

## **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). 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](http://www.rail-reg.gov.uk).

## 2. The application

**2.1 Title of proposed contract or supplemental agreement** (please also include the section of the Railways Act 1993 under which you are applying):

52nd Supplemental Agreement between Network Rail Infrastructure Limited (Network Rail) and London & Birmingham Railway Limited ("London Midland")

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: London & Birmingham Railway Limited
Contact individual: Carew Satchwell	Contact individual: James Carter
Job title: Route Contracts Manager	Job title: Network Access Manager
Address: The Mailbox, 100 Wharfside Street, Birmingham. B1 1RT	Address: 4th Floor, 102 New Street Birmingham B2 4JB
Telephone number: 0121 345 3267	Telephone number: 07772 886852
Fax number:	Fax number: 0121 654 1239
E-mail address: carew.satchwell@networkrail.co.uk	E-mail address: James.carter@londonmidland.com

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

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. If the answer to (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate.

**C&Ps paras 3.9-3.15**

- (a) London Midland holds a valid train operating licence dated 7th November 2007  
(b) London Midland also has a safety certificate under 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 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**

The purpose of this proposed Supplemental Agreement is to amend London Midland's Track Access Contract ("the Contract") to provide London Midland with the rights to operate additional and accelerated peak services on the Fast Lines to / from Euston, at a maximum speed of 110mph, from the start of the December 2014 timetable for one year. .

The introduction of the peak 110mph enhanced timetable will provide a further capacity increase for customers on this busy route, providing an additional 3,788 seats into London during the morning peak three-hour period, and over 4,300 additional seats out of London in the evening peak to ease the significant crowding currently occurring on London Midland services on this route. London Midland services were recently highlighted as being some of the most overcrowded on the network, and these services will help alleviate this crowding.

### **SX Peak WCML Enhancements (110mph project)**

The peak enhancements proposed form the outstanding rights initially sought by London Midland through the Section 22A application made to the ORR in 2011 (the 30<sup>th</sup> Supplemental Agreement).

The 30<sup>th</sup> Supplemental Agreement requested the rights for;

- 1) Accelerated (110mph) off-peak services, along with additional off-peak services, from December 2012

Plus;

- 2) Additional (110mph) rights for peak services on the WCML from May 2014.

Following the ORR's initial 'Minded to Approve' decision of 15<sup>th</sup> December 2011, in October 2012 the ORR granted the rights to London Midland to operate the 110mph off-peak services from the Principal Change Date 2012, but directed London Midland to submit a separate application for the peak 110mph rights. This forms the basis of this proposed 52<sup>nd</sup> Supplemental Agreement.

These peak 110mph services, now scheduled for implementation in December 2014, require the procurement of an additional ten 110mph Class 350/3 units which are currently in the process of being delivered.

Whilst Network Rail would not support London Midland's initial application for the peak 110mph rights in the 30<sup>th</sup> Supplemental Agreement (due to outstanding issues with the pathing of the proposed 17:16 and 18:16 departures from Euston), any timetabling issues have now been resolved and validated paths have been offered for the December 2014 timetable.

### **Other WCML Enhancements**

Additionally, London Midland wish to make some further amendments to relieve intense crowding, including the operation of additional early morning Saturday services. The changes can be summarised as:

#### **SX**

- 1) 08:11 Coventry – Birmingham New St starts back from Northampton
- 2) 18:14 Birmingham New St – Coventry extended to Northampton
- 3) 19:14 Birmingham New St – Coventry extended to Northampton
- 4) 19:01 New St – Crewe diverted via Stoke calling at Stone, Stoke, Kidsgrove, Alsager
- 5) 20:11 Coventry – Birmingham New St starts back from Northampton

#### **SO**

- 1) Additional 06:01 Crewe – Euston (arr 08:49)
- 2) Additional 07:18 Crewe – Euston (arr 10:00)
- 3) 20:36 Birmingham New St – Crewe is diverted via Stoke vice the 18:46 Euston – Crewe, which is

lengthened to 8-cars.

A summary of all of the proposed amendments is attached to this application for reference.

No safety risks have been identified. Following extensive vehicle testing an NRAP certificate was granted in December 2012 to permit the operation of accelerated 110mph Class 350s on the WCML.

**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**

Not applicable

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

**4.1 Benefits:** please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also describe any significant changes in the pattern of services, their benefits to passengers and any impact on other operators, including freight operators. Where appropriate, please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application. **C&Ps paras 4.26-4.35**

##### **SX Peak WCML Enhancements (110mph project)**

These access rights are being sought following the successful introduction in December 2012 of London Midland's enhanced WCML off-peak timetable, which provided increased capacity and much faster journeys between London and Milton Keynes, Northampton, Rugby and Trent Valley Stations. Passenger loadings on London Midland's Crewe-Euston services have now grown significantly since December 2012, driven by the increased connectivity and greatly reduced journey times along the Crewe-Trent Valley-Milton Keynes – London route.

The proposal for the peak services to/from Euston in December 2014 will replicate the off-peak service pattern introduced in December 2012, i.e. with xx.46 departures from Euston timed at

110mph to Crewe via Weedon, Milton Keynes, Rugby and the Trent Valley. The accelerated xx.46 paths then allows the operation of a further 110mph train path "flighted" on the Fast Lines behind at xx.49, to Birmingham New Street via Northampton. The peak enhancements will operate Monday to Friday (arriving at Euston 07:00-09:59 and departing Euston 16:00-18:59).

The introduction of the peak 110mph enhanced timetable will provide a further capacity increase for customers on this busy route, providing an additional 3,788 seats into London during the morning peak three-hour period, and over 4,300 additional seats out of London in the evening peak to ease crowding and cater for passenger growth.

All of the proposed peak enhancements have been accommodated alongside the existing rights of other WCML operators.

#### **Other WCML Enhancements**

The proposed SO amendments are intended to provide capacity to relieve heavy crowding on existing services. The 20:36 BNS – CRE service will be diverted via Stoke-on-Trent to pick up the calls at Stone, Stoke, Kidsgrove and Alsager that will be dropped from the 18:46 EUS-CRE service. This is to allow the 18:46 service to be extended to 8-car operation to cater for crowding out of Euston, but cannot call at Stone, Kidsgrove and Alsager due to platform length restrictions.

All of the rights sought through this application are for 'quantum only' rights, to permit future timetable flexibility. Marked up copies of the relevant Tables from Schedule 5 has been attached to this application to highlight the proposed amendments.

Owing to the considerable uncertainty regarding the effect and timing of any HS2 works at London Euston, Network Rail and London Midland have agreed that these rights will be quantum only and will expire after one year, i.e. at the Principle Timetable Change Date in 2015. The parties may choose to discuss the possible extension of these services when there is more clarity around the HS2 works and the effect on capacity at Euston. Any such extension will be the subject of a further supplemental agreement which will be consulted upon in the usual way.

**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**

All of the peak 110mph services will be operating in validated paths offered by Network Rail for the December 2014 timetable.

These services are included in Network Rail's assumptions regarding the delivery of CP5 performance targets, and were included when the relevant Performance Strategies were compiled for 2014/15.

Given the proposed times of operation there will be no impact on Network Rail's maintenance and renewal activities.

**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**

There are no changes proposed to the existing agreement in relation to flexing rights.

**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**

The Contract contains no provisions for Journey Time Protection.

**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**

As previously indicated this proposal requires the operation of services at 110mph using Class 350 units. The upgrade of London Midland's Class 350/1 units to permit operation at 110mph was carried out in 2012, following Compatibility Assessment work, extensive testing and approvals in accordance with our Safety Management System under The Railways and Other Guided Transport Systems (Safety) Regulations 2006. An NRAP certificate for 110mph operation was secured in December 2012.

**4.6 Franchise obligations:** please explain whether the proposed services are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps paras 4.3-4.4**

The ability to exercise the access rights specified in the Contract will enable London Midland to fulfil its obligations to the Secretary of State as part of London Midland's HLOS Deed of Amendment (2012).

**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**

The provision of 110mph services in the peak hours in and out of Euston is dependent upon the provision of additional Class 350 rolling stock. The Department for Transport funded the procurement of 10 x Class 350/3 units as part of a HLOS proposal by London Midland to address the forecast increase in demand for commuter journeys between Northampton, Milton Keynes and London Euston.

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

Passenger Focus were advised of the proposed peak 110mph enhancements through the widespread industry consultation carried out in 2011.

**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**

As initially covered in London Midland's proposed 30<sup>th</sup> Supplemental Agreement, the rights sought in this application are considered to be entirely consistent with the established WCML RUS, and actually assist in closing some of the WCML RUS Gaps relating to crowding and connectivity (notably JT3, JT5, OC1, RL1)

## 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**

None proposed, although note that whilst the proposed xx.46/xx.49 110mph timetable only operates on weekdays and Saturdays, the acceleration of Class 350/1 units to 110mph provides a performance benefit to London Midland's Sunday services.

RailSys performance modelling was initially undertaken in 2012 to support the application for the off-peak rights in December 2012. Network Rail has since undertaken a TRAIL modelling exercise to quantify the impact of the additional peak 110mph enhancements. The results showed that the performance impact from the additional services would have a marginal but manageable impact on London Midland's PPM for WCML services (-0.3%).

Network Rail and London Midland have agreed to review and strengthen control contingency arrangements to reflect these new rights, and the increase in 110 mph services.

London Midland's resource planning process has involved the recruitment of additional train crew to ensure that the additional services can be delivered robustly.

The timetable amendments will involve a small number of additional attaching / detaching moves, with marginally more 12-car units than present. Throughout October when London Midland introduces the 350/3s in for strengthening, a briefing for drivers will be undertaken to make sure that stopping positions are correct at Northampton, to ensure success deliver of the plan in December.

**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**

Not applicable

**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**

There will be no change to the current level of performance monitoring

**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,

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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**

Not applicable

**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**

Not applicable

## 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**

A separate application will be submitted to secure rights for West Midlands services from December 2014.

**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**

A summary of the proposed amendments has been included to highlight changes to individual services.

The whole of the proposal between the Parties is being submitted with this application. There are no side letters or other documents which affect it.

**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**

None



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

## **8. Pre-application consultation**

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

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

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **C&Ps paras 3.62**

Carew Satchwell circulated the consultation on behalf of Network Rail. All the usual industry parties were consulted using the standard distribution list. A period of 28 days was allowed for consultation during which one response was received raising concerns. This was from Virgin Trains. Network Rail believes it has addressed the concerns raised in this letter but to date no response has been received. A copy of all correspondence has been sent to the Office of Rail Regulation

Other responses were received from the Office of Rail Regulation, Passenger Focus, Merseytravel, Southern and First Great Western.

The ORR response posed a series of questions which have been responded to.

**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.

Virgin Trains' letter raised concerns over the effect of the new services on performance on WCML south. VT sought greater reassurance regarding the overall picture and sought greater information on performance modeling; the effect on Hanslope Junction; the operation of the 110 mph services if there were no appropriate stock available; the recruitment of additional train crew; the robustness of the timetable and performance at Coventry station as well as general concerns.

Network Rail has responded by supplying further information on the timetable modeling that took place, as requested by Virgin Trains, and providing more information regarding the points raised by VT in their response of 21<sup>st</sup> October. Network Rail responded on the 24<sup>th</sup> October.

**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.

Virgin Trains has not yet responded to Network Rail's letter of the 24<sup>th</sup> October, so there might be unresolved issues to address.

## 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 .....

Name (in caps) ..... Job title .....

For (company) .....

## 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  
OFFICE OF RAIL REGULATION  
ONE KEMBLE STREET, LONDON, WC2B 4AN

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