

**APPLICATION TO THE OFFICE OF RAIL REGULATION FOR
APPROVAL OF A PASSENGER TRACK ACCESS CONTRACT
UNDER SECTION 18 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 18 of the Railways Act 1993 for a new track access contract. Section 18 provides for the ORR to approve track access contracts between those seeking the right to use a railway facility, and the facility owner, when both parties have agreed the terms of the contract.

The form sets out the ORR's standard information requirements for considering such applications. It cross-refers throughout to the ORR's published document on his criteria and procedures for the approval of access contracts¹. That document explains the process and timing for the ORR's consideration of access applications and discusses the issues the ORR will need to consider. It also contains the published model track access contract which applicants should use as their starting point when drafting the contract they want. Applicants are strongly encouraged to read the ORR's criteria document before making an application. Cross-references to this document have been included on this form.

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 ORR's published guidance in this respect.

The track access team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

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

2. The application

Criteria
document
para(s)

2.1 Title of proposed contract:

Track Access Arrangement Agreement (Charter Passenger Services) for
"The Jacobite" services (Fort William – Mallaig) Summer 2007

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Network Rail Infrastructure Ltd	West Coast Railway Co Ltd
Stephen Cornish	Pat Marshall
CRE Special Trains	Director
9 th Floor Piccadilly Tower	Crag Bank
Piccadilly Station	Jesson Way
Manchester M60 7RA	Carnforth
	LA5 9UR
Telephone number: 0161 228 4897	Telephone number: 01524 732100
Fax number: 0161 228 4958	Fax number: 01524 735518
E-mail address: Stephen.cornish@networkrail.co.uk	E-mail address: p.marshall@wcrc.co.uk

¹ *Criteria and procedures for the approval of passenger track access contracts: third edition*, Office of the Rail Regulator, London, June 2003

2.3 Licence and railway safety case Please state whether the applicant intends to operate the services himself or have them operated on his behalf **3.10-3.14**

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. If the answer to (a) or (b) is no, please state the point which that person has reached in his obtaining of the licence, exemption or railway safety case (as the case may be)

The West Coast Railway Company intend to operate the service themselves. The company holds a valid train operating licence, and has an accepted railway safety case.

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): **3.19**

- 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); **3.49**
- any aspects in which the proposed contract contains bespoke provisions departing from the published model track access contract and the charging, performance and possessions regimes established through the ORR's periodic review (or subsequent interim reviews) of access charges; and **2.43-2.47**
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 facility owner's and operator's railway safety cases) **4.5-4.6**

The reason for the submission of the proposed contract is as follows:

WCR intend to operate one train from Fort William to Mallaig, and one from Mallaig to Fort William, on specified days during the summer of 2007. The operation was the subject of the original 1998 Agreement which has been re-approved on an annual basis for subsequent summer seasons. The main change to the original agreement is in the commercial terms, which the new agreement updates to reflect inflation in line with WCR's general Charter Train Access Agreement, and the inclusion of rights to run on certain Saturdays. The performance regime has been updated to reflect the May 2007 values. Model clauses relative to Charter Train Agreements are not yet available, but it is anticipated that new agreements for all charter train operations, based upon a model clause format, will be in place from June 2008. This will allow any application that WCR make for a 2008 Jacobite agreement to be formulated with the inclusion of model clauses.

There is a specific safety risk, allied to the possibility of lineside fire resulting from the use of steam traction in dry conditions, but these risks are covered generally within WCR's safety case, and are also covered specifically within Part IV of Schedule 5 of the proposed Agreement.

para(s)

3.2 Departure from ORR's model track access contract Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template 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) the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends **2.43-2.47**
6.2-6.3

No model clause version of a contract applicable to charter train operations has yet been produced by the Office of Rail Regulation.

3.3 Duration of contract Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration (in particular any factors that would support a contract longer than the standard five-year period contemplated by Directive 2001/14/EC) **4.65-4.70**

The passenger train operation commences on Sunday 20 May 2007 and the final day of passenger train operation is Friday 12 October. The proposed contract runs from Wednesday 16 May 2007 through to Saturday 20 October 2007, to allow for the associated ancillary moves provided for within clause 2.3.3 of the contract.

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, please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators **4.25-4.31**

The operation of a tourism-based steam-hauled train service during the high summer season providing a round-trip journey opportunity from Fort William to Mallaig and back as in previous years. This operation is greatly valued by the local community, and assists the local economy. It has no impact at all on other operators.

4.2 Adequacy Please set out to what extent and by what process (if any) the applicants have satisfied themselves 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 **4.12-4.31**

The service was the subject of a bid conforming with Part D of the Network Code, and has been planned into the WTT.

4.3 Flexing rights Please provide a general description of the extent of the facility owner's flexing rights in the proposed contract, and the rationale for the extent of flex provided, including changes from that in any existing agreement in respect of the services in question **2.38-2.42**
4.44

The proposed agreement sets out the times as already finalised within the May 2007 working timetable for this summer's operation, and thus flex in planning is not a relevant consideration.

Criteria
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para(s)

4.4 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 the ORR's criteria **4.62-4.63**

The proposed agreement contains protected rights that survive only a period of time that is less than the duration of the planned timetable applicable from May 2007 until December 2007.

4.5 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 the ORR's criteria **4.45-4.59**

The times stated within the proposed agreement reflect the times actually planned into the working timetable for the applicable period.

Maximum journey times, fastest key journey times or maximum key journey times are not relevant to the nature of this train service.

4.6 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, dedicated platforms etc), and explain the justification for any such provisions by reference to the ORR's criteria **4.32-4.41**

None

Criteria document para(s)

4.7 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 **4.42-4.43**

The specified equipment, listed within Schedule 5, has been updated from the specified equipment used in previous years, to reflect the withdrawal of certain locomotives from main line operation and the addition of replacement locomotives. All locomotives listed are permitted to operate on the route.

4.8 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 the ORR's criteria **4.64**

There is a requirement within the proposed agreement for the agreement of First Scotrail to be secured before operation of the service commences.

4.9 Franchise obligations Please indicate the extent to which the services in the proposed contract are necessary to fulfil obligations under a franchise agreement with the Strategic Rail Authority **4.3-4.4**

Not applicable

4.10 Public funding Please indicate 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 Strategic Rail Authority), including Passenger Transport Executives, and provide a point of contact at that body **3.30 4.16 4.28-4.31**

None

4.11 Rail Passengers' Committees Please indicate whether (and if so to what extent) the services in the proposed contract have been discussed with the relevant Rail Passengers' Committee(s), and provide copies of any relevant correspondence **3.30 4.31**

Not applicable

Criteria document para(s)

4.12 SRA strategies Please state here which of the SRA's strategies are considered relevant to this application and why **2.15-2.19 4.23**

None

5. Incentives

5.1 Charges and performance Please indicate, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by the ORR's periodic review (or subsequent interim reviews) as reflected in the ORR's model track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.36**

The charges contained within the proposed agreement reflect the charges contained within the original 1998 agreement for operation of these services, adjusted to reflect inflation from 1998 to the present date. Arrangements for future proposals will be subject to such directions as may arise out of the Regulatory review of charter train arrangements

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 train operator's own performance **4.25 5.1**

Not applicable

5.3 Restrictions of use Please indicate and explain the reasons for any instances where the proposed contract departs from the restrictions of use (possessions) compensation regime established by the ORR's periodic review of access charges and his subsequent interim review of the possessions incentives regime **5.37-5.43**

None

Criteria
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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 the ORR's enhancement reporting framework) **4.71-4.73**

None

6.2 Enhancement charges Please confirm that the arrangements for the funding of any network enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return (see Chapter 18, *The Periodic Review of Railtrack's Access Charges: Final Conclusions, Volume 1*, Office of the Rail Regulator, London, October 2000) **5.7 5.9-5.10**

Not applicable

7. Other

7.1 Associated applications to the ORR Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements) **3.15**

None

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) **3.28**

None

Criteria
document
para(s)

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 qualify or otherwise affect the proposed access contract **6.12-6.16 6.21**

It is confirmed that 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 qualify or otherwise affect the proposed access contract

7.4 Confidentiality exclusions Please indicate clearly any elements in the application and the proposed contract that the parties would wish to exclude from wider consultation on 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. Subject to its decision on such exclusions, it is the ORR's intention to publish this application and the proposed contract on the ORR website **3.21-3.25**

The slot charges set out in Schedule 7. 3.1
The Fire Patrol charges set out in Schedule 7 3.2.1
The performance charges set out in the appendix to Schedule 8

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 18), 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 **3.29**

I certify that the information provided in this form is true and complete to the best of my knowledge and that Network Rail and West Coast Railway Co Ltd are willing to enter into the attached contract as submitted

Facility Owner

Beneficiary

Signed:

Signed:

Date:

Date:

Name: Barbara Barnes
Head of Customer Service
For Network Rail

Name: Pat Marshall
Director
For West Coast Railway Company Ltd

9. Submission

9.1 What to send

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

3.28

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).

3.26-3.27

9.2 Where to send it

Manager, Track Access Division
Directorate of Rail Markets & Access
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

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