

Application to the Office of Rail Regulation for provisional approval of a proposed amendment to a passenger track access agreement under section 22 of the Railways Act 1993

1. Introduction

This form should be used when making an application to the Office of Rail Regulation (ORR) for provisional approval of a proposed amendment (agreed by both parties) to an existing track access agreement. Where a pre-application consultation is to be undertaken prior to application to ORR, this form should be completed up to section 7.4 to inform potentially affected parties of the proposed amendment. Following the pre-application consultation, the remainder of the form should be completed before making an application to ORR for provisional approval. Where an application to ORR is to be made without undertaking a pre-application consultation, the form should be completed fully before submission. Having taken account of our comments, the parties may then wish to submit an amendment formally for ORR's approval under section 22 of the Railways Act 1993.

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

2. The application

2.1 Title of proposed amendment:

6th Supplemental Agreement between Network Rail Infrastructure Limited and London & Birmingham Railway Limited ("London Midland")

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: London & Birmingham Railway Limited
Contact individual: Mark Goodall	Contact Individual: John Czyrko
Job title: Customer Manager for London Midland	Job title: Head of Operational Strategy
Address: 100 Wharfside Street	Address: PO Box 4323
The Mailbox	Birmingham
Birmingham B1 1RT	B2 4JB
Telephone number: (0121) 345 3370	Telephone number: (0121) 654 1175
Fax number: (0121) 345 4004	Fax number: (0121) 654 1179
E-mail address: mark.goodall@networkrail.co.uk	E-mail address: john.czyrko@londonmidland.com

¹ *Criteria and procedures for the approval of passenger track access contracts: fourth edition*, Office of Rail Regulation, May 2006 and the *Code of Practice for track access application consultations* are 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 beneficiary intends to operate the services itself or have them operated on its 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, exemption or Railway Safety Case/Certificate (as the case may be)

- (a) London Midland ("LM") holds a valid train operating licence dated 7th November 2007
- (b) LM also has a safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

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 applicants' 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**

- the changes provided for in respect of the services in question (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.53**
- any aspects in which the proposed amendment contains bespoke provisions departing from the published model passenger 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 amendment and the arrangements for their control and mitigation (by reference to the provisions of the facility owner's and operator's Railway Safety Case(s)/Certificate(s)) **4.9-4.11**

This application seeks to add a small number of Passenger Train Slots to the existing London Midland TAC ("the Agreement") in order to better meet passenger demand on Saturdays on the route between Birmingham New Street and Worcester via Bromsgrove (Train Service Code 332, in Train Service Group EJ03).

This route has seen particular growth in passenger volumes and certain services on Saturdays are particularly busy with shoppers and other leisure traffic heading into Birmingham. Owing to the length of the northbound platform at Bromsgrove it is not possible for trains to call which comprise more than 3x23m vehicles, and so LM is seeking rights to operate a small number of additional services between Worcester Shrub Hill and Birmingham New St via Bromsgrove to cater for this demand. These are three northbound trains (two in the morning and one early afternoon), and two southbound trains in the late afternoon.

Traction will be Class 170 and the proposed paths have been validated by Network Rail. It is intended to operate these trains from 30 August 2008, and for these rights to be held for the remainder of the term of the LM TAC, with these Saturday services being included in the December 2008 timetable.

It is also proposed to amend Schedule 2 of the TAC to include the route onto Willesden LMD as one of the routes to Light Maintenance Depots in Part III of the Schedule, to cater for possible future requirements.

There are no departures proposed from the model clauses format for passenger track access agreement, or from the charging regime in force.

No material safety risks have yet been identified in relation to this proposal.

3.2 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 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

None.

3.3 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)

The rights sought through this proposed 6th Supplemental Agreement and are intended to take effect from 30th August 2008 and are for the remainder of the term of the LM TAA (Principal Change Date 2014).

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

These additional Saturday services between Worcester, Bromsgrove and Birmingham are intended to provide additional capacity to the customer on a route where existing services are now loading to capacity.

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

Not applicable in relation to this application.

4.3 Adequacy: please explain 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 amendment, and the implications for overall network performance and the facility owner's maintenance and renewal activities

None. As stated the proposed paths have been validated by Network Rail.

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

Not applicable in relation to this application.

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>

³ 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 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**

Not applicable in relation to this application.

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**

Not applicable in relation to this application.

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**

Not applicable in relation to this application.

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**

Not applicable in relation to this application.

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**

Not applicable in relation to this application.

4.10 Franchise obligations: please explain 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 in relation to this application.

4.11 Public funding: please state 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 in relation to this application.

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 4.38**

None.

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**

Not applicable in relation to this application.

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 passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.43**

There are no departures proposed from the charging and performance regimes currently in force.

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**

None specific proposed in connection with this Application beyond the performance management initiatives already employed by LM and NR in relation to existing services.

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**

Not applicable in relation to this application.

5.4 Performance regime changes Where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposed amendment. If necessary, please provide any relevant information in support of the changes proposed. **5.35-5.43**

The parties are not proposing a Monitoring Point Weighting in Appendix 1 of Schedule 8 for the one train which will terminate at Bromsgrove on Saturdays under this proposal. The parties believe that the actual value of this particular service does not merit the bespoke creation of a monitoring point ahead of the full scale recalibration of the Performance Regime under PR08.

5.5 Restrictions of use: please describe 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 his subsequent interim review of the possessions incentives regime **5.44-5.51**

Not applicable in relation to this application.

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 in relation to this application.

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 in relation to this application.

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. 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**

Not applicable in relation to this application.

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**

The parties do not intend to provide any further information in support of this application.

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 amendment **6.12-6.16**
6.21

There are no side letters or other documents that relate to this application.

7.4 Confidentiality exclusions: where applicable, please indicate 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 applicants should indicate what elements of the application and proposed amendment they would wish ORR to exclude from publication following its decision. **3.23-3.27**
Code of Practice: 20-23

Applicants should be aware that ORR will make the final decision on what information is excluded from publication on its public register and website (following its decision on whether to approve this application) having regard to the grounds for confidentiality set out in section 71(2) of the Railways Act 1993. Accordingly, where the applicants make exclusions prior to pre-application consultation, they should provide a full justification for each instance by reference to those statutory grounds. ORR will consider these justifications when making its decision on whether the information should be excluded from the public register and publication elsewhere. Further guidance on confidentiality is provided in the Code of Practice.

The applicants are not seeking any confidentiality exclusions.

Note: The remainder of this application should not be completed until after a pre-application consultation has been carried out in line with the Code of Practice, unless the applicants consider that such a consultation is not appropriate.

8. Details of the pre-application consultation

Code of Practice: 13-18

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

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

If no, please explain why, having regard to paragraphs 13-16 of the Code of Practice and, if the beneficiary is a franchised or concessionary train operator, please confirm whether it has consulted separately and obtained the relevant franchising authority's agreement to the proposed amendment.

Pre application consultation was carried out in line with the Code of Practice. Industry consultation closed on 17th July 2008, following a 21 day consultation period.

.

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**

First Great Western supports this proposal.

Passenger Focus was pleased with the increased service for passengers.

First/Keolis Transpennine Limited had no comment or objection.

London Overground had no objection to the proposed amendment to the LM TAA.

No other comments were received.

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.

There were no other unresolved issues.

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

No aspects of the application have changed as a result of the consultation. However, as Network Rail's registered office is soon to change, it was agreed with the ORR that the schedule 1 of the TAA could be changed without consultation. This was agreed on 6th August with Ian Williams.

8.5 Additional supporting information 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.

Not applicable

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 22), 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 and that the facility owner and the beneficiary are willing to enter into the attached proposed amendment as submitted

<u>Facility Owner</u>	<u>Beneficiary</u>
Signed:	Signed:
Date:	Date:
Name (in caps): STEVE DERRICK.....	Name (in caps): JOHN CZYRKO.....
Job title: ...AREA GENERAL MANAGER	Job title: ...HEAD of OPS STRATEGY
For (company): NETWORK RAIL.....	For: LONDON & BIRMINGHAM RAILWAY LTD

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 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

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 Passenger Form S22 January 2008