

## 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):

Section 17: New Track Access Contract.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Limited	<b>Company:</b> First Greater Western Limited ("GWR")
<b>Contact Individual:</b> Richard Turner	<b>Contact Individual:</b> Robert Holder
<b>Job Title(s):</b> Customer Relationships Executive (FGW)	<b>Job Title:</b> Network Access Manager
<b>Address:</b>	<b>Address:</b>
Western House	Milford House
1 Holbrook Way	1 Milford Street
Swindon	Swindon.
SN1 1BD	SN1 1HL
<b>Telephone number:</b> 01793 839562	<b>Telephone number:</b> 0751 533 1596
<b>E-mail address:</b>	<b>E-mail address:</b> <a href="mailto:robert.holder@gwr.com">robert.holder@gwr.com</a>
Richard.Turner3@networkrail.co.uk and <a href="mailto:FGWTACConsultation@networkrail.co.uk">FGWTACConsultation@networkrail.co.uk</a>	

**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**

First Great Western (GWR) intends to operate the proposed services itself. GWR holds a valid operating licence and 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**

This Section 17 Application is for a new Track Access Contract to facilitate extension to PCD December 2021.

**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**

This is being provided at the Secretary of State's request to provide rights as above. The extension was considered by Network Rail's Sale of Access Rights Panel on Monday 23 06 19. It is likely Network Rail will not at this stage be likely to agree the extension without caveat on certain Schedule 5 rights being limited to expire at PCD 2020. Network Rail has not yet seen the Liability Cap value.

**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**

This is as per the model contract as developed and Approved by the ORR in connection with the PR18 circumstances as they apply to the current GWR contract, and with amendments to the existing contract regarding treatment of electricity for traction backdated charges that have been seen by the ORR and for which formal submission has been sought. There is nothing new that is contra the model clause. Liability Cap has reverted to the model.

#### **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 Contract takes the existing Track Access Contract as amended by the Section 22a 39<sup>th</sup> Supplemental submitted in parallel to the ORR for determination and extends to the PCD 2021.

This provides security for the enhanced train services facilitated by the huge investment in infrastructure, rolling stock and personnel undertaken to provide much needed material change to

frequency, speed and capacity on GWR. The complete service is as required by the franchise agreement including its provisions for Service Level Commitment, capacity and meeting and creating demand.

Cognizance is made of the December 2019 pattern of both GWR and Crossrail services between Paddington and Reading.

The main thrust of the GWR change introduced in December 2019 following the huge investment is to utilise the new Class 800 802 fleet on intercity and limited London area services to improve speed and frequency such as:

- Additional two trains per hour Paddington - Bristol Parkway - Bristol Temple Meads between the peaks;
- Additional limited stop services in the peak London - Bath - Bristol and London - Cardiff;
- An hourly through London - Cheltenham service each hour;
- A limited stop Paddington - Penzance service every two hours and a limited stop Paddington - Plymouth stop in the alternate hour;
- A service for Berks and Hants stations every two hours;
- Two trains per hour Plymouth - Penzance;
- Enhanced Paignton - Exeter services;
- Through Cardiff - Penzance services; and
- higher frequencies on Saturdays and Sundays.

**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**

The December 2019 service has been validated by Network Rail. The infrastructure and rolling stock readiness has been closely monitored and managed through at every level including by the PMO office. The December 2019 timetable offered and bid for as per these rights met its approval and is as per its instructions.

The Gatwick enhancement has been scrutinised by Network Rail, with known needs for level crossings on that route identified and now under development.

Compliance is effected with TTP and EAS.

**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**

As per model contract.

**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**

None.

**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**

No change from 39<sup>th</sup> 22a Supplemental picture.

**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**

These are essential to meet franchise requirements for journey time, frequency, capacity and growth. The DfT has written to GWR requiring extension of the track access contract, and this represents an extension in line with published ORR policy and with likely agreement (subject to caveats on Schedule 5 mentioned above) of this expiry date at SOAR.

**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**

The industry consultation will include Passenger Focus.

**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**

These rights are consistent with Western, Wales, Wessex, South East, London North Western and national RUSs and with latest long term planning axioms and outcomes.

## 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**

Significant improvement in rolling stock age, reliability and capability along with a substantial increase in staff.

**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**

Significant upgrade to the GWML.

**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 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**

The Schedule 8 Appendices in the application are unaltered from those in the current track access contract. The appendix is likely to be recalibrated to an extent for transfer of services to Crossrail planned for December 2019 and already catered for in the Schedule 5 in this application. This will be covered through Supplemental Agreement.

## 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**

The timings meet the infrastructure planned for December 2019.

**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**

N/A

## 7. Other

### 7.1

A Section 22a application was made in parallel for new Schedule 5 rights (as is base in per this s17 application) in the current contract which expires PCD 2020.

### 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**

No side letter or other document is required. The ORR has been provided with a copy of the DfT requirement. Justification for the Schedule 8 Liability Cap value is herewith to the ORR and Network Rail only in the form of an excel document.

**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**

The consultation version should exclude those items normally redacted by the ORR please. This driven by the same reasons as normal.

**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**

Imminent.

**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.

N/A

**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.

N/A

## 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 Robert Holder..... Date 08 07 2019.....

Name (in caps) ...Robert Holder... Job title ...Network Access Manager

For (company) ...First Greater Western Limited...

## 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  
WC2B 4AN