

Application to the Office of Rail Regulation for a passenger track access contract under section 17 of the Railways Act 1993

1. Introduction

This form should be used 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 is the means by which those seeking the right to use a railway facility (including Network Rail's network) apply for compulsory third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

Where an applicant wishes to submit an application direct to ORR and have ORR conduct the industry consultation on its application, this form should be completed fully before submission to ORR. Alternatively, where an applicant wishes either to request Network Rail (for applications where it is the facility owner) to conduct a pre-application consultation or to conduct a pre-application consultation itself, this form should be completed up to section 7.4 before carrying out a pre-application consultation. The remainder should be completed after the consultation, before applying to ORR for directions under section 17.

The form sets out our standard information requirements for considering such applications. It cross-refers throughout to our criteria and procedures (C&Ps) ¹ and, where appropriate, to the Industry code of practice for track access application consultations (the Code of Practice) ¹. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues we will need to consider. Applicants should use the published model passenger track access contract as their starting point when drafting the contract they would like ². Applicants are strongly encouraged to read the C&Ps and the Code of Practice before making an application.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Railways Act 1993 and the C&Ps in this respect. We will be happy to discuss prospective applications.

A copy of this form, and of ORR's model track access contract, can be accessed electronically and downloaded via the ORR website (www.rail-reg.gov.uk).

2. The application

2.1 Title of proposed contract:

Track Access Contract between Grand Northern Railway Co. Ltd. and Network Rail

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

Company: Grand Northern Railway Company Limited

Contact individual: Ian Yeowart

Job title: Managing Director

Address: River House

17 Museum Street

YORK YO1 7DJ

Telephone number: 01904 461375

Fax number: 01904 466066

E-mail address: iy@grandunionrail.co.uk

¹ *Criteria and procedures for the approval of passenger track access contracts: fourth edition*, Office of Rail Regulation, May 2006, and *Industry code of practice for track access application consultations*, both available at <http://www.rail-reg.gov.uk/server/show/nav.202>.

² This is available at <http://www.rail-reg.gov.uk/server/show/nav.202>.

2.3 Licence and Railway Safety Case/Certificate: please state whether the applicant intends to operate the services itself or have them operated on its behalf

Please state whether the proposed operator of the services (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has an accepted Railway Safety case under the Railways (Safety Case) Regulations 2000 or a 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 which the proposed operator has reached in obtaining a licence or exemption and Railway Safety Case/Certificate (as the case may be)

The services will either be operated directly - for which a valid Train Operator License will be sought and for which a Railway Safety Case is being finalised – or services will be operated by Grand Central, holder of a valid Train Operating License and Safety Certificate.

3. The proposed contract

3.1 Executive summary: please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below): **3.21**

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.74**
- any aspects in which the proposed contract contains bespoke provisions departing from the published model track access contract and the charging, performance and restrictions of use regimes established through ORR's periodic review (or subsequent interim reviews) of access charges; and **2.50-2.56**
6.2-6.3
- any material safety risks that have been identified arising from the proposed contract and the arrangements for their control and mitigation (by reference to the provisions of the operator's Railway Safety Case/Certificate and, so far as is possible, the Railway Safety Case/Certificate of the facility owner) **4.9-4.11**

This will be a new contract. Grand Northern is proposing to operate 6 daily return services on the route on weekdays and 4 daily return services at weekends.

The following stopping pattern is proposed:

- Bradford Interchange
- Halifax
- Brighouse
- Huddersfield
- Stalybridge (or possibly Guide Bridge)
- Stockport
- Alderley Edge
- London Euston

Grand Northern propose to operate the services using Class 180 DMU in 5 car formation.

Some of the stations on the route are not long enough to accommodate 5 cars and a method statement for operating long trains at short platforms has been prepared and will be part of the safe working arrangements.

The proposed contract is in line with the ORR's template Track Access Contract and is expected to contain a small number of bespoke provisions in line with the Grand Central Track Access Contract. For example this is to address areas of no historical performance data and the creation of a performance regime.

3.2 Terms not agreed with the facility owner: please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions **2.24 3.72-3.74**

Grand Northern and Network Rail Have not discussed the proposed contract, but it is prepared in line with the agreed contract between Grand Central and Network Rail for Grand Central's Sunderland services.

Schedule 2 & Schedule 5

Network Rail has not yet completed work on the proposed 2008 timetable. Grand Northern (through Grand Union and Grand Central) has been working with Network Rail on development of this timetable for over 12 months.

3.3 Departure from ORR's model passenger track access contract: please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends **2.50-2.56 6.2-6.3**

The contract will remove drafting that solely relates to franchised passenger operators.

3.4 Duration of contract: please state the commencement date sought for the proposed contract, and provide justification for the proposed duration (in particular, giving reference to ORR's policy on long-term access contracts³ where contracts would be for longer than five years) **4.74-4.79**

Grand Northern will be seeking a contract of 10 year duration from 14 December 2008 to underpin the development of the service in the early years and the investment and commitment in rolling stock.

³ *Long-term access contracts: final conclusions*, Office of Rail Regulation, June 2005 available at <http://www.rail-reg.gov.uk/upload/pdf/240.pdf>

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

4.1 Benefits: please set out what specific benefits will result from the proposed contract. In particular, **4.30-4.36** please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators

These services will operate under the provisions for open access and will not receive subsidy to underpin the financial viability of the operation.

These services will serve large communities that are currently remote from direct rail links to the Capital. Currently only one daily service (via the ECML) serves Bradford, with no direct services provided from any of the other stations except Stockport. Bradford, Halifax and Brighouse are also subject to a separate application for ECML services. As well as London, this service group would offer additional new direct links between those stations and Stalybridge and Stockport.

Road links between towns and cities in the Calder Valley, and on the M62 to Stockport and beyond are severely constrained by the volume of traffic that uses them, resulting in long planned journey times for distances that appear reasonably short when looking at a map.

Services operating to Euston via Huddersfield would link this large West Yorkshire town to the Capital, as well as improving services between Calder Valley stations and the WCML. West Yorkshire Passenger Transport Executive (WYPTE) is supportive of the improved services proposed, and also has developing plans for re-generation of the station at Bradford Interchange which would see canopy and platform improvements as well as upgrading of the ticket office and travel centre. The station is due to undergo re-modelling work on the approaches, with a re-signalling scheme due later in 2008 to improve moves into and out of the station.

Services would stop at Stalybridge initially, although discussions with Greater Manchester Passenger Transport Executive has revealed their support for improvements at Guide Bridge which has the capacity to be developed into a well sited 'parkway' station. This would allow easy access to direct London services from Ashton Under Lyne, Oldham, Rochdale, Bury and the eastern side of Manchester.

Services would initially call at Stockport to set down only in the London direction, and pick up only in the Bradford direction to ensure compliance with the West Coast franchise current protection against competition on that flow. Services are then planned to call at Alderley Edge and then non-stop to London Euston.

Stakeholder support for these services is very strong, and the introduction of these services would have an important re-generation effect on the towns and cities that would be linked directly to the Capital.

The initial indication to the ORR for this service group was made on 15 September 2006, in response to an ORR request of 11 July 2006.

4.2 Congested infrastructure: please state whether the part(s) of the network to which this application relates have been declared congested by the facility owner, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005⁴ **4.84-4.85**

The infrastructure is not declared congested.

⁴ These regulations are available at <http://www.opsi.gov.uk/si/si2005/20053049.htm>

4.3 Adequacy: please set out to what extent and by what process (if any) the applicant has satisfied itself that there is sufficient network capacity for the services in the proposed contract, and the implications for overall network performance and the facility owner's maintenance and renewal activities **4.17-4.38**

Capacity is available on the route, and Grand Northern would be content to work with other operators and Network Rail to make best use of the available capacity. There are disagreements with Network Rail however on the ability of 'non tilt' trains to operate at maximum design speed, 125mph, when trains could adequately keep time with necessary speed reductions at appropriate points. The ITT for IEP, which will use the WCML, does not specify tilt as a requirement.

Grand Northern will continue working with Network Rail to find an acceptable solution.

4.4 Flexing rights: please provide a general description of the extent of the facility owner's flexing rights in the proposed contract, the rationale for the extent of flex provided, including changes from that in any existing agreement in respect of the services in question, and the extent to which the provisions have been agreed with the facility owner **2.44-2.49 4.51**

Grand Northern would be seeking rights similar to those contained within the Grand Central Track Access Contract. With a service roughly every 3 hours Grand Northern is prepared to flex as far as is practicable to achieve its outcome of a quantum of 12 weekday services, 8 at weekends, at times which are commercially attractive.

4.5 Protected rights and obligations: please describe the extent to which the proposed contract contains any protected rights and/or protected obligations (i.e. protection from subsequent amendment of the Network Code under Condition C8), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **4.69-4.70**

No protected rights are included.

4.6 Journey time protection: please describe the extent to which the proposed contract affords journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **4.52-4.66**

Grand Northern would be seeking terms that ensure Maximum Journey Times on services do not exceed 220 minutes (250 minutes on Sundays).

This protection is sought to ensure Grand Northern can remain competitive on journey times.

4.7 Other limitations on flexibility: please describe the extent to which the proposed contract contains any other restrictive obligations on the facility owner (e.g. regular service intervals, clockface departures etc), and explain the justification for any such provisions by reference to ORR's criteria **4.39-4.48**

No other limitations on flexibility are sought.

4.8 Specified equipment: where the proposed contract contains changes to specified equipment (rolling stock), please give full details, including timescales, and the extent to which the vehicle and route acceptance procedure in the Network Code (Part F) has been completed **4.49-4.50**

The equipment to be used is Class 180 DMU in 5 car formation.

4.9 Moderation of competition: where applicable, please describe the extent to which the proposed contract seeks contractual protection from the introduction of competing services on specific flows, and explain the justification for such protection by reference to ORR's policy on moderation of competition **4.71-4.73**

Grand Northern does not seek protection from competition.

4.10 Franchise obligations: please explain the extent to which the services in the proposed contract are necessary to fulfil obligations under a franchise or concession agreement **4.3-4.4**

There are no franchise obligations.

4.11 Public funding: please state whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives, and provide a point of contact at that body **3.32 4.23 4.35-4.38**

There is no public funding for the proposed service.

4.12 Passenger Focus: please state whether (and if so to what extent) the services in the proposed contract have been discussed with Passenger Focus, and provide copies of any relevant correspondence **3.32 4.48**

No direct discussions have recently taken place regarding this service group, although from 2005 discussions and presentations took place with the Rail Passenger Committee for the North East and North West who supported the proposals for Bradford, Halifax, Brighouse and Huddersfield services to London.

4.13 Route utilisation strategies (RUSs): if applicable, please also 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 state the reasons for this. **2.29 4.5-4.8**

No RUSs are particularly relevant at this time, although work on the Yorkshire and Humber RUS is in the early stages.

5. Incentives

5.1 Charges and performance: please set out, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by ORR's 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) **5.1-5.43**

No departures to the contract, except those areas which are not applicable to Open Access operators, are expected.

The final shape of the performance regime will be in line with the output from the Grand Central Track Access Contract subject to creation of suitable performance data.

5.2 Train operator performance: please describe any planned initiatives associated with the operation of the services in the proposed contract aimed at improving the applicant train operator's own performance **4.30 5.1**

Class 180 DMU will be used. Whilst these trains currently have a reputation for unreliability, the return of each unit from current lease will see it undergo a thorough examination and mechanical overhaul by Alstom which will include a series of reliability modifications. More detail on that work will be provided later to ORR.

5.3 Facility owner performance: please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the facility owner's own performance. **4.30 5.1**

Remodelling and re-signalling are underway or planned for the approaches to Bradford Interchange.

5.4 Restrictions of use: please describe and explain the reasons for any instances where the proposed contract departs from the restrictions of use (possessions) compensation regime established by ORR's periodic review of access charges and his subsequent interim review of the possessions incentives regime **5.44-5.51**

The contract will not contain a Schedule 4 in line with Grand Central's contract.

6. Enhancement

6.1 Enhancement details: where the proposed contract provides for the delivery of any network enhancements, or the services in the proposed contract are predicated on 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) **4.82-4.83**

No network enhancements are proposed in the contract.

6.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's Policy Framework for Investments⁵, and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document)

5.7
5.12-5.14

No network enhancements are proposed in the contract.

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 proposed applications to ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

3.17

Applications for access to stations and maintenance depots have still to be concluded.

7.2 Supporting information: please state here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

3.30

A copy of the supporting financial information will be forwarded under separate cover.

7.3 Side letters and collateral agreements: please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which purport to qualify or otherwise affect the proposed access contract

6.12-6.16
6.21

The whole of the proposed contract, excluding finalised timetables will be submitted.

7.4 Confidentiality exclusions: where applicable, please explain clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed amendment sent to consultees for the pre-application consultation process (if undertaken). Alternatively, where an application has not been subject to pre-application consultation, the applicant should state what elements of the application and proposed amendment they would wish ORR to exclude from publication.

3.23-3.27

In excluding, or seeking the exclusion of, any information, the applicant should have regard to the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Further guidance is provided in the Code of Practice. Subject to its decision on such exclusions, it is ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, ORR is obliged to send a copy of the application **in full** to the facility owner)

Code of Practice:
20-23

No exclusions of this application are sought. Additional supporting financial information is restricted and commercially confidential.

⁵ *Policy Framework for Investments: Conclusions*, Office of Rail Regulation, October 2005, available at <http://www.rail-reg.gov.uk/upload/pdf/255.pdf>

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: Has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state whether Network Rail or you (the applicant) conducted the consultation;
- list all train operators, franchising authorities and other parties that were consulted, stating which parties, if any, made representations (other than nil returns) and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation and, if this was less than 28 days, please explain the reasons for this.

**Code of Practice:
17-18,
34-39**

If a pre-application consultation has not been carried out, please explain what informal discussions have been held with those third parties who might be affected by this application and the nature of any concerns raised.

No pre-application consultation has or will be undertaken. The operation of this service was outlined to ORR in a letter dated 15 September 2006 in response to ORR's request for information.

8.2 Resolved issues: please detail any issues raised in response to the consultation that have been resolved to the satisfaction of the consultee. You may wish to refer to responses attached to this form.

**Code of Practice:
43-44**

8.3 Unresolved issues: please detail any issues raised in response to the consultation that have not been resolved to the satisfaction of the consultee, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you do not think these issues should preclude ORR's approval of the application.

**Code of Practice:
45**

8.4: Please explain any aspects of the application that have changed as a result of the consultation and why they have changed.

8.5: Please list here any further information being provided to ORR to support the application that was not made available to consultees in any pre-application consultation held as part of this application and listed in section 7.2. If the applicants wish ORR to consider excluding this information from subsequent publication they should justify why the information is of a confidential nature, following the guidance provided in section 7.4 above.

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 (including section 17), 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 **3.31**

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed

Date 8 May 2008.....

Name (in caps) IAN YEOWART.....

Job title MANAGING DIRECTOR..

For (company) GRAND NORTHERN RAILWAY COMPANY.....

10. Submission

10.1 What to send:

Please supply, in hard copy, the signed top copy of this application form, one copy of the proposed draft contract, with copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

3.30

Please also supply the application, the proposed contract and, insofar as it is 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).

3.28-3.29

10.2 Where to send it:

Manager, Track Access Team
Directorate of Access, Planning and Performance
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

ORR Form Passenger S17 January 2008