

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:

New Track Access Contract between Arriva Trains Wales and Network Rail

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Ltd	Company: Arriva Trains Wales Ltd
Contact individual: Chris Pearce	Contact individual: Chris Dellard
Job title: Customer Relationship Executive	Job title: Engineering & Access Planning Manager
Address: 5th Floor	Address: St Mary's House
5 Callaghan Square	47 Penarth Road
Cardiff	Cardiff
CF10 5BT	CF10 5DJ

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

Arriva Trains Wales, as a franchised operator, holds a valid Train Operating Licence and an accepted Safety Certificate.

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**

New Track Access Contract between Arriva Trains Wales and Network Rail

Arriva Trains Wales' Track Access Contract expires on the Principal Change Date 2014 (8th December 2014).

Arriva Trains Wales and Network Rail propose to enter into a new Track Access Contract to provide Arriva Trains Wales with contractual rights in order to submit an Access Proposal for the December 2014 Timetable before the Priority Date, 7th March 2014.

The proposed term is 5 years.

The latest Model Clause contract template has been adopted.

The only material change from the existing contract is to remove the Schedule 5 interval protection that Arriva Trains Wales currently has between Crewe and Manchester. This is in order to comply with ORR's current policy to not approve any rights on the West Coast Main Line which it considers to be highly prescriptive.

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**

None.

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**

None.

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 proposed contract will provide Arriva Trains Wales with rights, as appropriate, to bid for the December 2014 Timetable.

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 paths are fully validated by Network Rail. There are no additional rights sought over and above that in the existing contract.

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**

None.

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**

Maximum journey times are listed as expressed in the existing contract.

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

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**

Specified equipment is listed as expressed in the existing contract.

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 contract is required to fulfil Arriva Trains Wales' requirements under the Wales & Borders Franchise Agreement with Welsh Government and DfT.

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**

None.

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 have been made aware.

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

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

The relevant RUSs are the Freight RUS and the Wales RUS. Arriva Trains Wales and Network Rail believe that the proposal is consistent with those RUSs.

consistent with that RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

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**

There are no specific performance initiatives planned.

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 performance initiatives planned.

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**

Yes.

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**

N/A

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**

None.

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**

None.

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**

None.

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**

We have attached a draft of the proposed contract.

We confirm that there are no side letters or collateral agreements in connection with this proposal.

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**

Appendix 1 of Schedule 8 is excluded as it is commercially sensitive.

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,**

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

Switchboard 020 7282 2000 • Fax 020 7282 2041 • Website www.rail-reg.gov.uk

Form **P**

433399

A 28-day consultation was carried out by Network Rail with the following Operators: East Midlands trains, TransPennine Express, First Great Western, ScotRail, London Midland, MerseyRail, Northern Rail, CrossCountry, West Coast Trains, Colas Rail, DB Schenker, Direct Rail Services, Europorte, Freightliner Group, GB Railfreight, West Coast Railway, Devon & Cornwall Railways, Hutchinson Ports, DP World, DMS Transmodal, Roadways Container Logistics, Go! Cooperative, Pre Metro Operations, Alliance Rail, Renaissance Trains, CTRL & Union Railways North, Rail Freight Group, GMPTE, MerseyTravel, Centro, Passenger Focus and Welsh Government.

The e mail addresses which the consultation was addressed to were as follows:

✂

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**

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**

Only one specific comment was received in relation to this proposal, which came from First Great Western. The specific comments are below.

'In general FGW supports this application.'

FGW asks for a consistent approach to apply and asks that Cardiff - Maesteg journey time rights are provided only if Paddington - South Wales journey time rights are provided in the track access contract between Network Rail and FGW for the period Dec 14 to Dec 16.

I should be very grateful if you would arrange for this to be considered please.'

The comments raised by First Great Western are understood and acknowledged. The issue appears to relate to an aspect of their own Track Access Contract which is currently under negotiation in line with their franchise period. The Arriva Trains Wales contract is unrelated to that and furthermore is not linked to a time of franchise extension.

It is not considered that the proposal will adversely affect First Great Western or any other operator.

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 22.01.14

Name (in caps) CHRIS PEARCE

Job title CUSTOMER RELATIONSHIP EXECUTIVE

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**

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

Switchboard 020 7282 2000 • Fax 020 7282 2041 • Website www.rail-reg.gov.uk

Form **P**

433399

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