

APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT TO AN EXISTING CONTRACT

ORR ensures that train operating companies have fair access to the rail network and that best use is made of capacity.

Use this form to apply to the Office of Rail and Road (ORR) for:

- Directions under section 17 of *The Railways Act 1993* (the Act) for a new track access contract. This is for companies who want to use Network Rail's network where the parties are not able (for whatever reason) to reach agreement.
- Approval for a new track access contract under section 18 of the Act. This is for use where terms have been agreed by the parties.
- Approval of a proposed amendment to an existing track access contract, agreed by both parties, under section 22 of the Act.
- Directions under section 22A of the Act for an amendment to an existing track access contract. This is for someone seeking an amendment to an existing track access contract to permit more extensive use of the railway facility if the parties are not able, for whatever reason, to reach agreement.

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) (and our [making an application](#) guidance in particular) explains the process, timescales and the issues we will consider. Please read the guidance before completing the contract and this form.

If the facility owner and beneficiary have agreed terms, the facility owner should fill in the form. If not, the beneficiary should fill in the form.

A pre-application industry consultation is usually required before submitting an application. Please see the industry [code of practice for track access application consultations](#) for more information.

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 8. You should fill in the rest of the form after the consultation and before applying to ORR.

If, in the case of section 17 and 22A applications, the beneficiary and Network Rail have been unable to agree terms, the beneficiary should:

- (a) ask Network Rail to conduct a pre-application consultation in line with the code of practice; or
- (b) conduct a pre-application consultation itself, in line with the code of practice; or
- (c) submit the application to ORR and ask ORR to conduct the consultation, in which case, please complete this form in full before submitting it to us.

We are happy to talk to you informally before you apply. Please contact us at Track.Access@orr.gov.uk. You should use our current [model freight track access contract](#) as your starting point. Please ensure that you are using the latest version of this form as published on our [website](#). We may ask for applications which have not used the latest templates to be resubmitted.

You may also use and adapt this form if necessary to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

1. Application Summary

1.1 Facility owner:

Network Rail Infrastructure Limited

1.2 Beneficiary Company:

GB Railfreight Limited

1.3 With which of the regions does this application interact?

Region:	Southern <input checked="" type="checkbox"/>	Eastern <input checked="" type="checkbox"/>	North West & Central <input checked="" type="checkbox"/>	Wales & Western <input checked="" type="checkbox"/>	Scotland's Railway <input checked="" type="checkbox"/>
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1.4 Application under the Railways Act 1993 section:

17	<input type="checkbox"/>	18	<input type="checkbox"/>	22	<input type="checkbox"/>	22A	<input checked="" type="checkbox"/>
				Supplemental Number:		34 th Supplemental	
				Current contract date:		December 2016	
				Current contract expiry date:		December 2026	

1.5 Executive summary of the proposed contract or amendment: (Brief & High Level)

GB Railfreight wishes to amend its current track access contract to incorporate firm access rights that support many of its long-established flows, along with some new freight growth paths for future services up to May 2026. 456 x new firm access rights for services currently in the June 2024 Timetable (these are all currently contingent access rights) along with 32 new firm access rights, for known anticipated freight growth across the country, which do not have WTT train slots in the June 2024 Timetable.

Proposed commencement date:	As soon as this supplemental is approved
Expiry date:	December 2026 (PCD 2026)
Date Approved at SOAR	Not approved as no time available to meet ORR's 20/5/24 deadline for applications.
If rights currently running as TOVRs when did they commence?	Some of these services were entered into the Working Timetable as far back as 2018, with many in 2020 and some up to 2023.

1.6 Industry consultation:

Who carried out the consultation?	Network Rail, on behalf of GB Railfreight		
Consultation start date:		Consultation end date:	
Not carried out <input checked="" type="checkbox"/>			

1.7 Applicant details

<u>Facility Owner</u> Company: Network Rail Infrastructure Limited Contact name: Sarah McCarthy Job title: Customer Relationship Executive Address: Waterloo General Offices, London, SE1 8SW Phone: [REDACTED] E-mail: [REDACTED]	<u>Beneficiary</u> Company: GB Railfreight Limited Contact name: Ian Kapur Job title: Head of Strategic Access Planning Address: 3 rd Floor, 55 Old Broad Street, London, EC2M 1RX Phone: [REDACTED] E-mail: [REDACTED]
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1.8 Date of application to ORR:

20 th May 2024

1.9 Checklist of documents attached to the application form:

- Proposed new contract or supplemental agreement
- Marked up Schedule 5 (where applicable)
- Marked up comparison to model contract (where applicable)
- All consultation correspondence (see below)
- Supporting evidence such as performance improvement plans or modelling exercises.
- Other supporting documents, side letters or collateral agreements (please list):

APPENDIX A: Schedule 5 rights table showing only the proposed new firm rights.

1.10 Confidential redactions: If there is any information you want us to exclude from publication please list it here and provide full reasons for the redactions. Please provide a redacted version of the document(s) that we can publish.

Not applicable

2. Licence and railway safety certificate

2.1 Please state whether:

- you intend to operate the services yourself; or
- have them operated on your behalf.
 - if so, please name the proposed operating company:

2.2 Does the proposed operator of the services:

- (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and**
- (b) hold a valid 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 reached in obtaining a licence, exemption and/or safety certificate.

Not applicable

3. The proposed contract or amendment

3.1 Application overview: Please detail the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely, and fully highlight the changes from the previous version of the contract (in the case of an amendment).

GB Railfreight wishes to amend its current track access contract to incorporate firm access rights changes that support its established freight flows and also caters for some freight growth up to May 2026.

These are as 456 firm access rights (these are all currently contingent access rights in June 2024 Timetable) and 32 proposed brand-new firm access rights for services not yet with WTT train slots.

Since 2012, there have been various access rights policies that have prevented many of GBRf's established freight flows in the Working Timetable being granted firm rights and this supplemental seeks to re-dress protection for those outstanding services.

In addition, there are some new services for which GB Railfreight is seeking to gain firm rights and these are also shown in the Schedule 5 rights table.

The changes, as shown in the attached Schedule 5 Rights Table (Appendix A), are being proposed to facilitate and protect GB Railfreight's long-term legitimate business and investments, described above, whilst maintaining a reasonable balance of flex for operational practicability on the whole of the network.

Increasing the proportion of goods carried by rail has an important role to play in making the UK deliver on its legal requirement for net zero carbon emissions. Retailers and manufacturers recognise the efficiency and great environmental benefits that rail freight offers, helping to improve air quality, reducing emissions and road traffic congestion. Many of the routes, over which these services travel, have benefited from Strategic Freight Network investment so these firm rights are to support exactly the services for which the various up-gradings were meant.

Approval of these rights is vital to secure on-going modal shift, from road to rail, as well as contributing towards a decarbonised transport strategy.

No material safety risks have been identified as arising from this application.

3.2 Capacity considerations: Please detail the steps taken by the parties to satisfy themselves that there is sufficient network capacity for the services in the proposal. Include details on all relevant capacity considerations, including but not limited to track and power supply traction. Will the proposed Rights operate over an area subject to a **Declaration of Congested Infrastructure**, or will the capacity requirement result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code)

The proposed access rights, with 60-minute windows at each end are, in the main, to support currently running, and on-going, varieties of freight services, many of which are particularly time-sensitive and part of a long logistical world-wide chain.

These services require clearly defined arrival and departure times to tie into origin and destination terminal slots at each end of the route, where the "main line" capacity can be quite challenging and very limited terminal arrival/departure slots have got to be met, especially at the busier ports and receiving depots. This application does contain some services to/from some of the UK's busiest ports.

Correct and robust slots are also paramount to on-going network performance. Tightly defined train slots (60-minute windows) also help to ensure that the very large investment in infrastructure and newly-built locomotives and wagons are used to their maximum and that there are no stranded investments over the course of their 30 year life, for either GBRf or 3rd party investments. This is also paramount to both delivery of product and on-going network performance.

Most of the proposed firm rights have associated train slots offered in the December 2023 Working Timetable. They take into account the Operating Constraints, consisting of the Engineering Access Statement detailing possession opportunities for the Infrastructure Maintainer, the Timetable Planning Rules, also the Working Timetable and associated Sectional Appendices to ensure the train runs within the capability of the Network.

In offering those with validated train slots, Network Rail will have satisfied itself that the slots are fully Timetable Planning Rules compliant and that appropriate use has been made of available capacity taking into account the Decision Criteria.

Sufficient network capacity, and also the off-network capacity, has been found without any infrastructure enhancements currently being required. There have been detailed discussions between GBRf and Network Rail Routes & Regions, including on the performance aspects of these services, and there are now no outstanding concerns with performance.

GB Railfreight believes that to grant firm access rights, at these specific time windows, would be the appropriate balance for ORR in discharging its statutory duties under Section 4 of the Act. The following duties are very relevant to the granting of firm access rights:

- Section 4(1)(a) – to protect the interests of users of railway services
- Section 4(1)(b) – to promote the use of the railway network in Great Britain for the carriage of goods
- Section 4(1)(ba) – to contribute to the development of an integrated system of transport of goods
- Section 4(1)(c) – to promote efficiency and economy on the part of persons providing railway services
- Section 4(1)(g) – to enable persons providing railway services to plan their businesses with a reasonable degree of assurance

Combined with Network Rail's Network Licence conditions, GB Railfreight believes all is in place for ORR to approve these proposed new rights so that GB Railfreight can plan its legitimate business in a timely, efficient and economical matter so as to satisfy its reasonable requirements in providing services with a reasonable degree of certainty.

3.3 Safety risks: Please explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate).

No safety risks have been identified throughout the consultation process.

3.4 Contract duration: For new agreements or extensions to existing agreements, please provide justification for the proposed duration and, if more than 5 years, with reference to the [Railways \(Access, Management and Licensing\) Regulations 2016](#).

Not applicable.

3.5 Performance: Are there any implications for overall network performance? Please outline your assurance process that shows that any performance risk is tolerable in comparison to the benefits of the application. Please explain any risk mitigations. Please attach any associated evidence to support your case.

There are no implications on overall network performance from this supplemental agreement, as the rights proposed by this application all have validated train slots in the current and previous working

timetables and have been running for this length of time (or longer in some cases) with no significant negative performance impact.

3.6 Maintenance and renewals: Are there any implications for the facility owner's maintenance and renewal activities?

No implications have been identified throughout the consultation process.

3.7 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): Please explain any areas of the application which have ***not*** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions.

All parts of this 34th Supplemental Agreement are not-agreed with Network Rail and have not been progressed through SOAR Panel. This application has been swiftly progressed but insufficient time has been available to go through due process, by this point in time, ahead of the ORR deadline of 20th May 2024.

3.8 Bespoke provisions (departures from ORR's model access contracts)

Does the proposed contract include any departures from ORR's model access contract:

Yes

No

If yes, please set out and explain any:

- areas where the drafting of the application changes ORR's published template access contracts (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made.

Not applicable.

- instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model access contracts, including the financial implications (e.g. establishment of an access charge supplement or rebate).

Not applicable.

- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete.

Not applicable.

3.9 Consolidated contract

For amendments to existing contracts, is the version of the consolidated contract on our [website](#) fully up to date? If not, please explain why not.

The version of the consolidated contract on the website is currently fully up to date as of 14th May 2024. GB Railfreight also has the 25th (Section 22A), 28th (Section 22), and 33rd Supplementals (Section 22) already in the process and in the hands of ORR. The expectation is that the 33rd Supplemental ought to likely be approved imminently.

4. The expression of access rights

4.1 Changes to rights: please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please attach a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application.

Full details of the new firm access rights sought, both for those already with WTT train slots, and those without train slots, are detailed in Appendix A.

4.2 Firm rights: Do the Firm Rights in the proposal contract relate to service freight haulage contracts which you hold or will hold? If so, how? How does the duration of these haulage contracts compare with the duration of the proposed track access contract?

The contracts involved with these flows fall partially within GBRf's current Track Access Contract term, with some continuing beyond the December 2026 expiry deadline. Approving these rights for the full period of GBRf's track access contract, however, also gives GBRf and its customers the confidence to service the current contracts and also to confidently renegotiate them, when due, on an equal basis with other freight operators.

When any of the Freight Access Rights are no longer required during the course of this contract, there are two processes that currently cater for changes to be made to GBRf's track access contract and, therefore, the removal of rights and train slots on a regular basis:

Condition J9 – The Rights Review Meeting: This states that Network Rail shall hold Rights Review Meetings with operators as frequently as necessary in order for it to ensure that capacity on the network is shared in the most efficient and economical manner in the overall interests of users, providers, potential providers and funders of railway services. This condition exists now and should be the main driver of always ensuring maximum capacity. In essence, this application is exactly the result of such a review.

Capacity Management Review Group: This is the joint Freight Operating Companies & Network Rail capacity working group, having started on 9th April 2014 as a result of the CP5 Freight Access Charges determination. Its purpose is to review and amend current and future rail freight paths based on a "usefulness" and "reasonableness" test. After discussion, GB Railfreight train slots are either removed from the timetable or turned into strategic capacity.

From 9th April 2014 up to 27th March 2024, on an on-going basis, 8,849 schedules have been relinquished – 6,706 have been completely removed from the timetable, as traffic patterns have altered, and 2,143 have been used and revised to go into strategic capacity.

This system is the correct way forward and strikes the right balance between removal of unused rights & paths and keeping relevant and useful paths for strategic capacity and future freight use. The Capacity Management Review Group convenes every three months to ensure correct industry decisions are made.

These two mechanisms are how any rights that are not being exercised are removed from GB Railfreight's long-term track access contract.

4.3 Contingent Rights: Please set out the extent to which you expect to use the Contingent Rights in the application. In particular, please state whether the proposed rights are seasonal (eg 3 months each year) or occasional (eg MO, SX, etc)..

There are no Contingent Rights being sought in this application.

4.4 Window size: Please set out the reasons for the origin and destination window sizes used in the Rights Table in Schedule 5.

As stated in paragraph 76 of ORR's "*Directions in respect of a track access contract between Network Rail Infrastructure Limited and GB Railfreight Limited*" document, dated 29th February 2016, ORR expects the default position for window size of freight firm rights, backed by commercial contracts with end users, to effectively be one-hour windows. One-hour windows will preserve each of GBRf's end-users' confidence in its ability to provide the train services and timings they need and enables GBRf to plan the future of its business with a reasonable degree of assurance.

In addition, GBRf believes that the detailed explanations given in previous sections of this application articulate the reasoning why a 60 minutes window is fair and reasonable for GBRf in managing its business with a reasonable degree of certainty.

4.5 Long Term Planning Process: Is the Long Term Planning Process (or similar devolved authority or regional service delivery project) relevant to this application? If so, please explain how the proposed rights are consistent or inconsistent with this.

This application is consistent with all established Route Studies on the UK Rail network. Additionally, the *Long-Term Planning Process: Freight Market Study*, established in December 2013, and its 2019 updated forecast figures, have stated that, overall, rail freight is expected to continue to strongly grow, and the maritime Intermodal and aggregates sectors in particular. This is being borne out by strong growth by GB Railfreight over the last eight years.

This application for these freight services is exactly for the growth traffic described.

6. Incentives

6.1 Train operator performance: please describe any planned projects associated with the operation of the proposed services aimed at improving your performance.

Contained in the agreements between GB Railfreight and its customers are updated performance regimes which include right time arrivals and departures as KPIs, with financial penalty. GBRf's twelve Operations Managers are now responsible, and directly accountable, for right-time departures (and arrivals) for the terminals served by GBRf services.

GB Railfreight has also, very recently, invested in eleven additional Class 66 locomotives, 10 Class 69 locomotives and 84 new Ecofret 2® wagons, they being exactly for these traffics. A wider availability of locomotives will assist in attaining even greater levels of good performance across our traffics, UK-wide.

The use of i-Pad is being used for remote condition monitoring, mainly for levels of fuel, sand, brake blocks and coolant with a view to reducing main line failures and delays.

This is a novel way to anticipate faults before they occur and using technology to help improvement performance over all routes. Additionally, in recent months, more "intelligent" remote data downloading has come into use of GBRf's Class 66 locomotives.

All of GBRf's train lists are now produced using mobile-consisting technology, leading to fewer delays due to paperwork issues. The aim of all of these is to realise a better operational plan and to deliver

more robust freight performance throughout the network. They also help to provide more accurate Sectional Running Times and offer an increased level of clarity for unexplained delays.

In addition to the above, performance regime briefs are regularly given to all GBRf staff, including drivers, ground staff and controllers and all new performance incentives have been introduced with GB Railfreight's locomotive and wagon maintenance suppliers.

All of these will help improve network performance for a large percentage of trains that GB Railfreight runs.

6.2 Facility owner performance: please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's own performance.

No planned projects for services in this application.

6.3 Restrictions of use: set out and explain the reasons for any changes from the Restrictions of Use regime in the model freight track access contract (Schedule 4)

There are no changes to the Restrictions of Use regime.

7. Enhancement

7.1 Enhancement details: Please provide details of any relevant enhancement schemes. Where the proposal delivers part of, or the associated services are subject to, a network enhancement, please summarise the outputs and timescales of the scheme and explain the extent to which the Part G Network Change procedure has been completed.

There are no network enhancements associated with this application nor are any of the proposed services subject to network enhancements. All the Firm Rights in this application have associated train slots already offered to GB Railfreight in the December 2023 Timetable.

7.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with the [investment framework](#), and summarise the level and duration of payments, and the assumed rate of return.

Not relevant to this application.

8. Associated access contracts

8.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other previous, current or forthcoming applications to ORR (e.g. in respect of track access, station or light maintenance depot access contracts). Where the application is being made in parallel with any other application from the same operator, please ensure the applications are consistent with one another. Where the application relies on another operator relinquishing access rights, please provide details.

No other applications are applicable.

8.2 Unregulated access: please comment on whether any contracts are being negotiated for access to a facility adjoining Network Rail's network (e.g. to a freight light maintenance depot), including where ORR's approval is not required. For more information, see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). (This is relevant in the context of clause 6.4 of the model contract.)

Not relevant to this application.

9. Pre-application consultation

9.1 The consultation:

If consultation has not been carried out, explain why not.

Not yet applicable – this is the start of the Section 22A consultation process.

If a consultation has been carried out please:

- state who conducted the consultation;
- list all train operators and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. If this was less than one calendar month, please explain the reasons for this.
- If the consultation was concluded some time ago, please explain why you consider it is still valid.
- have there been any material changes since consultation that could affect the validity of the responses received?
- please list any information that you have redacted from any documentation sent to consultees and the reasons for the redactions.

9.2 Resolved issues: please explain any issues raised by consultees which have been resolved.

Not yet applicable

9.3 Unresolved issues: Please explain any issues raised by consultees which have ***not*** been satisfactorily resolved and why you think these issues should not stop ORR approving the application. Include details of steps taken to resolve the dispute such as meetings or counter offers and provide copies of correspondence where available.

Not yet applicable

10 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, 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.

In the case of agreed applications under section 18 or 22, the facility owner should fill in the information in the box below. For disputed applications under section 17 or 22A, the applicant should fill in the required information.

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

Signed: Date: 20/05/2024

Name (in caps): Ian Kapur

Job title: Head of Strategic Access Planning

For (company): GB Railfreight Limited

For section 18/22 applications, please provide a letter of support from the beneficiary or ask them to sign here:

Signed Date.....
Name (in caps) Job title
For (company)

11. Submission

11.1 What to send: please supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form by e-mail, **in plain Microsoft Word or Open Document Text format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting).

11.2 Where to send it:

Freight Track Access Manager Email: track.access@orr.gov.uk