

Application form – facility access appeal

Form **R29**

Application to ORR on appeal under regulation 29 of the Railway Infrastructure (Access and Management) Regulations 2005

Introduction

The Railway Infrastructure (Access and Management) Regulations 2005 (“the Regulations”) aims to ensure that train operators have full access to the rail network and to a range of services and facilities. The Regulations establish a number of rights to those applying for access and impose corresponding obligations on facility owners.

The Regulations appoints ORR as the body to determine an appeal, under regulation 29, where there is a dispute over access to a terminal or port (as defined in regulation 6) or services (as defined in regulation 7). Our role and procedures for assessing appeals is explained more fully in our guidance.¹

1. Using this form

This form sets out our standard information requirements for considering appeals under regulation 29. Applicants are strongly encouraged to read our guidance document before making an application.

Applicants seeking the right to use a railway facility or procure a service should lodge an appeal using this form unless the level of access or service provision sought falls entirely within the scope of section 17 or 22A of the Railways Act 1993 (the Act). In those cases the applicant must lodge the appeal under the relevant section.

It is important that applicants provide as many relevant details as possible in this form as we will, as far as possible, determine the appeal based upon the information given to us. We will not usually conduct our own research.

2. The application

2.1 Title of agreement:

FACILITY ACCESS CONTRACT – SOUTHAMPTON MARITIME FREIGHTLINER TERMINAL

¹ <http://orr.gov.uk/what-and-how-we-regulate/track-access/policies>

2.2 Your contact details:

Company: *DB Schenker Rail (UK) Limited*

Contact individual: *Stewart Smith*

Job title: *Industry Contracts Manager*

Address: *Westbury Down Yard Offices, Station Approach, Westbury BA13 4HP*

Telephone: [REDACTED]

E-mail: [REDACTED]

2.3 Licensing and safety

Please state whether the applicant intends to operate the services itself or have them operated on its behalf.

Please state below whether the proposed operator of the services:

- (a) holds a valid train operating European licence or a licence under section 8 of the Act or an exemption under section 7²; and
- (b) holds the relevant safety certification or authorisation.³

If the answer to (a) or (b) is no, state the point reached in obtaining a licence, exemption or safety certification or authorisation (as applicable).

DB Schenker Rail (UK) Limited ("DB Schenker") intends to operate the train services itself (with Freightliner Limited providing the terminal services) and holds valid train operating licences under section 8 of The Railways Act 1993 and Regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 ("the Licensing Regulations"), as well as a Statement of National Regulatory Provisions granted under Regulation 10 of the Licensing Regulations.

DB Schenker also has a Safety Certificate under Regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

3. The proposed agreement

3.1 Details of facility or service to which access is requested

Name of facility or service: *Access to and loading / unloading of intermodal trains at Southampton Maritime Freightliner Terminal.*

Facility owner: *Freightliner Limited*

Contact individual: *Andrew Grant*

Job title: *Terminal Manager*

Address: *Rail Container Terminal, Tilbury Docks, Tilbury RM18 7EH*

Telephone:

E-mail: [REDACTED]

3.2 Summary

Please provide in the box below a summary of the proposed appeal. This should cover:

² See <http://orr.gov.uk/what-and-how-we-regulate/licensing>

³ See our webpage on The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) at <http://orr.gov.uk/what-and-how-we-regulate/health-and-safety/regulation-and-certification/rogs>

- the type and level of rail access required (including number of train slots and timings if relevant) or any services required from the facility owner;
- the commercial terms proposed; and
- the applicant's reasons for seeking the contract in the terms proposed.

This section should also include an explanation of the extent to which the applicant has evaluated available capacity at the named facility in order to satisfy itself that the level and type of services being sought can be accommodated.

DB Schenker is seeking access to Southampton Maritime Freightliner Terminal for up to four intermodal train services per day. DB Schenker is seeking the minimum access package along with those services detailed in the proposed agreement which include, for example, the loading and unloading of the containers. In the absence of a template model Facility Access Contract, the proposed agreement, containing the access and terminal handling specification and commercial terms (attached as Appendix 1), uses as far as possible the terms and conditions contained in the contract that ORR directed Associated British Ports to enter into with DB Schenker in respect of the Port of Immingham. The draft agreement provides for track access to, and the supply of services at, Southampton Maritime Freightliner Terminal, of which Freightliner Limited is the service provider, for a period of five years. In support of its application, DB Schenker has commissioned a Capacity Evaluation Report ("the Report") from an independent consultant (Appendix 2) which has concluded that spare capacity is, or could be made, available.

The Report draws on information in the public domain supplied by Freightliner following the recent upgrade of its crane and other terminal facilities at Southampton Maritime Freightliner Terminal, and the current Freightliner train service to both Southampton Maritime and Millbrook Freightliner Terminals.

Please also send to us, where possible, a draft agreement showing the contractual terms between the applicant and facility owner.

3.3 Grounds for making this appeal

Set out here the reasons for making this appeal under the Regulations (e.g. has a restriction been imposed by the facility owner? or has access been refused? Does the applicant feel unfairly treated or discriminated against?) Please provide copies of correspondence between the applicant and facility owner that supports any argument.

DB Schenker understands that Southampton Maritime Freightliner Terminal is exempt from the access provisions of The Railways Act 1993 (as amended) by virtue of The Railways (Class and Miscellaneous Exemptions) Order 1994. Therefore DB Schenker believes it is unable to make an application to the ORR for directions pursuant to section 17 of The Railways Act 1993, and is instead relying on the appeal provisions contained in the Regulations.

DB Schenker is making this application as it has not been able to agree terms with Freightliner Limited to enable the Train Services to be accommodated at the Southampton Maritime Freightliner Terminal. The relevant correspondence between DB Schenker and Freightliner Limited is attached as Appendix 3. It should be noted that no substantive written response to DB Schenker's formal letter of 9th June 2014 has yet been received.

3.4 Suitability of preferred facility

Explain the purpose for requiring the access/service and why you consider that this particular facility is competent to supply the access/service. Please also provide:

- a detailed explanation of any corresponding services that the applicant is providing to a third party customer (including details of any commercial arrangements that are in place in this respect);
- a detailed description of the characteristics of the facility specifically required which makes it necessary to use the proposed facility;

- an explanation of why it is considered that no other facility is capable of providing these services (including comments regarding the commercial viability of any possible alternative arrangements);
- an explanation of why the services required cannot be provided by the applicant; and
- a description of any other facilities that provide similar access or services to that required, and an explanation of why these are not considered to be viable in this particular instance (either from an operational or commercial point of view).

Southampton Maritime Freightliner Terminal is conveniently located within the extended dock estate, within a short distance of the deep sea container berths which provide the majority of the containers forwarded by rail from Southampton.

Southampton Maritime Freightliner Terminal has the necessary infrastructure in terms of handling equipment and length of terminal sidings, to permit the operation of the proposed train services in accordance with the specification.

There is no other facility within the immediate Southampton area, and particularly in close proximity to Associated British Port's container berths, which has the necessary facilities to accommodate the train service specification on a commercially-viable basis.

- *Freightliner Limited operates a second terminal nearby, at Southampton Millbrook, but this lacks the necessary number of sidings and siding length to accommodate a viable train plan. Furthermore, movement of containers to it from the deep sea container berths requires the use of road transport via the public highway, rendering the use of "internal-use" tractors and trailer units unsuitable.*
- *DB Schenker operates an intermodal terminal within the Western Docks. This terminal has a single loading siding which lacks the flexibility of a multi-siding terminal. Loading and discharge is accomplished by old, unreliable and uneconomic side-lifters. The site is not in close proximity to the deep-sea container berths or container holding areas. The cramped nature of the site and the volume of traffic passing means that investment in overhead gantry cranes, reach-stackers or new side-lifters is not a viable enhancement. All of these factors render the operation of this site uneconomic.*

4. Supporting information

4.1 Associated applications to ORR

Please provide details of any other applications that are also being made to ORR (e.g. under sections 17, 18 or 22 of the Act).

Not Applicable.

4.2 Supporting information

If there is any further justification or relevant information that will support your application, please provide it below. Please itemise and describe any other material being submitted with this form.

See Appendix 2.

4.3 Side letters and collateral agreements

Please confirm that the whole of the proposed agreement 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 application.

None

4.4 Confidentiality exclusions

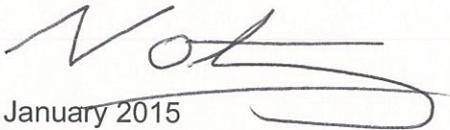
Indicate clearly any elements in the application and the proposed agreement that should be excluded from any wider consultation on the grounds of confidentiality as specified in section 71(2) of the Act. Where so, justify each proposed exclusion by reference to those statutory grounds. Subject to our decision on such exclusions, it is our intention to publish this application and the proposed agreement on our website.

None

Notice: Under regulation 37 of the Regulations if any person, in giving any information or making any application under or for the purposes of any provision of these Regulations, makes any statement which s/he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, s/he is guilty of an offence and liable to prosecution.

5. Certification

Signed:



Date: 9 January 2015

Name (in caps): NIGEL OATWAY

Job title: ACCESS MANAGER

For (company): DB SCHENKER RAIL (UK) LIMITED

6. Submission

Please check you are sending electronic copies of:

- this application form;
- the proposed draft agreement (where appropriate);
- any documents incorporated by reference (other than established standard industry codes or other instruments); and
- any other attachments, supporting documents or information.

Send by e-mail to: track.access@orr.gsi.gov.uk

Or hard copies by post to:

Head of Track Access and Licensing
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

