



APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT, UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

1. Introduction

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

- Directions under section 17 of *The Railways Act 1993* (the Act) for a new track access contract. This is for companies who want to use Network Rail's network where the parties are not able (for whatever reason) to reach agreement.
- Approval for a new track access contract under section 18 of the Act. This is for use where terms have been agreed by the parties.
- Approval of a proposed amendment to an existing track access contract, agreed by both parties, under section 22 of the Act.
- Directions under section 22A of the Act for an amendment to an existing track access contract. This is for someone seeking an amendment to an existing track access contract to permit more extensive use of the railway facility if the parties are not able, for whatever reason, to reach agreement.

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 7. You should fill in the rest of the form after the consultation and before applying to ORR.

If, in the case of section 17 and 22A applications, the beneficiary and Network Rail have been unable to agree terms, the beneficiary should:

- (a) ask Network Rail to conduct a pre-application consultation in line with the code of practice; or
- (b) conduct a pre-application consultation itself, in line with the code of practice; or
- (c) submit the application to ORR and ask ORR to conduct the consultation, in which case, please complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timings and the issues we will consider. You should use our current [model freight track access contract](#) as your starting point. Please read the guidance before completing the contract and this form.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#).

You may also use and adapt this form to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

2. The application

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

Freightliner Heavy Haul Limited 8th Supplemental Agreement to the December 2016 Track Access Contract – Section 22A Application.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited Contact individual: Rita Handley Job title: Customer Relationship Executive Telephone number: (Redacted) E-mail address: (Redacted) Address: 6 th Floor, One Eversholt Street, London NW1 2DN	Company: Freightliner Heavy Haul Limited Contact individual: Chris Matthews Job title: Track Access Manager Telephone number: (Redacted) E-mail address: (Redacted) Address: 3 rd Floor, 90 Whitfield Street, Fitzrovia, London W1T 4EZ

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

Freightliner Heavy Haul Limited (“Freightliner”) currently operates, and intends to continue to operate, the services itself and holds a valid operating licence under Section 8 of the Railways Act 1993. Freightliner also holds safety certificates, Part A and B, under Regulation 7 of the Railways, and other Guided Transport Systems (Safety) Regulations 2006.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Act or an exemption under section 7, or a European licence with a GB Statement of National Regulatory Provisions issued under the *The Railway (Licensing of Railway Undertakings) Regulations 2005* **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006?

If the answer to either (a) or (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate (as relevant).

N/A

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, in the case of an amendment, fully highlight the changes from the previous version of the contract.

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).

Please also state the commencement and expiry dates for the proposal, and, for new contracts or extensions to existing contracts, provide justification for the proposed duration of the contract where the total exceeds five years.

Date of commencement: 7th December 2016

Expiry date: December 2026 (PCD 2026)

Freightliner Heavy Haul Limited has been granted a Track Access Contract (Freight Services), dated 11th December 2016, expiring on the Principal Change Date (PCD) of December 2026.

Freightliner Heavy Haul secured a new contract with [Redacted], in 2017 and the services commenced in Period 7 of 2018/19. Freightliner is requesting Firm Rights in line with the ORR directions letter of 29th February 2016. Further details are provided in 4.1 and 4.3.

Freightliner is requesting 21 additional one hour window firm rights in a new Service Group – 6229 for the duration of the Track Access Contract.

No material safety risks have been identified as arising from this application. Freightliner Heavy Haul Limited and its staff will operate the trains in accordance with our Safety Certificate, GORT3053 Working Manual for Rail Staff – Handling and Carriage of Dangerous Goods ‘The Pink Pages’ and GORT3056 Working Manual for Rail Staff – Freight Train Operations ‘The White Pages’. Freightliner also has special instructions and briefing documentation for the tank wagons used to haul the product, which are issued to the relevant staff.

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. Please state the efforts you are making to resolve any disputes.

At this stage Freightliner has not been able to agree complete terms for these Access Rights with Network Rail. Freightliner has sought Access Rights through Network Rail’s Sale of Access Rights (SOAR) panel on three occasions over the last 16 months. Although the panel’s reasons differed each time, on every occasion Network Rail deferred, or failed to approve the Access Rights on the terms requested.

Summary of previous applications

1st panel (2nd April 2018): Panel deferred a decision on the selling the access rights “until a future facing performance analysis can be produced to support the proposal”. Network Rail was unable to outline what performance data it required, given that at this stage the traffic had not started to run.

2nd panel (29th April 2019): Panel deferred a decision “subject to discussions with FLHH on quantum / 1-hour windows and possibility of rights for 6 months”.

3rd panel (22nd July 2019): paper authorised ‘subject to’:

1. 15 rights approved to PCD 2020
2. 6 rights approved to PCD 2020 subject to Western Route approval
3. All rights subject to resolution of Southeast EAS.

Appendix A details the formal output received from the SOAR panel.

Matters not agreed

It is clear from Appendix A that very limited reasons have been provided by SOAR to support the decisions that have been made. Freightliner has requested more information to understand the matters of concern. Further information has not been forthcoming. On the basis of the limited information provided, Freightliner understands that the following matters remain unagreed:

1. Network Rail will not grant access rights on the Great Western Main Line between London Paddington and Reading beyond PCD 2020.
2. Network Rail has requested changes to the arrival / departure windows to a small number of slots to ensure alignment with the maintenance strategy on the Great Western Main Line Relief Lines.
3. Resolution required to Freightliner objections to the South East Engineering Access Statement.

Reasons for the failure to agree

Reasons for the failure to agree on the matters above:

1. Network Rail has informed Freightliner that it will not grant access rights on the Great Western Main Line between London Paddington and Reading beyond PCD 2020. Network Rail has informed Freightliner that this is due to confirming whether Heathrow Express (HEX) trains will continue to utilise one platform operation at Paddington beyond that timeframe. Freightliner is unclear why the platforming strategy of HEX at Paddington impacts on the ability to grant Rights in this application which, do not run into Paddington. Freightliner has requested more information to explain this position, but to date no reasons have been provided to link the duration of the Access Rights with HEX platforming.
2. Network Rail has requested changes to six arrival / departure windows to ensure alignment with the maintenance strategy on the Great Western Main Line Relief Lines. The windows Freightliner requested align with the timings received in the December 2019 timetable offer. That said most of the changes requested to the arrival / departure windows are minor and Freightliner has updated its proposed Rights Table accordingly to align with Network Rail's proposal, thereby ensuring Section 4 access times are protected for future timetable iterations. The exception to this is 6V09 ThO, where Freightliner have amended the time slot to reflect Friday Section 4 times rather than applicable on a Thursday, as a result of this train running over midnight. This allows a greater terminal time, therefore providing improved robustness in the performance of this service.
3. Network Rail has sought resolution of the objections to the proposed possessions in the South East Engineering Access Statement prior to approving the Access Rights. Freightliner have proactively engaged in discussions with Network Rail South East Route to resolve these objections, and believe a cyclical access strategy has been agreed on, providing possession opportunities to critical areas of the network where these have not previously been available on midweek nights. This has been circulated around impacted operators by Network Rail. Freightliner are currently awaiting confirmation of these changes to the Engineering Access Statement and Confirmed Period Possession Plan (CPPP) being published by the route, which will then allow the outstanding objections to be withdrawn formally.

As a result, Freightliner considers that matters 2&3 above can be considered resolved. Freightliner considers that the most significant outstanding matter relates to the approval of Access Rights beyond PCD 2020.

Reasons for seeking these provisions

Freightliner has a multi-year contract with [Redacted] to transport aviation fuel to Heathrow Airport. This contract extends well beyond PCD 2020. [Redacted] has made significant investments to support this traffic, including procuring new tank wagons through [Redacted] and in specialist terminal facilities. The investment in 30 year + assets was made with the clear expectation that this critical flow will continue well into the future. The approval of the requested Access Rights is crucial to provide confidence to the customer over the ability to secure suitable train slots for these services in future timetables, with paths that support terminal discharge and loading operations. Freightliner is therefore seeking Access Rights aligned to its Track Access Contract that expires in PCD 2026.

3.3 Departures from ORR's current model freight track access contract: please set out and explain here any:

- Areas where the drafting is different to ORR's published template freight track access contract. Please explain why these departures have been made.
- 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 freight track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate).
- New processes (e.g. self-modification provisions) which have been added. Please demonstrate how these new processes are robust and complete.

There are no departures from the ORR's model freight track access contract proposed in the 8th Supplemental Agreement.

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

4.1 Benefits: Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Why do you need these new rights (if any)? Please describe any significant changes in the pattern of services and any impact on other operators, including other 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.

The Rights Table will reflect Freightliner's current operation, providing clarity to train planners, projects and strategic planning. Full details of the proposed changes are provided in the accompanying Rights Table, with the relevant changes since the last submission 'marked up'.

The Rights sought are to support the new haulage contract with [Redacted], for their operation at London Heathrow Airport for the supply of aviation fuel. The rights will support the operation of two trains per day between the [Redacted] Isle of Grain and the Colnbrook Logistics Centre at Heathrow Airport.

This flow is critical for airport operations, supplying circa 20% of all aviation fuel to Heathrow Airport. The pipeline network connecting UK refineries to the UK airports, constructed in the 1940's, does not provide sufficient capacity to deliver enough fuel for flight operations on a daily basis.

4.2 Adequacy: please set out how you have satisfied yourself that there is enough network capacity for the proposed and/or amended services (or will be at the time of service operation). Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities.

Please confirm whether the proposed Rights will involve operation over an area subject to a Declaration of Congested Infrastructure, or whether the capacity requirement will result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code).

All trains included in this 8th Supplemental Application have validated paths in the December 2019 WTT. None of the routes over which the Rights will run have been declared congested infrastructure.

Some of the train paths have been constructed from strategic capacity (QJ) and have been validated to ensure there are no conflicts on the Colnbrook branch or the Grain branch and are fully compliant with relevant Timetable Planning Rules.

4.3 Firm Rights: Do these Firm Rights in the proposal contract relate to service freight haulage contracts which you hold or will hold? If so, how? How does the duration of these haulage contracts compare with the duration of the proposed track access contract?

The haulage contract commenced on 18th October 2018 and runs for a term of [Redacted]. The customer, [Redacted] has procured new tank wagons through [Redacted] and invested in terminal facilities to service the haulage contract. These assets have a 30 year + life and therefore there is a clear expectation that this traffic will continue well beyond 2023. Securing these rights to the end of Freightliner's current Track Access Contract, will provide security to [Redacted] that these Access Rights will transfer under Network Code provisions, if applicable, following renewal of the haulage contract.

4.4 Contingent Rights: please set out the extent to which you expect to use the Contingent Rights in the application. In particular, please state whether the proposed rights are seasonal (e.g. 3 months each year) or occasional (e.g. MO, SX, etc.).

There are no contingent rights in this application.

4.5 Window size: Please set out the reasons for the origin and destination window sizes used in the Rights Table in Schedule 5.

The request for 1 hour windows is in line with the ORR directions letter of 29th February 2016. The 1 hour window and minimal terminal times are critical for this traffic. It supports terminal loading and discharge operations, as well as ensuring maximum productivity for the customer's wagon fleet.

4.6 Long term planning process: please state which Route Studies are relevant and whether the proposed rights are consistent with them. If they are not consistent please give the reasons. See Network Rail's [website](#). What consideration has been given to any issues emerging from relevant Events Steering Group concerning capacity on the routes covered by the application (if Network Rail network).

This application is consistent with all established Route Studies on the UK rail network; including the Freight Market Study and the Freight Route Study.

5. Incentives

5.1 Train operator performance: please describe any planned projects or initiatives associated with the operation of the proposed services aimed at improving your performance (including faster or longer trains).

Freightliner remains incentivised, [Redacted] through the Schedule 8 provisions, to deliver high levels of performance. The performance of this traffic has been very strong and has been recognised by all parties to be so. Since operations started in Period 7 of 2018/19 Arrival to Fifteen minutes has been at 87.1%. This compares to a Moving Annual Average Arrival to Fifteen minutes of 86.2% across all FOCs. Exact on-time departure for this traffic currently sits at 82.4%, which compares favourably to the all freight operator average of 79.9% on a moving annual average basis.

Notwithstanding that this traffic is very high performing, Freightliner continues to work collaboratively with Network Rail on a number of performance initiatives to drive further performance gains. A performance improvement plan has been produced which details and monitors a lot of these initiatives, which include:

- Significant investment in people, training and competence management
- A new locomotive maintenance depot at Crewe, removing reliance on a third party.
- Mid-life overhaul of FHH Class 66 fleet. This X and G Exam programme is continuing.
- Series of internal KPIs developed to monitor performance trends and identify problem terminals and trains. Designed to challenge repeat performance issues.
- Autumn Agreement that recognises and responds to potential autumn related performance issues. Freightliner was the first FOC to have such an agreement in place and discussions are well established to ensure that this traffic is included in the 2019 Autumn Agreement.

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 performance. ***C&Ps paras 4.26-4.36, 5.38-5.40, 5.64-5.69***

Freightliner continues to work collaboratively with Network Rail through forums including the Freight Performance Steering Group (FPSG) and specifically for this traffic via regular conference calls. Within this context Network Rail has proposed a number of initiatives designed to further improve performance. These initiatives include:

- Monitoring of specific trains delayed on a recurring basis.
- Strategic freight corridor meetings. This is a series of meetings designed to identify performance improvement initiatives along each of the key freight corridors.
- Tracking recurring FO hotspots (ie identifying locations where frequent unexplained delays occur for FHH). Designed to understand the root causes of these delays.
- Regular meetings to discuss Top 10 Victim/Perpetrator issues and understand what mitigations are in place to respond to future similar incidents.

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 performance.

Freightliner works closely with the customer to ensure high levels of performance at the terminal facilities, including incentives to drive right time departures. Furthermore, the minimum turnaround times at origin and destination that are included in the Schedule 5 rights table support the right-time delivery of the traffic.

5.3 Restrictions of Use: set out and explain the reasons for any changes from the Restrictions of Use regime in the model freight track access contract (Schedule 4).

There are no changes to the Restriction of Use regime.

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).

There are no network enhancements associated with this application, nor are any of the proposed services subject to network enhancements.

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).

Not applicable to this application.

7. Other

7.1 Associated applications to ORR: please state whether this proposal 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).

Not applicable to this application.

7.2 Unregulated access: please comment on whether any contracts are being negotiated for access to a facility adjoining Network Rail's network (e.g. to a freight light maintenance depot), including where ORR's approval is not required. For more information, see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). (This is relevant in the context of clause 6.4 of the model contract.)

Not applicable to this application.

7.3 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).
- 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.

Annex 1 – Marked up version of Schedule 5 Rights Table (Showing changes since last submission to SoAR panel).
Annex 2 – Clean version of Schedule 5 Rights Table. Appendix A – Previous SoAR Panel Output

7.4 Confidentiality exclusions: please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the application 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 you want us to exclude from publication.

A separate redacted version of the Form F is provided to address confidentiality exclusions that are required. These relate to the contractual position with the customer.

8. Pre-application consultation

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

8.1 The consultation: has a pre-application consultation been carried out in line with the [Code of practice for industry consultations](#)? If yes, please:

- state who conducted the consultation;
- list all train operators 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.

Pre-Application consultation was carried out by Rita Handley at Network Rail on behalf of Freightliner Heavy Haul. The consultation was issued on 27th August 2019 to all relevant industry stakeholders as per Network Rail's master distribution list. Responses are attached to this form.

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.

Govia Thameslink Railway requested further information as to whether this was new to rail traffic or existed in the existing timetable, and asked for copies of relevant train prints. These were supplied (see attached response) and confirmation given this was established traffic as per the information contained within this form. No further correspondence was received so we believe any queries have been satisfactorily answered and no changes are necessary.

8.3 Unresolved issues: please set out any issues raised by consultees which have ***not*** been resolved to the consultee's satisfaction, 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.

MTR Crossrail raised queries surrounding performance and timetable modelling for these services. Network Rail confirmed this was being undertaken as part of the ESG for this route, as per the attached consultation responses.

MTR Crossrail's concerns appear to be focussed on platforming capacity at Paddington beyond PCD 2020, we believe that MTR Crossrail have no issues with this Supplemental Application until PCD 2020. We do not believe that platforming strategy at Paddington should have an impact on this application, the Western ESG has included these trains into future timetabling work and the train slots requested exist in compliant paths in the December 2019 timetable. Further, work carried out in recent years in preparation for the introduction of Crossrail services has seen the improvement of connections at West Drayton, reducing the time taken to perform conflicting moves, and the construction of a dive-under at Acton, removing all conflicting moves between these trains and MTR Crossrail services here. This substantial investment in the route has been carried out to support both an intense passenger service and the existing quantum of freight traffic, while also catering for future growth, helping to drive improved environmental conditions in the South East through modal shift from road to rail, and promote third party investment in rail freight terminals.

[Redacted] have invested heavily in the necessary terminals and rolling stock to support the running of these trains for many years. The granting of access rights with one-hour windows is key to ensuring the continued operation of this traffic in an efficient manner, protecting journey time together with loading and unloading slots, and by definition, ensuring best use of the available train slots by ensuring all trains can be run with the maximum load of fuel, rather than having this compromised by sub-optimal terminal times. Notwithstanding this, the one hour windows still provide considerable opportunity for Network Rail to apply flex in order to create an optimised timetable.

As evidenced in section 5.1, the performance of this traffic has been above industry standard, and there is no reason to believe this will deteriorate. The introduction of additional services in the future around existing, established traffic, and concerns for the performance of said additional traffic as a result, should not compromise this 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.

In the case of agreed applications under section 18 or 22, the facility owner should fill in the 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)

For section 18/22 applications, please provide a letter of support from the beneficiary or ask them to sign here:

Signed  Date...11/10/2019...

Name (in caps) CHRIS MATTHEWS

Job title TRACK ACCESS MANAGER

For (company) FREIGHTLINER HEAVY HAUL LTD

10. Submission

10.1 What to send: please supply, in hard copy or electronic format, 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.

10.2 Where to send it:

Freight Track Access Manager
Access and Licensing Team
Directorate of Railway Markets and Economics

Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Email: track.access@orr.gsi.gov.uk