

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 like². 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:

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

Company:

Contact individual:

Job title:

Address:

Telephone number:

Fax number:

E-mail address:

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)

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**

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**

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**

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

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

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**

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**

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**

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

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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

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**

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**

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:

**Code of
Practice:
17-18,
38-43**

- 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.

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.

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.

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.

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

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 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.

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).

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

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