



## **APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A PASSENGER 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. If a train operator wants to access the national railway network, it will need a track access agreement with Network Rail which requires ORR's approval under the Railways Act 1993. When determining access to the network, we must have regard to our [statutory duties](#), most of which are set out in section 4 of the Act. We must exercise our functions (which include the approval of access contracts) in a way that we consider best achieves those duties.

Use this form to apply to the Office of Rail and Road (ORR) for a passenger track access contract, or an amendment to an existing contract by a supplemental agreement, under sections 17-22A or the Railways Act 1993.

It 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.

This form should be completed up to section 10 and sent to consultees along with a copy of the proposed contract or supplemental agreement. Sections 10 and 11 should be filled in after the consultation and before applying to ORR.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#). 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 version 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 Beneficiary company name:

London and North Eastern Railway Company Limited (LNER)

### 1.2 Facility owner details:

Network Rail:	<input checked="" type="checkbox"/>				
Region:	Southern <input type="checkbox"/>	Eastern <input checked="" type="checkbox"/>	North West & Central <input type="checkbox"/>	Wales & Western <input type="checkbox"/>	Scotland's Railway <input checked="" type="checkbox"/>
Other Facility Owner:	<input type="checkbox"/>	Please state:			

### 1.3 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:		38 <sup>th</sup>	
Current contract date:		3 <sup>rd</sup> March 2017	
Current contract expiry date:		Principal Change Date (PCD) 2025	

### 1.4 Applicant status:

Public Service Operator <input checked="" type="checkbox"/>	Public service contract start date:	24 <sup>th</sup> June 2018
	Public service contract end date:	The rail contract between the Secretary of State for Transport and LNER for the delivery of passenger services is due to expire on 22 June 2025. A PIN has been issued for an extension of 2 +up to a further 3 years, and as LNER is under DfT OLR Holdings Limited it is almost certain that LNER will be issued with a direct award for a minimum of 2 years. This means the contract term will be up until June 2027 with the option of extending up until June 2030.
	Name of funder (e.g. DfT, Local Authority):	DfT
	Does the funder support this application?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Open Access <input type="checkbox"/>		
Charter Operator <input type="checkbox"/>		

**1.5 Executive summary of the proposed contract or amendment:**

LNER is seeking to convert the existing contingent rights contained within Table 2.2 of its Schedule 5 Part B to firm rights from Principal Change Date (PCD) 2024. No other changes are being proposed.

The industry is currently working on finalising a revised timetable for the East Coast Mainline (ECML) under the aegis of the Event Steering Group (ESG) but in the scenario whereby the ECML ESG timetable is not implemented then LNER wishes to convert the long standing contingent rights under the ECML access rights policy to firm rights.

The contingent rights under the ECML access rights policy are due to expire at PCD 2024 and so LNER are seeking to make these firm rights from PCD 2024 to the end of contract.

In line with the 34<sup>th</sup> Supplemental Agreement LNER is seeking firm rights to PCD 2030.

Proposed commencement date:	PCD 2024
End date:	PCD 2030
Date approval or directions wanted by:	

**1.6 Industry consultation:**

Who carried out the consultation?	<b>Network Rail</b>		
Consultation start date:	<b>21<sup>st</sup> May 2025</b>	Consultation end date:	<b>21<sup>st</sup> Jun 2025</b>
Not carried out <input type="checkbox"/>			

**Applicant details**

<p><u>Facility Owner</u>                  Company: Network Rail Infrastructure Limited                  Contact Name: Mark Garner                  Job Title: Customer Manager                  Floor 4B                  George Stephenson House                  Network Operations                  Toft Green                  York YO1 6JT</p> <p>Phone: [REDACTED]                  E-mail: [REDACTED]</p>	<p><u>Beneficiary</u>                  Company: London North Eastern Railway                  Company Limited                  Contact Name: Malcolm Knight                  Job title: Head of Operational Planning                  West Offices                  Station Rise                  York                  YO1 6GA</p> <p>Phone: [REDACTED]                  E-mail: [REDACTED]</p>
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**1.7 Date of application to ORR:** 20<sup>th</sup> May 2024

**1.8 Checklist of documents attached to the application form:**

- Proposed new contract (S17 or S18) or supplemental agreement (S22 or S22A)
- Marked up Schedule 5 (where applicable)
- Marked up comparison to model contract (where applicable)
- All consultation correspondence
- Supporting documentation required for competing services (see section 6.2)
- Other supporting documents, side letters or collateral agreements (please list):


**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.

### 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).

The existing rights contained within Table 2.2 of its Schedule 5 Part B are to be moved to Table 2.1 of its Schedule 5 Part B.

A marked up copy of Schedule 5 Part B has been provided with this application showing the proposed changes.

**3.2 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).

None have been identified.

**3.3 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](#).

LNER Track Access Contract will be extended from PCD 2025 to PCD 2030 as covers in the related 34<sup>th</sup> Supplemental. Note that this supplemental relates to Schedule 5 Part B of the Track Access Contract and would be superseded by Schedule 5 Part C on introduction of the ESG timetable.

**3.4 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.

This application has yet to be approved by Network Rail's Sale of Access Rights Panel. This application is being made in light of the ORR request for ECML related applications in its letter dated 24 April 2024 to the industry.

#### 3.5 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

### 3.6 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.

Consolidated to 11 March 2024 on ORR's website and in due course this will be updated with the version that includes the Periodic Review 2023 amendments via the 33<sup>rd</sup> Supplemental Agreement.

## 4. The impacts of the proposal

**4.1 Benefits:** please set out what specific benefits the proposal will achieve. Please describe the benefits to passengers and any impact on other operators, including freight operators.

Continuation of existing services, enabling certainty for LNER and its customers.

**4.2 Capacity:** How have you satisfied yourself that there is enough network capacity for the services in the proposal? Please include details on all relevant capacity considerations, including but not limited to track, platform availability, and power supply traction.

The services currently operate today.

**4.3 Performance:** What is the impact on 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.

The services currently operate today so we do not believe there is any material risk to performance.

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

None.

## 5. The expression of access rights

**5.1 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.

The Schedule 5 Part B rights within Table 2.2 have been incorporated into Table 2.1 and the notes removed.

Paragraphs 2.4 and 2.5 now become "Not used".

**5.2 Flexing rights:** Please explain any limitations on the facility owner's flexing rights in the proposal and the rationale for such limitations.

All rights are quantum only and do not contain flexing limitations.

**5.3 Specified equipment:** Please explain any changes to specified equipment (rolling stock). Has the vehicle and route acceptance procedure in the Network Code (Part F) has been completed? Please explain whether you have, or will have, the rolling stock necessary to exercise the rights.

Not applicable.

**5.4 Contractual obligations:** Are the proposed services necessary to fulfil obligations under a public service contract? For publicly contracted operators seeking additional access rights, we will expect to see evidence of funder support for the specific rights and of operators' intent and ability to operate the new services.

The services that LNER are seeking to operate are part of the LNER Train Service Requirement with the DfT and have DfT approval and funding.

**5.5 Public funding:** Other than the DfT, Welsh Government or Transport Scotland, are the proposed services subject to financial support from central or local government including PTEs. If so, please give details.

There is no other public funding of the services.

**5.6 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.

Not applicable.

## 6. Competing passenger services:

We would expect to apply the 'not primarily abstractive' test to:

- (i) a new open access service which would compete with franchised services and so impact on the public sector funder's budget;
- (ii) a new franchised service which would compete with an existing franchised service, where we would expect to focus the test on areas where the competing franchised services are operated on behalf of different funders or where for some other reason there are particular concerns over the impact on a funder's budget; and
- (iii) a new service, which might be open access or franchised, which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network.

**6.1** Please state if your application is for a competing passenger service, and if so please describe the nature of the competition:

Not applicable. They are existing services.

**6.2** For competing services, please also confirm that you have attached as part of your submission to ORR the following:

- Business plan, including details of:
  - forecasts of passenger traffic and revenues, including forecast methodology;
  - pricing strategies;
  - ticketing arrangements;
  - rolling stock specifications (e.g. load factor, number of seats, wagon configuration);
  - marketing strategy;
  - estimated elasticities of the services (e.g. price elasticity, elasticity with respect to quality characteristics of the services).
- Demand forecasting (including associated spreadsheet models) demonstrating modelled generation : abstraction ratio.
- Indicative timetables, including associated .spg files



## 7. Incentives

**7.1 Train operator performance:** please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving operator performance.

None.

**7.2 Facility owner performance:** please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving the facility owner's performance.

None.

**7.3 Monitoring of services:** Will all proposed services be monitored for performance throughout their journey? If not, please explain.

All trains will be monitored as per usual industry process under the schedule 8 regime.

**7.4 Performance regime changes (for applications under sections 17 or 22A only):** where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed.

Not applicable.

## 8. Enhancement

**8.1 Enhancement details:** where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to 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).

None.

**8.2 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 applicable

## 9. Other

**9.1 Associated applications to ORR:** please state whether this application is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, 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 evidence that this process has been completed.

This application is related to LNER's 34<sup>th</sup> which is looking to extend our existing contract to PCD 2030. However, the rights in this application refer only to Schedule 5 Part B of the current Track Access Contract and will be superseded by the rights in part C when the ESG timetable is introduced.

**9.2 Side letters and collateral agreements:** please confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it.

Not applicable

**9.3 Confidential redactions:** please list any information that you have redacted from any documentation sent to consultees. If there has been no pre-application consultation, please list any information you want us to exclude from publication. Please provide full reasons for any redactions.

Not applicable

### 10. Pre-application consultation

#### 10.1 The consultation:

If consultation has not been carried out, explain why not. If it has, please list the consultees.

Who conducted the consultation?

List all consultees who responded and include their responses and any associated documentation or correspondence between the parties.

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

**10.3 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.

**10.4 Subsequent Changes:** Have any changes been made to the proposal following consultation?

### 11. 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.*

**For agreed applications under section 18 or 22, Network Rail should complete the information below. For disputed applications under section 17 or 22A, the beneficiary should complete it.**

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

Signed ... ..

Date 20<sup>th</sup> May 2024

Name (in caps) **MALCOLM KNIGHT** Job title . **HEAD OF OPERATIONAL PLANNING**

For (company) ...London and North Eastern Railway Company Limited

## 12. Submission

**12.1 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).

### 12.2 Where to send it:

Email: [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk)