

## 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):

4<sup>th</sup> Supplemental Agreement between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited ("West Midlands Trains"), under Section 22A of the Railways Act 1993

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: West Midlands Trains Limited
Contact individual: Michelle Woolmore	Contact individual: James Carter
Job title: Route Contracts Manager	Job title: Network Access Manager
Address: Baskerville House, Centenary Square, Broad St, Birmingham B1 2ND	Address: West Midlands Trains Limited 134 Edmund Street Birmingham B3 2ES
Telephone number:	Telephone number: 07772 886852
Fax number:	E-mail address: [Redacted]
E-mail address: [Redacted]	

**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**

(a) West Midlands Trains holds a valid train operating licence dated 10<sup>th</sup> December 2017  
(b) West Midlands Trains also has 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**

The purpose of this proposed Supplemental Agreement is to update the Track Access Contract ('the Contract') between West Midlands Trains and Network Rail to provide West Midlands Trains with the rights to operate a number of additional train services on the WCML South from the PCD in December 2020. These rights will expire on Principle Change Date 2026 to coincide with the duration of the West Midlands Franchise.

West Midlands Trains is proposing to operate an additional hourly train service between Northampton and London Euston (SX and SO), calling at WOL, MKC, BLY, LBZ, BKH, HML and WFJ, between the hours of 11.05 – 15:05 and at 20.05 (SX) and hourly from 10.05 – 19.05 (SO).

This operation of these additional services on the Slow Lines will enable the existing Liverpool – Euston (via Birmingham) services to be accelerated on the WCML South by reducing the dwell time at Northampton from the current 12 minutes to 7 minutes, then running non-stop (via Fast Lines) to Euston, with the existing station calls replaced by the new xx.05 services. Corresponding hourly return services in the Down direction will then be provided from Euston to Northampton between 09.25 and 15.25 (plus one SX evening return working to MKC).

On Saturdays the pattern is broadly similar, with an additional 10 services between Northampton and Euston, and an additional 11 services in the Down direction between Euston and Northampton.

West Midlands Trains is proposing to implement these changes as part of a wider package of measures to improve reliability and simplify service recovery on the WCML.

No safety risks have been identified as part of this proposal.

West Midlands Trains' franchise is due to expire on 1<sup>st</sup> April 2026.

**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**

West Midlands Trains had initially bid to Network Rail for these WCML services to be included in the May 2020 timetable. Even though WMT considered that capacity was available to operate these services within a TPR-compliant timetable, Network Rail's view was that the absence of performance modelling at time of WMT submitting the PDNS meant that they could not properly consider and, if appropriate, accept the 4<sup>th</sup> FL path, and therefore were not willing consider the 4<sup>th</sup> FL paths within WMT's bid. Whilst WMT had commissioned an independent performance assessment using 'Treno' modelling software, unfortunately due to the size and complexity of the model the outputs were not able to be produced in time to be assessed and fully understood for the May 2020 validation process.

WMT therefore agreed with Network Rail that work on the additional WCML paths should be deferred for inclusion in the December 2020 timetable instead, subject to WMT '*demonstrating the performance impact and how that would be managed,*' and that Network Rail would work with WMT in good faith on the rights that WMT require.

The outputs from the Treno performance modelling will be available in late November / early December 2019.

**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**

Not applicable

#### 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**

Given the performance challenges that have occurred since the implementation of the May 2019 timetable, WMT has been working closely with Network Rail to develop a package of train service changes for implementation between December 2019 and December 2020 to try and modify the current timetable in order to improve operational performance. These train service modifications have been developed around a number of principles:

- Segregating long and short-distance service groups out between the Fast and Slow lines on the WCML South
- Increasing turnaround and dwell times at Euston and Birmingham New St
- Removing as much splitting and joining at Euston and Birmingham New St as possible

Some of the service changes in the West Midlands are proposed for December 2019, with the WCML changes now proposed for December 2020 (see section 3.2).

On the WCML, the operation of the new Northampton – Euston 'Slow Line' services will enable the acceleration of the Liverpool – Euston (via Birmingham) services, which will run express to Euston. This will extend the turnaround times at Euston from 16 minutes (current average) to between 18 and 31 minutes, providing a performance buffer in the event of perturbation.

Segregating the long and short-distance services out between the Fast and Slow lines on the WCML will reduce the risk of delays spreading between service groups (an unfortunate consequence of the current timetable, whereby a late-running arrival from Birmingham on the FL can often cause a late SL departure to Tring). Train crew diagrams will be less intertwined due to the removal of PNBs at Euston, reducing an additional performance risk from train crew changes. Finally the clear segregation of service groups simplifies the unit diagram structure in preparation for the rollout of the new WMT EMU fleet, which will be dedicated to certain service groups only.

All of this should enable better containment of disruption and improve service recovery during perturbation.

**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**

WMT previously bid for these services for May 2020 and believe that capacity exists for a TPR-compliant timetable.

Schedule 5 of the proposed Contract will be specified on a 'quantum-only' basis to provide Network Rail with maximum flexibility to modify the timetable in future.

**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**

The rights sought in this Contract are quantum-only and do not contain any flexing rights.

**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**

The Contract contains no provisions for Journey Time Protection.

**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**

Not applicable

**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**

Not applicable

**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**

Not applicable.

**4.8 Passenger Focus and, where applicable, London TravelWatch:** please state whether (and if so to what extent) the proposed services have been discussed with these bodies. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

Transport Focus and London TravelWatch will be included as part of the industry consultation.

**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**

The proposed rights are considered to be consistent with the WCML RUS (2011).

## 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**

Not applicable

**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**

Not applicable

**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**

There will be no change to the current level of performance monitoring.

**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**

Not applicable

## 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

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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**

Not applicable

**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**

Not applicable

## 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**

An application made under Section 22A of the Railways Act has been submitted informally to ORR for review (proposed 1<sup>st</sup> Supplemental Agreement). This covers access rights for 5 x additional paths between Northampton and Euston (SX) from December 2019.

**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**

There are no side letters or other documents which affect the application.

**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**

Not applicable.

**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**

**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.

**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.

## 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***

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***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 .....

Name (in caps) ..... Job title .....

For (company) .....

## **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