

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.

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):

10th Supplemental Agreement to the Track Access Contract Dated 28th February 2013 between Network Rail Infrastructure Limited ("NR") and First/Keolis Transpennine Limited ("FTPE") relating to Schedule 5, table 2.1.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: First/Keolis Transpennine Limited
Contact individual: Kerry Taylor	Contact individual: Helen Bold
Job title: Customer Manager	Job title: Track Access Assistant
Address: Floor 4B, George Stephenson House, Toft Green, York, YO1 6JT	Address: 7th Floor, Bridgewater House, 60 Whitworth Street, Manchester, M1 6LT
Telephone number: 01904 383151	Telephone number: 01612288089
E-mail address: kerry.taylor@networkrail.co.uk	Fax number: 01612288181
	E-mail address: Helen.bold.@firstgroup.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

FTPE holds a valid Passenger Operators Licence, Non Passenger Operators Licence and Station Operators Licence all dated 28 January 2004 and a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 dated 6th February 2012.

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**

On the 8th January the Secretary of State announced that FTPE and Northern would be delivering a number of capacity enhancement across the rail network in the North of England. This allows existing services to be maintained from May 2015, following a decision by rolling stock leasing company, Porterbrook, to move some of the Class 170 trains which FTPE currently operate, to the Chiltern Railways franchise.

Summary

In summary, as of May 2015, FTPE lost five of its nine Class 170 trains and will be hiring six Class 156 trains from Northern Rail.

The Class 156 units will be used between Manchester, Blackpool and Barrow in place of the Class 185 units as follows on its **North West** Route:

Northbound

- Lancaster to Barrow: 1 (of the 2) weekday services will be using 156 rolling stock
- Manchester Airport to Blackpool: 12 (of the 18) weekday services and 9 of the 17 Saturday services will be using 156 rolling stock
- Manchester Piccadilly to Barrow: 1 weekday service will now be using 156 rolling stock

Southbound

- Barrow to Lancaster: the two weekday services will be using 156 rolling stock
- Blackpool to Manchester Airport: 12 of the 19 weekday services and 9 of the 19 Saturday services will be using 156 rolling stock
- Blackpool to Manchester Oxford Road: 1 weekday service will now be using 156 rolling stock

These changes are reflected in the marked up version of Schedule 5, Table 2.1.

As a result, some of the Class 185 units that operate between these locations will be deployed to cover services between Manchester and Hull and Manchester and Cleethorpes (on the **North Transpennine Route** and **South Transpennine Route**).

All of FTPE's **North Transpennine** services between Liverpool, Manchester, West Yorkshire, Humberside, North Yorkshire, the Yorkshire Coast and the North East will be operated by Class 185 trains.

An hourly service (on the **South TransPennine** Route) will be maintained between Manchester Airport, Sheffield, Doncaster and Cleethorpes. The huge majority of these will remain as direct services. Limited amendments are planned with customers between Manchester Airport and Cleethorpes and Cleethorpes to Manchester Airport needing to change at Doncaster.

It should be noted that there is no change to quantum as a result of this rolling stock cascade.

Following consultation of a Vehicle Change, the necessary changes to Schedule 5 (specified equipment) and Schedule 7 (train consist data) of FTPE's Track Access Contract to support the operation of Class 156s from the timetable change date in May 2015 have been made under General Approval. This supplemental change to the Track Access Contract is therefore to reflect the changes to the timetable in Schedule 5, Table 2.1 to reflect the change in timing loads.

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**

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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**

The changes to Schedule 5, table 2.1, provide a replacement for the Class 170s FTPE will lose from 17 May 2015 and provides some additional capacity on key routes.

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**

Not applicable.

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**

Not applicable.

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**

Not applicable.

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**

Changes to Specified Equipment were made by the 9th Supplemental Agreement under General Approval.

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**

As a result of the rolling stock cascade, the introduction of the Class 156 services is necessary to maintain FTPE current services from May 2015.

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 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**

A copy of the Statement from the Department for Transport can be found on the link below:

<https://www.gov.uk/government/speeches/rail-in-the-north-rolling-stock>.

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**

Not applicable.

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**

The Class 156 units have a maximum speed of 75 mph, compared to 100mph for the 185 units. However, the timetable has been developed to account for this.

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**

As per current arrangements.

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**

We are looking at some platform extensions to accommodate the 4 car Class 156 unit formations in the North West and six car Class 185 unit formations on the South TransPennine Route.

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**

Not applicable.

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**

As stated in section 3.1, Executive Summary, the decision on this rolling stock cascade was made on 8th January. A copy of the Statement from the Department for Transport can be found on the link below, as also provided in section 4.8.

<https://www.gov.uk/government/speeches/rail-in-the-north-rolling-stock>.

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**

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;

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- 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**

Network Rail carried out the consultation for a period of 28 days, between 28th May 2015 and 24th June 2015, with the following parties:

ATW
Cross Country
East Midlands
East Coast
Grand Central
Hull Trains
London Midland
Merseyrail
Northern Rail
Scotrail
West Coast Trains
Freight Operators (All)
Charter Train Operators (All)
ORR
DfT (3)
Transport for Scotland
Merseytravel
Transport for Greater Manchester
South Yorkshire PTE
Tyne & Wear PTE "NEXUS"
West Yorkshire PTE "METRO"
Passenger Focus

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.

The following issues were raised by the ORR as part of the consultation process:

- 1 *In Table In table 2.1 for Service Group: North West, it is not clear what is meant by the figures for Train Slots included in brackets. Are these effectively part of the mark-up or do they have on-going meaning?*

The figures in brackets show the new figures which are to be reflected in Table 2.1 (to reflect the mark up).

- 2 *We are concerned at the setting of the number of rights for the same service but with different Timing Loads. As proposed it would not be possible to bid extra Class 156 trains where rights are held only for Class 158. Would it not be preferable to set them all at Class 156 Timing Load as Class 185 can be bid on that basis. Our operations team question whether the trains will run to different timings in different hours, whatever traction type is used.*

The table has been presented in this way to reflect the quantum of services which will be run in Class 156 sectional running times. We have presented it in this way to reflect the number of services which will be run using Class 156 units and the number of services which will be run as Class 185 units.

There were no other comments received which required responses to this consultation.

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.

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)

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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
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