the passenger services on the 16 October 2004. GPA now wish to be paid an access charge for this Station.

Proposed contract and a template contract

The proposed contract differs from the template contract because this is a bespoke agreement. Please see section 3.3 (*Departure from ORR's template Station access contract*) below.

Bespoke provisions

The format of the agreement is bespoke because of the nature of the Station facility. The Station is the only Station independently owned by a company outside the Rail industry.

3.2 Terms not agreed with the facility owner Please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions

FSR and GPA have been engaged in ongoing discussions and negotiations to agree a new Station access agreement (the **New Agreement**) but the parties have not been able to agree the access charges.

The parties have agreed the costs of meeting the ongoing obligations in relation to the Station facility, such as operating and maintenance costs. However, they cannot agree the appropriate charge for the capital cost of

GPA meeting its obligations to continually renew the facility to its "modern equivalent form" or an appropriate return on capital (based on the modern equivalent asset value of the facility).

For a full explanation please see section 5 (*Charges*) below.

3.3 Departure from ORR's template station access contract Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template station access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (*e.g.* a self-modification provision) the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

This is a bespoke agreement and is based on the previous Station access agreement for this Station facility previously approved by the ORR (SAA/54/18/01/98/01).

The compare of the New Agreement and the ORR template station access contract is marked "Schedule B".

3.4 Duration of contract Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration if appropriate

The original Station access agreement for the Station facility was entered into between GPA and ScotRail Railways Limited (the then franchised passenger service operator).

As at 16 October 2004, the ScotRail Franchise, as the passenger operator for the Scottish rail network, was transferred to FSR.

The original Station access agreement expired on 1 December 2004 and a new Station access agreement was agreed the following year with FSR. This Station access agreement for the Operation of Passenger Services for Prestwick International Station between GPA and FSR, based on the previous Station access agreement, expired on 31 October 2005.

The New Agreement will run until the end of the franchise term, unless terminated earlier in accordance with its terms.

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

4.1 Benefits Please set out what specific benefits will result from the proposed contract. In particular, please describe any new rights sought or significant changes in the facilities or services to be used, their benefits to passengers and any impact on existing beneficiaries.

Under the previous Station access agreements GPA was not paid an access charge. The proposed contract will pay GPA an access charge for FSR using the Station facility.

4.2 Adequacy Please set out to what extent and by what process (if any) the applicant has satisfied himself that the facilities and services required can be supplied at the station in question.

The applicant currently uses the Station and is satisfied that the facilities and services required can be supplied

at the Station.

4.3 Franchise obligations Please indicate the extent to which the use of the station in the proposed contract is necessary to fulfil obligations under a franchise agreement.

FSR have an obligation to call at the Station in accordance with the service patterns listed in the SPTe Service Level Commitments (SLC).

4.4 Public funding Please indicate whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Secretary of State), and provide a point of contact at that body

The services in the proposed contract are not subject to direct financial support from central or local government. However, the Franchise does receive funding from the Scottish Ministers.

4.6 General guidance given by the Secretary of State and/or Scottish Ministers Please state here any general guidance given by the Secretary of State or the Scottish Ministers considered relevant to this application and why

None.

5. Charges

Please indicate, and explain the reasons for, how the proposed charges were determined and in particular how the principles outlined in ORR's published guidance on station charges¹ have been applied.

The approach outlined in the ORR's published guidance suggests that access charges are determined allowing for:

- i. Capital costs of the asset owner meeting its obligations in respect of renewal of stations in 'modern equivalent form' and an appropriate return on capital. Both are based on the provision of 'Modern Equivalent Asset' (MDV) in perpetuity; and
- ii. Cost of meeting its ongoing obligations in relation to:
 - a) operating the facility;
 - b) ongoing maintenance;

¹ e.g. *A Fair Deal: Guidelines on Adjustments to Station Long Term Charges*, ORR, London, 1998
<http://www.rail-reg.gov.uk/upload/pdf/76.pdf>

- c) repair of the station structures; and
- d) any other additional costs which are the responsibility of the facility owner.

The parties have agreed the following:

Cost of maintaining and repairing the facility: £ EXCLUDED INFORMATION per annum

Cost of internal management of the facility: £ EXCLUDED INFORMATION per annum

FSR and GPA cannot agree the rate of renewal of the asset.

Modern Equivalent Asset Value

The parties have agreed the Modern Equivalent Value (**MEV**) of the Station facility. The MEV is determined by reference to a facility that "provides the same service potential as the existing asset, but takes account of up to date technology and the likely demand for future capacity and may therefore not involve a like for like replacement".

Independent experts have been instructed by GPA to calculate the MEV. The independent experts, Professional Project Management Limited (**PPM**), were the Project Managers for the existing railway station project.

The PPM report, dated 29 May 2005 concludes that the appropriate MEV for the Station facility is: £3,534,000. The cost compares with the recently opened Gartcosh railway station which has a published cost of £3.5 million. A copy of the report is marked "Schedule C".

Calculation of Access Charge

The asset charge is based on cost of capital (**COC**) and asset lives. According to the ORR guidance "A Fair Deal – Guidelines on adjustments to Station Long-Term Charges" (November 1998) a ready reckoner is an access fee of £101 per £1,000 of investment based on a return of 7.5% and a life of 30 years. The "Fair Deal" states that the figures may be varied after consideration of the specific circumstances for the particular facility owner. However, the ORR briefing paper "The Structure of Station Long Term Charges" (April 2005) now suggests that there should be a similarity of charges between beneficiaries of Stations.

GPA have argued to FSR that rather than a COC of 8% there should be a weighted average cost of capital value of 11%, which they believe more fairly represents the nature of the asset. FSR find this to be an extraordinary proposal, especially because GPA did not put the majority of capital into funding the construction of the Station facility.

Although the Station facility is owned by GPA the Station was constructed with funding from various partners. The following contributions are estimated by the SPTE:

- SPTE (from SRC) £508,350 (23%)
- Ayrshire Enterprise £420,000 (20%)
- Kyle & Carrick Council £360,000 (16%)
- Prestwick Airport Limited £360,000 (16%)
- European Union grants £550,000 (25%)

Total: £2,193,350

FSR does not agree that GPA is entitled to a return on capital when the capital was provided in the majority by third parties.

The access charges are in place as a means by which facility owners are compensated for bearing the Stations capital costs, operating and maintenance costs, and taxes, as well as providing them with a rate of return. In this example, where their investment in the Station has been only a small part of a greater investment, GPA should not benefit from a rate of return based on the investment by third parties. This is not compensating GPA but rather rewarding them.

A return based on the reasonable replacement value would be more appropriate in this situation. The ORR guidance on this issue states that income from the access charge must be sufficient to meet the costs associated with the renewal in a modern equivalent form over time. Therefore FSR propose that a rate of return of 2% MEV per annum would be more appropriate.

The rate of return must be considered taking into account the relationship between the parties and the benefits that FSR brings to GPA's business. FSR provides GPA with passengers and without FSR there would be no passengers reaching the airport by rail.

6. Enhancement

6.1 Enhancement details Where the proposed contract provides for the delivery of any station enhancements, or the services in the proposed contract are predicated on any planned station 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 station change procedure in the station access conditions (Part C) has been completed (where appropriate, by reference to submissions made under the ORR's enhancement reporting framework)

None.

6.2 Enhancement charges Please confirm that the arrangements for the funding of any station enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return (see Chapter 18, *The Periodic Review of Railtrack's Access Charges: Final Conclusions, Volume 1*, Office of the Rail Regulator, London, October 2000)

None.

7. Other

7.1 Associated applications to the ORR Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

None.

7.2 Supporting information Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

Schedule A – The proposed contract

Schedule B – A compare of the proposed contract and the ORR template station access contract.
Schedule C – A copy of the report from Professional Project Management Limited calculating the MEV.
Schedule D – A side letter between FSR and GPA for access charges.

7.3 Side letters and collateral agreements Please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract

The parties have agreed that the access charges will be paid from 17 October 2004 therefore they have entered into a side letter for the payment of the agreed fees to date. A copy of the letter is marked "Schedule C".

7.4 Confidentiality exclusions Please indicate clearly any elements in the application and the proposed contract that the applicant would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Subject to its decision on such exclusions, it is the ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, the ORR is obliged to send a copy of the application **in full** to the facility owner)

Please note that GPA has already seen a copy of this Application.

8. 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 (including section 17), 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

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed Date

Name (in caps) Job title

For (company)

9. Submission

9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft contract, copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

Please also supply the application, the proposed contract and, insofar as it is 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).

9.2 Where to send it

Head of the Stations and Depots
Directorate of Rail Markets, Passengers and Freight
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

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