

Application to the Office of Rail Regulation for a passenger track access agreement, or amendment to a passenger track access agreement under sections 17-22A of the Railways Act 1993

1. Introduction

Please use this form to apply to the Office of Rail Regulation (ORR) for:

- directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.3. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps) and, where appropriate, to the [Industry Code of Practice](#) for track access application consultations (the Code of Practice). The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model passenger track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: www.rail-reg.gov.uk.

2. The application

2.1 Title of proposed contract or supplemental agreement:

42nd Supplemental Agreement

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

Facility Owner

Company: Network Rail

Contact individual: Andy Holt

Job title: Customer Manager

Address: 2nd Floor, EMCC

Bateman Street

Derby

DE22 3SG

Telephone number: 07766 448579

Fax number: 01332 442551

E-mail address: andy.holt@networkrail.co.uk

Beneficiary

Company: East Midlands Trains

Contact individual: Lanita Masi

Job title: Track Access Manager

Address: Prospect House

Prospect Place

Millennium Way

Derby DE24 8HG

Telephone number: 01332 867138

Fax number: 01332 867092

E-mail address:

lanita.masi@eastmidlandstrains.co.uk

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

East Midlands Trains Ltd will be operating the services and is the holder of a Safety Certificate under the Railways and Other Guided Transport Systems (Safety) 2006. This certificate was issued on 22 October 2007.

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**

Network Rail is currently building a new station at Ilkeston, located on the Erewash Valley (at Engineer's Line Reference TCC 126 miles and 52 chains) north of Trowell Junction. Construction was due to be completed in order to enable trains to stop at the station from the Principle Change Date in December 2014. Due to a number of project related issues, including the discovery of Great Crested Newts on the proposed station site, it is now expected that the station will open during the December 2014 timetable and not ahead of the timetable change date.

East Midlands Trains will ultimately become the Station Facility Owner and the station will be served regularly by Northern Rail's Leeds-Nottingham services (and vice versa) plus East Midlands Trains will seek to operate a limited number of services operated within the EM03 Liverpool-Norwich (and vice versa) Service Group.

This 42nd Supplemental Agreement sees the insertion of Ilkeston station as an Additional Station within Table 4.1 Calling Patterns for East Midlands Trains services that could, subject to the normal timetable process, call at the new station within the EM03 Service Group.

Note that changes within tables in the 'Mark Up' version that have been included are highlighted in 'red'.

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**

Not Applicable.

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**

No departures from the ORR model clauses are proposed.

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

4.1 Benefits: please set out what specific benefits the proposal will achieve. 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. Please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application. **C&Ps paras 4.26-4.35**

The opening of a new station at Ilkeston will enable a greater number of people to travel by rail and provide an alternative to the local bus services to Nottingham as well as new direct journey opportunities, for example, to Sheffield, Leeds, Manchester and Liverpool as well as providing connections into the wider rail network.

Any services that call at Ilkeston will need to be compliant with the relevant Train Planning Rules (e.g. Headways and Station Dwells) and these will form part of the normal development process for the timetable that starts in December 2014.

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 additional services all comply with the Train Planning Rules and will not have adverse implications on Network Rail's maintenance obligations or impact on renewal activities.

East Midlands Trains services that call at Ilkeston will be operated under their 'Right Time Railway' banner and it is not expected that there will be an adverse impact on performance.

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**

No additional restrictions/limitations on flexing rights have been included within this submission.

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**

No additional journey time protection is sought by EMT within this submission.

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**

No changes to Specified Equipment are sought within this submission.

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**

Not applicable.

4.7 Public funding: please state whether (and if so to what extent) the proposed services are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives. Please also provide a point of contact at that body. **C&Ps paras 3.52, 4.25, 4.35-4.39**

Not applicable.

4.8 Passenger Focus: please state whether (and if so to what extent) the proposed services have been discussed with Passenger Focus. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

Passenger Focus will be consulted by East Midlands Trains on services that will call at Ilkeston as part of their normal update on timetable proposals.

It should also be noted that Passenger Focus are also a consultee as part of the Industry Consultation of this Supplemental Agreement.

4.9 Route utilisation strategies (RUSs): if applicable, please state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

The aspiration for a new station on the Erewash Valley at Ilkeston was included within the East Midlands Route Utilisation Strategy that was published in 2010.

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**

East Midlands Trains will continue to champion Right Time Railway and services will operate under this philosophy.

Monitoring of services calling at Ilkeston will be undertaken, as would be expected for a new station, and performance trends will be analysed in the normal manner with associated actions tracked through the relevant Right Time Railway group.

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**

There are no specific projects directly planned for the operation of services at this new station. However the local Network Rail operations team have been involved in discussions regarding the operation of services at Ilkeston station and have raised no concerns to date.

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 existing Schedule 8 Contractual Monitoring Points mean that services will be adequately monitored.

The scale of change within the relevant Service Group^s is expected to have no major impact on Schedule 8 payments.

5.4 Performance regime changes (for applications under sections 17 or 22A only): where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed. **C&Ps para 5.38-5.40**

Not applicable.

6. Enhancement

6.1 Enhancement details: where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework). **C&Ps paras 4.80**

The Network Change proposal for Ilkeston station (under reference NC G1 2013 LNE 050) is subject to the normal industry consultation on the Network Rail website and commenced on 13th December 2013.

Network Rail are currently in the process of dealing with responses from both passenger and freight operators in line with normal industry practice.

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**

Funding for the new station has been jointly provided by the DfT (New Stations Fund) and Derbyshire County Council.

The Enhancement Charges do not form part of this Supplemental Agreement with East Midlands Trains.

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**

Northern Rail will be submitting a Supplemental Agreement in connection with station calls at Ilkeston station. Details relating to the timescales of this are not yet known.

East Midlands Trains and Network Rail will be working on producing the relevant agreements and associated Station Lease documentation in relation to EMT becoming the SFO at Ilkeston and these will be completed ahead of the opening of the station.

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**

Not applicable.

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, Code of Practice: 18-22**

Not applicable.

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

8. Pre-application consultation

8.1 The consultation: has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state who conducted the consultation;
- list all train operators, franchising authorities and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. If this was less than 28 days, please explain the reasons for this.

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **Code of Practice: 11-15,**

Industry Consultation was carried out by Network Rail commencing on Wednesday 11th June and closing on Thursday 10th July 2014.

Consultation was carried out via the Network Rail website as well as directly contacting industry representatives via e-mail highlighting that consultation was underway including a copy of the proposed Supplemental Agreement as well as the Form P,

The following were directly consulted (via e-mail of on 11th June);

Department for Transport, Arriva Trains Wales, Chiltern Railways, First Capital Connect, First Great Western, Mersey Rail, East Coast Trains, Hull Trains, Grand Central, Freightliner Heavy Haul, Freightliner Group, DB Schenker, Cross Country Trains, Virgin Trains, Northern Rail, Southern Railway, South Eastern Railway, South West Trains, Direct Rail Services, London Overground, BAA, Colas Rail, Transport for London, Trans Pennine Express, GB Railfreight, Railfreight Group, Passenger Focus, London Travel Watch, Centro, Mersey Travel, London 2012 Olympics, High Speed 1, Mayor of London, Devon and Cornwall Railways, Hutchinson Ports (UK), DP World, MDS Transmodal, Roadways Container Logistics, Alliance Rail, Go Co-op, Pre Metro Operations, South Yorkshire PTE and the ORR.

Only the following responded to the consultation directly; First Great Western (no issues raised), Merseytravel (no issues raised), East Coast (no issues raised), First Transpennine Express (no issues raised) and Passenger Focus (a minor issue raised - and resolved – regarding the inclusion of direct trains to/from London within the Form P which was incorrect). Copies of the above are attached to the application within Appendix A.

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. **Code of Practice: 47-48**

One minor issue was raised by Passenger Focus relating to the inclusion of direct trains to/from Ilkeston station to London – which was an error within the Form P – this matter was resolved and the Form P has been updated to reflect that there will be no direct trains to/from London.


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. **Code of Practice: 45**

No unresolved issues.

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 <u>10/09/2014</u>
Name (in caps) PHIL VERSTER	Job title ROUTE MANAGING DIRECTOR
For (company) NETWORK RAIL INFRASTRUCTURE LTD (LNE & EM ROUTE)	

10. Submission

10.1 What to send: please supply, in hard copy, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information. **C&Ps para 3.39**

Please also supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting). **C&Ps para 3.37-3.38**

10.2 Where to send it:

Manager, Track Access Team
Directorate of Railway Markets and Economics
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN