

Application to the Office of Rail Regulation for an amendment to a passenger track access agreement under section 22A 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 22A of the Railways Act 1993 for an amendment to an existing track access agreement. Section 22A is the means by which those seeking an amendment to an existing track access agreement to allow the operation of more extensive services apply for a compulsory amendment if they have failed (for whatever reason) to reach agreement with the facility owner.

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 that we will need to consider. Applicants are strongly encouraged to read the C&Ps and the Code of Practice before making an application.

Where an applicant wishes to submit an application direct to ORR and have ORR conduct the industry consultation, 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 22A.

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 can be accessed electronically and downloaded via the ORR website (www.rail-reg.gov.uk).

2. The application

2.1 Title of proposed amendment:

Grand Central Seventh Supplemental Agreement

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

Company: Grand Central Railway Company
Contact individual: Ian Yeowart
Job title: Managing Director (Grand Union Railway Company)
Address: River House
17 Museum Street
YORK YO1 7DJ
Telephone number: 01904 633307
Fax number: 01904 466066
E-mail address: iy@grandcentralrail.com

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>.

2.3 Licence and Railway Safety Case/Certificate: please state whether the applicant intends to operate the additional services himself or have them operated on his behalf **3.9-3.14**

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 in relation to those additional services. 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 be operated by Grand Central. Grand Central holds a valid Train Operating Licence and holds a valid Safety Certificate

3. The proposed amendment

3.1 Executive summary: please provide an executive summary of the proposed amendment. This should cover the services, the commercial terms, and the applicant's reasons for seeking the amendment 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 3.77**

- the changes provided for in respect of the services in question (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.74**
- any aspects in which the proposed amendment 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 **2.48-2.52 6.2-6.3**
- any material safety risks that have been identified arising from the proposed amendment 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**

The proposed Supplemental Agreement is made with regards to two additional train paths Monday – Friday and Saturday. One from Sunderland to London Kings Cross and one from London Kings Cross to Sunderland.

3.2 Terms not agreed with the facility owner: please set out here those specific areas of the proposed amendment 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

Network Rail has now indicated it is not prepared to sell the rights to this path despite developing it with Grand Central for over 18 months. The reason given is that Network Rail does not want to 'prejudice' any ORR decisions on paths and possible new services proposed for the December 2008 timetable. However other operators have continued to expand their services since 2005 with Network Rail support and there are other Section 22 proposals due to be submitted to ORR for the ECML prior to December 2008.

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

There are no provisions within this Supplemental Agreement which constitute a departure from any of the provisions contained within the current Grand Central Track Access Agreement.

3.4 Duration of amendment: please state the commencement date sought for the proposed amendment, and provide justification for the proposed duration (in particular, giving reference to ORR's policy on long-term access contracts² where contracts would be for longer than five years)

Grand Central is seeking the amendment to begin on the supplementary change date of 18 May 2008 and terminate on the termination date of Grand Central's Track Access Agreement entered into on 18 January 2007.

3.5 Scope of section 22A: please provide a full justification of why you believe the amendment(s) proposed are ones that fall within the scope of section 22A of the Act. You should, in particular, explain the extent to which the changes proposed would lead to more extensive use being made of the facility owner's network.

3.77

The paths are fully developed and available, Network Rail had previously indicated they were prepared to sell the rights but have now declined to do so. Grand Central is seeking rights that run concurrent with its current Track Access Agreement.

² *Long-term access contracts: final conclusions*, Office of Rail Regulation, June 2005 available at <http://www.rail-reg.gov.uk/upload/pdf/240.pdf>

C&P
para(s)

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 amendment. In particular, please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators **4.30-4.36**

During the 2007 timetable development Grand Central and Network Rail identified an additional path in each direction between Sunderland and Kings Cross. These paths would finally give Grand Central the 4 return paths sought (and evaluated by ORR) by the Section 17 Application of 24 January 2005. They would balance out the original award of 3 return paths made by the ORR in April 2006 by giving Sunderland a mid morning departure at 0918, and a return from Kings Cross at 1918, giving a more even and acceptable spread of services. These additional paths are to operate Mon-Sat.

Passenger numbers from Sunderland, Hartlepool, Teesside and North Yorkshire are growing daily, particularly on the 2 'peak' services of 0646 ex Sunderland and 1650 ex Kings Cross. Passengers however are telling us they would prefer a better balanced service, giving opportunities for journeys that do not require such an early start and importantly, a later return from Kings Cross. These additional services give a more reasonably timed mid-morning departure from Sunderland, and a beneficial early evening departure from Kings Cross. Currently intending passengers have to travel out very early to enable a day out in London to be achieved, and the 1650 departure is too early as a 'last train' and gives little scope for flexibility should the train be missed. The 1650 is now already close to full loading on certain days. A 1918 departure offers additional seating and gives passengers comfort on journey possibilities allowing greater confidence in the service.

The calling patterns would be the same as for the original 3 return services, and rolling stock would be either HST (as per Specified Equipment) or Class 180, for which a proposed vehicle change notice has been submitted to Network Rail.

When the ORR awarded Grand Central the original 3 return paths, the decision not to award 4 paths (or Bradford) was based upon the uncertainty of suitable capacity for more services as outlined by Network Rail (through the draft report) at that time. The Network Rail draft report was seriously flawed, and no final report was ever produced.

Grand Central consistently argued – and produced evidence - that there was sufficient capacity (position as outlined at 1.15 in 'Office of Rail Regulation's Decisions on Track Access Rights Necessary To Operate Additional Passenger Services on the East Coast Main Line') to meet all operator aspirations.

Since then, as suggested by Grand Central, Network Rail has identified that capacity and continued to sell additional paths to satisfy all operator aspirations - except those of Grand Central.

The economic evaluation carried out by ARUP on behalf of the ORR indicated that Grand Central's services (proposed 5 carriages) would have crowding issues, and these services now operate with 6 carriages to mitigate that dis-benefit which also improves the economic benefits overall. The ORR and ARUP confirmed (3.10 in the Decision Document) that Grand Central's 4 services per day 'produce significant economic benefits'.

From the Decision Document it is clear that all the benefits of additional services were fully appraised and all offered significant economic benefits. In each case all aspirations have been met subsequently by Network Rail except Grand Central's 4th path and its Bradford Services. Indeed Hull Trains has acquired further paths over those sought in 2005.

Grand Central has been fully involved in the RUS process, and has been patient in awaiting the outcome, whilst continuing to seek further rights to operate services in line with previous applications and declared aspirations to ORR. It is clear that had Network Rail been diligent in carrying out its duties in 2005/6 then the aspirations sought by all operators could have been accommodated at that time.

As it is, Grand Central's request for this 4th path is entirely in line with the output from the RUS and acknowledges the ORR's view in 2006 on not agreeing further applications pending the output from the RUS. This application (along with the application to operate to Bradford) is also chronologically the longest outstanding application for access rights on the ECML and both have already been fully evaluated by the ORR and its consultants ARUP.

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 2005³ **4.84-4.85**

The infrastructure is not declared congested.

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

Network Rail has developed the paths through its own Timetable Planning Team.

4.4 Flexing rights: please provide a general description of the extent of the facility owner's flexing rights in the proposed amendment, the rationale for the extent of flex provided, including changes from that in the 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**

The flexing rights will be the same as those contained within the current Grand Central Track Access Agreement.

4.5 Protected rights and obligations: please describe the extent to which the proposed amendment 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 or obligations are proposed.

³ These regulations are available at <http://www.opsi.gov.uk/si/si2005/20053049.htm>

4.6 Journey time protection: please describe the extent to which the proposed amendment affords or varies 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**

The journey time protection will be the same as those contained within the current Grand Central Track Access Agreement.

4.7 Other limitations on flexibility: please describe the extent to which the proposed amendment 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**

This proposed Supplemental Agreement places no limitations or restrictive obligations on the facility owner.

4.8 Specified equipment Where the proposed amendment 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**

These additional paths will be operated by current specified equipment. However Grand Central is currently seeking to add additional specified equipment and is undertaking consultation through Network Rail.

4.9 Moderation of competition Where applicable, please describe the extent to which the proposed amendment 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**

No moderation of competition protection is sought.

4.10 Franchise obligations Please indicate the extent to which the services in the proposed amendment are necessary to fulfil obligations under a franchise or concession agreement **4.3-4.4**

Not applicable.

4.11 Public funding Please indicate whether (and if so to what extent) the services in the proposed amendment 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**

Not applicable.

4.12 Passenger Focus Please state whether (and if so to what extent) the services in the proposed amendment have been discussed with Passenger Focus, and provide copies of any relevant correspondence **3.32 4.40**

The '4th path' was part of Grand Central's initial submission to ORR via a Section 17 application made on 24 February 2005. This application was concluded with the reasons document on 6 April 2006. All the necessary consultations and representations were undertaken at that time.

This application seeks only to introduce the 4th path that was fully evaluated and consulted upon via that application, for which the 4 original paths requested passed the ORR's 5 stage evaluation process.

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

This application is entirely consistent with the output from the recently published East Coast Main Line RUS which is currently awaiting ORR acceptance. Grand Central has not formally sought any additional paths from the ORR (excepting PDNS applications to Network Rail to maintain the position pending the RUS) since the April 2006 Decision. This follows the guidance given by the ORR in the Decision Document.

5. Incentives

5.1 Charges and performance Please set out, and explain the reasons for, any instances where the proposed amendment departs from the charging and/or performance regimes established by ORR's periodic review (or subsequent interim reviews) as reflected in ORR's model track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.43**

This application will be consistent with the current arrangements within the current Grand Central Track Access Agreement.

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

Grand Central has invested significant amounts in its train fleet and continues to invest in further improvements and modifications to minimise failure.

Additionally Grand Central is negotiating with Network Rail and Angel on the introduction of Class 180 unit(s) - and also with Network Rail and EWS on the clearance issues for Class 67 locomotives to operate at 125mph on the ECML. These initiatives are designed to increase the fleet availability.

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

These services are timed 'off peak' and timetabled to minimise possible impact on other operator services.

5.4 Performance regime changes Where applicable, please provide justification for any changes to Schedule 8 of the track access agreement in the proposed amendment. If necessary, please provide any relevant information in support of the changes proposed.

5.35-5.43

None proposed.

5.5 Restrictions of use Please indicate and explain the reasons for any instances where the proposed amendment departs from the restrictions of use (possessions) compensation regime established by ORR's periodic review of access charges and the subsequent interim review of the possessions incentives regime

5.44-5.51

Not applicable.

6. Enhancement

6.1 Enhancement details Where the proposed amendment provides for the delivery of any network enhancements, or the services in the proposed amendment 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

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 Investments⁴, 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

Not applicable.

7. Other

7.1 Associated applications to ORR Please indicate 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**

This proposed Supplemental Agreement does not relate to any other applications currently with, or to be made to ORR.

7.2 Supporting information Please indicate 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**

Grand Central will be supplying further supporting evidence in justification of this additional path, but points out that the original application for 4 return services was fully evaluated with ORR only agreeing to firm rights for 3 return services due to uncertainty over available capacity.

⁴ *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 amendment 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 amendment

6.12-6.16
6.21

The whole of the proposed amendment has been 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

Code of Practice:
20-23

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)

No confidentiality exclusions have been made in this application. However supporting cost and revenue information (to be provided) is confidential.

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,
34-39

- 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.

No pre-application consultation has or will be undertaken. The operation of this 4th path was fully considered by all interested parties during the consultation - and subsequent hearing - on Grand Central's Section 17 application of 24 February 2005 which resulted in the initial award of firm rights to 3 return services daily.

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.

8. 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 22A), 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 ...20 MARCH 2008.....

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

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

9. Submission

9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, one copy of the proposed draft amendment, 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 amendment 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**

9.2 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 22A January 2008