

Application to the Office of Rail Regulation for approval of a passenger framework agreement or an amendment to an existing framework agreement under The Railways Infrastructure (Access and Management) Regulations 2005

1. Introduction

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

- approval under The Railway Infrastructure (Access and Management Regulations) ("the Regulations") for a new framework agreement; and
- approval under the Regulations for amendments to an existing framework agreement.

The Regulations provide for ORR to approve framework agreements between an applicant, and the infrastructure manager, which in the case of the HS1 network ("HS1") is HS1 Limited. This form should be completed up to section 6.3 before carrying out a pre-application consultation to inform potentially affected parties of the proposed contract. Following this consultation, the remainder should be completed before applying to ORR under the Regulations.

This form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our HS1 criteria and procedures ("C&Ps"), which applicants are strongly advised to read and take advice on if necessary. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues we will need to consider. Applicants should use the published template framework agreement as their starting point when drafting the contract they would like.

ORR is happy to discuss prospective applications. Please contact us [here](#).

A copy of this form, and of HS1 Limited's template framework agreement, can be accessed electronically and downloaded via the [ORR website](#).

2. The application

2.1 Title of proposed contract:

New Passenger Framework Track Access Agreement between HS1 Limited and London & South Eastern Railway Limited from 31 December 2014 to 31 December 2024

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

Company: HS1 Ltd

Contact individual: Chinua Labor

Job title: Regulatory Commercial Manager

Address: 12 Floor, One Euston Square

Melton Street

London

NW1 2FD

Telephone number: 0207 014 2758

E-mail: chinua.labor@highspeed1.co.uk

Company: London & South Eastern Railway Ltd

Contact Individual: Suad Chowdhury

Job title: Contracts and Partnership Manager

Address: Friars Bridge Court

41-45 Blackfriars Road

London

SE1 8NZ

Telephone number: 0207 620 5623

Fax number: 0207 620 5547

E-mail: suad.chowdhury@southeasternrailway.co.uk

2.3 Licence and railway safety certificate: please state whether the applicant intends to operate the services itself or have them operated on its behalf

Does the proposed operator of the services (a) hold a valid European licence and Statement of National Regulatory Provisions for operating the proposed services in Great Britain under the Railway (Licensing of Railway Undertakings) Regulations 2005, and (b) have 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 which the proposed operator has reached in obtaining a licence, exemption and/or safety certificate.

London & South Eastern Railway Ltd (the “**Train Operator**”) holds a valid European licence and Statement of National Regulatory Provisions for operating the proposed services in Great Britain under the Railway (Licensing of Railway Undertakings) Regulations 2005, and has a valid 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. 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 (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **C&Ps para: 3.10**
- 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, where contracts would be for longer than five years, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#) **C&Ps para: 3.40**; and
- any material safety risks that have been identified arising from the proposed contract or amendment and how these will be controlled (by reference to the provisions of the relevant safety authorisation and the train operator’s safety certificate). **C&Ps para: 3.6-3.8**

HS1 Limited (“**HS1 Ltd.**”) and the Train Operator propose to submit to ORR an application under the Railways Infrastructure (Access and Management) Regulations 2005 for approval of a new Passenger Framework Track Access Agreement from 31 December 2014 to 31 December 2024 (“the **Framework Agreement**”)

Background

In 2013 the DfT confirmed their position on domestic passenger services currently operated by London & South Eastern Railway Limited ("Southeastern") on the HS1 network. The DfT has instructed HS1 Ltd and Southeastern to enter into a Framework Agreement to allow the continuation of services beyond the expiry of Southeastern's franchise for duration of 10 years.

On this basis, HS1 Ltd and Southeastern would like to formally submit an application to the ORR for approval of the Framework Agreement that will be effective from 31 December 2014 up to 31 December 2024.

Please note: The effective date of the Framework Agreement being the expiry date of the existing framework track access agreement between HS1 Ltd and Southeastern dated 14 August 2009 (as amended).

Other Changes from Existing Framework Agreement

Following the ORR's decision on Schedule 5 and the revision of the HS1 template track access agreements in 2012, all references to earliest and latest train slots have also been removed from Schedule 5 of the Framework Agreement.

3.2 Departures from HS1's template framework agreement: please set out here, with reasons, any:

- areas where the drafting of the proposed contract or amendment omits, amends or adds to HS1's published template framework agreement (as appropriate, cross-referencing to the answers below). **C&Ps para: 5.2**
- 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 the template framework agreement, including the financial implications. **C&Ps chapter 4**
- new processes which have been added. Please demonstrate how the process is robust, internally consistent and complete. **C&Ps para: 5.9**

The new Framework Agreement expresses the access rights in the same manner as the existing framework agreement between HS1 Ltd and Southeastern dated 14th August 2009 (as amended).

4. The expression of access rights and the consumption 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 fully describe any new rights required, as compared to the existing 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 para: 3.11-3.18**

The new Framework Agreement is consistent in expression of access rights as that contained in the existing Framework Agreement between HS1 and Southeastern dated 14th August 2009 (as amended).

4.2 Adequacy: please set out how the applicants have satisfied themselves 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 HS1 Limited's maintenance and renewal activities. **C&Ps para: 3.11**

No part or parts of the HS1 network has been declared congested by HS1 Ltd, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005.

4.3 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 HS1 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.

N/A

4.4 Franchise obligations: please explain the extent to which the services in the proposed amendment are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps para: 3.34**

We note that any approval of the Framework Agreement will remain subject to the ORR's statutory requirements set out in the Railways Act 1993, as well as the ORR published policies, including the ORR's policy on [long-term access contracts](#).

4.5 Public funding: please state whether (and if so to what extent) the services in the proposed amendment are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), and provide a point of contact at that body. **NB: this applies to GB operators only.**

N/A. However it is worth recognising the role of the Domestic Underpinning Agreement between the Secretary of State and HS1 Limited. The Domestic Underpinning Agreement specifies the minimum level of services on each domestic high speed service on the HS1 network.

4.6 Consumer organisations: please state whether (and if so to what extent) the services in the proposed contract have been discussed with Passenger Focus and London TravelWatch, and any other relevant consumer body, whether domestic or international, and provide copies of any relevant correspondence.

Southeastern will inform Passenger Focus and London TravelWatch about this application.

5. Incentives

5.1 Charges and performance: please set out, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by ORR's periodic review of charges as reflected in HS1's template framework agreement, including the financial implications (e.g. establishment of an access charge supplement or rebate). ***C&Ps chapter 4***

N/A

5.2 Train operator performance: please describe any planned initiatives associated with the operation of the services in the proposed contract aimed at improving the train operator's own performance.

N/A

5.3 HS1 Limited performance: please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving HS1 Limited's own performance.

N/A

5.4 Performance regime issues: where applicable, please provide justification for any changes to Schedule 8 of the framework agreement in the proposed amendment. If necessary, please provide any relevant information in support of the changes proposed.

N/A

6. Other

6.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other current or future applications to ORR (i.e. in respect of other track framework agreements).

N/A

6.2 Supporting information, side letters and collateral agreements: please:

- state here any relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application). **C&Ps para: 5.17**
- 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 purport to qualify or otherwise affect the proposed access contract. **C&Ps para: 5.17**

Please find enclosed the following supporting documents:

Appendix 2: Clean version of the proposed Framework Agreement

Appendix 3: Consultation responses and [HS1's our](#) response (see para 7.1)

Appendix 4: Written consent from HS1 Ltd and Southeastern

6.3 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 2.26-2.30**

Schedule 4 (track access charges) and Schedule 6 (performance values) of the Framework Agreement were excluded in the pre-application consultation process on the grounds of confidentiality.

Note: The remainder of this application should not be completed until after a pre-application consultation has been carried out.

7. Details of the pre-application consultation

7.1 Please confirm here that a pre-application consultation been carried out in line with the C&Ps. Please:

- state who conducted the consultation, and the period allowed for it (if less than 28 days, explain the reasons for this); and
- list all parties which were consulted, stating which parties, if any, made representations (other than nil returns) in response and attach their responses and any associated documentation to this form.

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 2.35-2.80**

We can confirm that the pre application consultation has been conducted by HS1 Ltd from 1st November 2013 to 13th December 2013.

Consultation list:

- Eurostar Ltd
- LOROL
- GBRf
- Europorte Channel
- DBScheneker
- Deutsche Bahn
- European Commission (EC)
- Transport for London
- Passenger Focus
- London Travelwatch

We received responses from EC and Eurostar Ltd on our proposal. We have formally responded to the EC. However we have not formally responded to Eurostar Ltd however we will discuss their comments outside of this process and at the next bilateral meeting with Eurostar Ltd in January 2014

Please find enclosed the following consultation responses and HS1 Ltd's response:

- EC response (Supporting Doc 1)
- HS1 response to EC comments (Supporting Doc 2)
- Eurostar Ltd (Supporting Doc 3)

7.2 Resolved issues and changes to the application: 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 to the application which have occurred as a result of the consultation. **C&Ps paras 2.69**

EC

We have carefully considered the comments from EC and have addressed each point in our response (see Supporting Doc 2). The ORR have recently forwarded an email from EC (dated 20 December 2013) responding to our response and we have agreed that the ORR will respond to the outstanding points. We will continue to participate in further discussions.

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We have not made any changes to our proposal as a result of the comments from the EC.

Eurostar Ltd

We have not made any changes to our proposal as a result of the points raised by Eurostar Ltd's and aim to discuss their points outside of this process.

7.3 Unresolved issues: please set out any issues raised by consultees that 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 do not think these issues should not stop ORR approving the application. ***C&Ps paras 2.69***

EC

We are aware that the EC comments were raised at a recent meeting on framework agreements in December 2013. We aim to discuss any outstanding points with the EC outside of this process.

Eurostar Ltd

As per note in para 7.2

8. Certification

*Warning: Under Regulation 37 of the Regulations, any person who, in giving any information or making any application under or for the purposes of any provision of the Regulations, 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 paras 5.18***

I certify that the information provided in this form is true and complete to the best of my knowledge and that the facility owner and the beneficiary are willing to enter into the attached contract as submitted

HS1 Limited

Train Operator

Signed:

Signed:

Date: 14/01/2014

Date: 14/01/2014

Name (in caps): CHINUA LABOR

Name (in caps): SUAD CHOWDHURY

Job title: REGULATORY COMMERCIAL MANAGER

Job title: CONTRACT & PARTNERSHIP MANAGER

For (company): HS1 Ltd

For (company): Southeastern

9. Submission

9.1 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 documents) and any other attachments, supporting documents or information. **C&Ps paras: 2.31-2.34**

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 paras: 2.31-2.34**

9.2 Where to send it:

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

ORR HS1 Passenger Form P January 2013