

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):

GB Railfreight Limited 11th 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.	Company: GB Railfreight Limited.
Contact individual: . Job title: Customer Relationship Executive.	Contact individual: Job title: Head of Strategic Access Planning.
Telephone number:	Telephone number:
E-mail address:	E-mail address:
Address: 6 th Floor, One Eversholt Street, London, NW1 2DN.	Address: 3 rd Floor, 55 Old Broad Street, London, EC2M 1RX.

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

GB Railfreight (GBRf) intends to operate the services itself.

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).

GB Railfreight (GBRf) holds a valid operating licence under Section 8 of the Railways Acts 1993. GBRf also holds safety certificates, Part A and Part B, under Regulation 7 of 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, 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: As soon as this supplemental is approved.

Expiry date: December 2026 (PCD 2026).

Since December 2016, GB Railfreight's business (measured in train miles) has grown by 48.3%, with a huge 28.1% growth over the last twelve months alone. Our Intermodal business has expanded by 32.4% over that time.

To cater for this large increase in our freight business, GB Railfreight has invested in an additional eleven Class 66 locomotives, thirteen Class 60 locomotives, three Class 47 locomotives and several hundred freight wagons. GB Railfreight has also employed over 150 new people, including many new drivers and ground staff, to support these new long-term contracts.

As part of securing this large growth, GB Railfreight is applying for 7 new Firm Rights for one of its new-to-rail Intermodal flows between Teesport and the new Doncaster i-Port terminal.

The addition of these 7 firm rights, as shown in the attached Schedule 5 Rights Table, is being proposed to facilitate and protect GB Railfreight's long-term legitimate business and investments, described above, whilst maintaining a reasonable balance of flex for operational practicability on the whole of the network.

No material safety risks have been identified as arising from this application.

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.

Section 22A Application:

It is absolutely right and proper that GB Railfreight contractualises its train slots, validated by Network Rail, as set out in ORR's document *Criteria and procedures for the approval of track access contracts (December 2011)*. Not to do so goes against all of Network Rail's and ORR's requirements, the Network Code and our track access contract. Network Rail Routes should not be stifling due process.

Through recent discussions with our Customer Relationship Executive over the past year, and he with LNE Route, it is clear that any new firm rights applied for over the East Coast Main Line, when not accompanied by some deleted firm rights, are not supported hence this being a Section 22A application.

In GBRf's view, this is not a valid argument, and is not referred to in ORR's document *Criteria and procedures for the approval of track access contracts (December 2011)*, that one firm right needs to be given up before another firm right can be supported or approved, either by Network Rail or ORR respectively.

That may be *desirable* but cannot be a pre-requisite for approval of another similar firm right. Were that argument to be taken to its logical conclusion, a freight company such as GBRf might never actually be able to grow, given the strategic importance of the ECML and its branches to all freight traffic.

It must also be noted that no such proviso is ever made or enacted when dealing with firm rights applications for franchised or non-franchised passenger services.

There is always a presumption of real growth and the granting of those additional rights, and the same principle must, therefore, apply to freight services. Indeed, unlike some recent passenger growth figures, GB Railfreight's services have actually shown a higher percentage growth rate.

It is also worth re-iterating that the routings shown in GBRf's rights table clearly state they are "Non-contractual comments", with a suggested routing given. If there is another route that Network Rail can use to satisfy all aspects of each proposed firm right then that is another possible solution. This additional flexibility was agreed to as part of the access rights review during 2015-2016.

Arriva Rail North Limited (unresolved issue): Arriva Rail North has concerns about whether or not Network Rail supports firm rights being granted to GBRf up to PCD 2021 (December 2021).

The most recent correspondence was from Arriva Rail North to GBRf on 16/1/20 and GBRf's most recent response back on 15/5/20. It is GBRf's view that, for any ECML firm rights request, each proposal is judged on its merits, by ORR.

Cross-Country Trains Limited (unresolved issue): Cross-Country Trains has some concerns regarding the actual running and performance of these specified services and how that performance interacts with the firm rights as described.

In its response of 15/5/20, GB Railfreight has tried to clarify the difference between firm rights, individual train slots from those rights, the use of all TOCs' and FOCs' flexing rights in the process of endeavouring to accommodate all access proposals and other industry processes that deal with on-the-day performance of all services.

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.

No departures from the model freight track access contract.

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.

Compared with its current track access contract, GB Railfreight is proposing to apply for 7 new Firm Rights, as per the detail set out in ORR's *Criteria and Procedures for the Approval of Track Access Contracts* document which supports having a clear and transparent rights application process.

The rights being sought are all with 60 minute windows and a full description of just the new rights can be found in Appendix A.

These rights support brand new W10-gauge Intermodal services between Teesport and the new Doncaster i-Port Intermodal terminal, with one set of wagons managing two full rotations over a 24-hour period. Much private funding has also been spent at each of the two terminals involved with this new flow.

The new services are taking full advantage of two recently completed Strategic Freight Network funded schemes – *Teesport & ECML Gauge Clearance* and *ECML (North) Gauge Clearance* schemes. GB Railfreight is, rightly, looking to secure its business over these routes with their newly increased capability.

For running off the Network on to private infrastructure, there are defined requirements in Section 6.4.1 of the model Track Access Contract (Freight Services). GB Railfreight has, therefore, agreed specified timing slots at both the listed ports/terminals and destination points.

Indeed, GBRf's end customers have been closely involved with these changes, ensuring that many freight operators' re-written timetables are entering and leaving their premises at the correct time and in the desired order.

The two off-network locations have several rail operators using the facilities and, therefore, a quite rigid daily loading and unloading plan that must be adhered to make these inter-connected trains work in a robust manner.

There is much interaction between freight operators' services, both within the confined workings of these terminals and also on the national network so any poorly planned service within a terminal could easily import delay on to the Network.

Actual terminal activity on private infrastructure absolutely drives the requirement of freight train plans. To many, these are unseen activities that are not really appreciated but what takes place off-Network is every bit as important as the on-Network journey time and quality of train slot.

For example, at ports handling Intermodal services, there are many logistical activities that must be carefully planned in advance and, ideally, change very little. These include meticulous planning of space on port land where containers that are to be loaded and unloaded can stand, the number of cranes being manned in any given period, where to hold the fleets of lorries (typically 50-70 lorries per service) that deliver and remove containers off the port and managing and realising the investment in equipment and manpower to undertake all of these activities.

With a port that handles multiple Intermodal services, it can be appreciated that even a small change to some rail schedules could lead to the over-lapping of these requirements and cause serious congestion within the terminal.

Doncaster i-Port terminal is smaller than a port and has less ability to be able to stack 50-70 lorries for any serious amount of time.

Without the level of protection that 60 minute windows offer, there is a serious risk that a flow which works during one timetable could not work in the following timetable were the times to flex too much.

It is these freight terminal plans that drives GB Railfreight to require a maximum limit of 60 minute windows in this rights application. In addition, the use of specified robust and little-changing time slots, at off-network locations, can only be good for performance on the network.

In the attached Schedule 5 Rights Table (Appendix A), the 60 minutes of requested flex, for each of the arrival and departure windows, initially gives Network Rail two hours-worth of available flexing. This, immediately, is a generous flex and gives a reasonable balance between giving Network Rail flexibility to create new timetables but not destroying GBR's service patterns and, therefore, its whole asset base.

On top of the proposed two 60 minute flexing windows, and despite optimisation work, the vast majority of GB Railfreight's schedules still contain an amount of pathing time, as they follow other slower stopping services and also time spent in loops for other passenger trains to pass. These pathing and looping times are already built in to the schedules and offer yet more flexibility if everyone's current flexing rights are used as necessary.

In addition to all of the above, yet more flexing is currently available to capacity planners.

Under Condition 10 of Part J of the Network Code, Network Rail is able to give notice of a proposed Access Right Change if it reasonably believes this will achieve better use of the Network and also that the positive impact of the change was not reasonably foreseeable when the relevant Firm Right took effect.

This condition is already in place and gives Network Rail its flexibility, were the current Part D and J conditions not to be suitable for Network Rail to create a "better" timetable.

It is for these reasons that GB Railfreight believes that 60 minute windows for all manner of freight, including bulk traffic such as biomass and aggregates, is the right balance and that it doesn't believe there is any effect on other freight operators.

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 of the Rights sought in the proposed supplemental agreement have WTT paths offered in the current timetable. They take into account the Operating Constraints, consisting of the Engineering Access Statement detailing possession opportunities for the Infrastructure Maintainer, the Timetable Planning Rules, also the Working Timetable and associated Sectional Appendices to ensure trains run within the capability of the Network.

In offering validated paths, Network Rail will have satisfied itself that the slots are fully Timetable Planning Rules compliant and that appropriate use has been made of available capacity taking into account the Decision Criteria, where applicable. The slots are in currently recognised freight pathways (as the timetable is currently constructed) and therefore capacity does exist for these services. Sufficient network capacity, and also pre-agreed off-network capacity, has been found without any infrastructure enhancements currently being required.

In GBRf's view, the application and process for Firm Rights, as per the detail set out in ORR's *Criteria and Procedures for the Approval of Track Access Contracts* document, cannot be continued to be frustrated by scenarios that may or may not play out by a particular timescale, or not. The running of GBRf's and other TOCs' & FOCs' businesses, here and now, needs to be at this heart of this application. The industry cannot stand still because of the above scenario, which is also a view shared by other Network Rail Routes.

Network Rail's Network Licence, combined with this application process, are in place to ensure that an operating company can plan its legitimate business in a timely, efficient and economical manner so as to satisfy its reasonable requirements in providing services with a reasonable degree of certainty.

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 proposed Freight Access Rights, with 60 minute windows at each end, are to support new and on-going time-critical freight services for just-in-time Intermodal services.

These services require clearly defined arrival and departure times to tie into port and inland terminal slots at each end of the route. Tightly defined train slots (60 minute windows) also help to ensure that the very large investment in infrastructure and newly-built locomotives and wagons are used to their maximum and that there are no stranded investments over the course of their 30 year life for either GBRf or the 3rd party investors.

This is also paramount to both delivery of product and on-going network performance.

Approving these rights for the full period of GBRf's track access contract gives GBRf and its customers the confidence to service their contracts and also to confidently renegotiate said contract, when due, on an equal basis with other freight operators.

When any of the Freight Access Rights are no longer required during the course of this contract, there are two processes that currently cater for changes to be made to GBRf's track access contract and, therefore, the removal of rights and train slots on a regular basis:

Condition J9 – The Rights Review Meeting: This states that Network Rail shall hold Rights Review Meetings with operators as frequently as necessary in order for it to ensure that capacity on the network is shared in the most efficient and economical manner in the overall interests of users, providers, potential providers and funders of railway services.

This condition exists now and should be the main driver of always ensuring maximum capacity. In essence, this application is exactly the result of such a review.

Capacity Management Review Group: This is the joint Freight Operating Companies & Network Rail capacity working group, having started on 9th April 2014 as a result of the CP5 Freight Access Charges determination. Its purpose is to review and amend current and future rail freight paths based on a "usefulness" and "reasonableness" test. After discussion, GB Railfreight train slots are either removed from the timetable or turned into strategic capacity.

From 9th April 2014 up to the current date, freight paths have been reviewed and 5893 have been completely removed from the working timetable, as is right and proper.

This system is the correct way forward and strikes the right balance between removal of unused rights & paths and keeping relevant and useful paths for strategic capacity and future freight use.

The Capacity Management Review Group convenes every three months to ensure correct industry decisions are made. These two mechanisms are how any rights that are not being exercised are removed from GB Railfreight's long-term track access 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 (eg 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.

As stated in paragraph 76 of ORR's "*Directions in respect of a track access contract between Network Rail Infrastructure Limited and GB Railfreight Limited*" document, dated 29th February 2016, ORR expects the default position for window size of freight Firm Rights, backed by commercial contracts with end users, to effectively be one hour windows.

One hour windows will preserve each of GBRf's end-users' confidence in its ability to provide the train services and timings they need, and enables GBRf to plan the future of its business with a reasonable degree of assurance.

In addition, GBRf believes that the very detailed explanations given in the four pages Sections 4.1 – 4.3 articulate the reasoning why a 60 minute window is fair and reasonable for GBRf in managing its business with a reasonable degree of certainty.

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 Event Steering Groups 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. Additionally, the *Long-Term Planning Process: Freight Market Study*, established in December 2013, has stated that the average annual growth for Intermodal services (by tonnes lifted) on rail is predicted to grow from 19% to 46% by 2033. Breaking this down, the average annual growth is expected to be 5.5% from now through to 2033.

This application is also consistent with the new Freight Network Study which states that average annual rail freight growth is approximately 3%.

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).

Contained in the agreements between GB Railfreight and its customers are new and altered performance regimes which include right time arrivals and departures as KPIs with financial penalty. GBRf's twelve Operations Managers are now responsible, and directly accountable, for right-time departures (and arrivals) for the terminals served by GBRf services.

The use of i-Pad is being used for remote condition monitoring, mainly for levels of fuel, sand, brake blocks and coolant with a view to reducing main line failures and delays.

This is a novel way to anticipate faults before they occur and using technology to help improvement performance over all routes. Additionally, in recent months, more “intelligent” remote data downloading has come into use of GBRf’s Class 66 locomotives.

All of GBRf’s train lists are now produced using mobile-consisting technology, leading to fewer delays due to paperwork issues.

The aim of all of these is to realise a better operational plan and to deliver more robust freight performance throughout the network. They also help to provide more accurate Sectional Running Times and offer an increased level of clarity for unexplained delays.

In addition to the above, performance regime briefs are regularly given to all GBRf staff, including drivers, ground staff and controllers and all new performance incentives have been introduced with GB Railfreight’s locomotive and wagon maintenance suppliers.

All of these will help improve network performance for a large percentage of trains that GB Railfreight runs.

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.

No planned projects for services in this application.

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 Restrictions 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. All of the Firm Rights in this application have associated train slots already offered to GB Railfreight.

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 relevant 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).

No other applications are applicable.

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 relevant 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.

Appendix A – A GBRf's Schedule 5 Rights Table showing only the newly proposed rights that would be incorporated into the main GBRf Rights Table.

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.

No confidentiality exclusions necessary.

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.

Not applicable at this stage.

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.

Not applicable at this stage.

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.

Not applicable at this stage.

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.....

Name (in caps): Job title: Head of Strategic Access
Planning

For (company): GB Railfreight Limited.

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