



## **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:

West Midlands Trains Ltd
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### 1.2 Facility owner details:

Network Rail:	<input checked="" type="checkbox"/>				
Region:	Southern <input type="checkbox"/>	Eastern <input type="checkbox"/>	North West & Central <input checked="" type="checkbox"/>	Wales & Western <input type="checkbox"/>	Scotland's Railway <input 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:		32nd	
Current contract date:		15 <sup>th</sup> May 2019	
Current contract expiry date:		PCD 2026	

### 1.4 Applicant status:

Public Service Operator <input type="checkbox"/>	Public service contract start date:	21 <sup>st</sup> September 2021
	Public service contract end date:	20 <sup>th</sup> September 2026
	Name of funder (e.g. DfT, Local Authority):	N/A
	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:

The purpose of this proposed Supplemental Agreement is to update the Track Access Contract ('the Contract') between West Midlands Trains and Network Rail to provide West Midlands Trains firm access rights for 19 services for which they hold firm rights until PCD 2024.

The services had been identified as running without firm access rights following an extensive rights review undertaken by West Midlands Trains in order to ensure their quantum of services running aligned with their Schedule 5 tables. An extension to these rights are being sought up until contract expiry.

An application for these services is currently running in parallel as a Section 22 application and is due to close on 3 June. That application seeks the firm rights up to PCD 2024, and was approved by SoAR Panel on Friday 10 May. This application therefore seeks an extension on those rights beyond PCD 2024 to the contract expiry date.

Proposed commencement date:	When Approved
End date:	End of Contract
Date approval or directions wanted by:	N/A

### 1.6 Industry consultation:

Who carried out the consultation?	Akaash Bhandari		
Consultation start date:	20 May 2024	Consultation end date:	21 June 2024
Not carried out <input type="checkbox"/>			

### 1.7 Applicant details

<u>Facility Owner</u> Company: Network Rai; Infrastructure Ltd Contact name: Akaash Bhandari Job title: Franchise & Access Support Manager	<u>Beneficiary</u> Company: West Midlands Trains Ltd Contact name: Scott Turner Job title: Network Access Manager
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Address: 2<sup>nd</sup> Floor Baskerville House,  
Centenary Square, Broad Street, Birmingham,  
B1 2ND  
Phone: [REDACTED]  
E-mail: [REDACTED]

Address: West Midlands Trains Ltd, 134  
Edmund Street, Birmingham, B3 2ES  
Phone: [REDACTED]  
E-mail: [REDACTED]

**1.7 Date of application to ORR:**

24 June 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 32nd Supplemental Agreement seeks to amend West Midlands Trains' Schedule 5 Tables in their Track Access Contract to include an additional quantum of 19 firm access rights.

Further to an extensive rights review carried out by West Midlands Trains it was identified there were 19 services which were running and they held no level of access rights for. Contingent rights were put in place for 90 days via a General Approval (25<sup>th</sup> GA) whilst an application for firm rights was progressed. An application to firm up these rights up to PCD 2024 is currently being circulated amongst Industry Consultees, and this application seeks to further extend these rights from PCD 2024 to the contract expiry date. The summary of rights being sought is as follows:

**EJ01 West Midlands Snow Hill**

- +2 Firm Sunday rights Worcester Shrub Hill – Birmingham Snow Hill

**EJ03 West Midlands New Street Locals**

- +1 Firm Weekday right Coventry – Birmingham New Street
- +2 Firm Saturday rights Birmingham New Street – Great Malvern
- +2 Firm Saturday rights Great Malvern – Worcester Shrub Hill
- + 1 Firm Saturday right Birmingham New Street – Coventry
- + 1 Firm Sunday right Great Malvern – Worcester Shrub Hill
- + 2 Firm Sunday right Northampton – Birmingham New Street
- +1 Firm Sunday right Northampton – Coventry

**EJ05 WCML: London – Northampton**

- +1 Firm Weekday right London Euston – Milton Keynes Central
- +2 Firm Weekday rights Milton Keynes Central – Northampton
- + 1 Firm Saturday right London Euston – Milton Keynes Central
- + 1 Firm Saturday right London Euston – Northampton
- + 1 Firm Sunday right London Euston – Milton Keynes Central
- + 1 Firm Sunday right London Euston – Northampton

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**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).

The application is seeking a relatively small quantum of additional services which have already been running in the WTT, and as such no additional safety risks 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](#).

Not applicable to this application

**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.

Due to the requirement by the ORR to submit unsupported applications by the 20<sup>th</sup> of May 2024 Network Rail have not been able to fully agree the application or take the proposed application to a SOAR panel.

### 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.

- 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).

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

### 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.

The West Midlands Trains Consolidated TAC which incorporates the changes made by the 25<sup>th</sup> Supplemental Agreement has been fully uploaded onto the ORR website.

## 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.

The 32<sup>nd</sup> Supplemental Agreement will tidy up the access rights in Schedule 5 of West Midlands Trains' Track Access Contract to ensure they reflect WMT's current operations. It will also ensure that West Midlands Trains will have the ability to continue to operate a good and efficient service levels by granting these firm rights.

**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 have been running in the timetable since the Dec '22 Timetable Change with no known issues surrounding network capacity. The application has been consulted with Network Rail's Capacity Team to ensure the capacity exists to grant these firm rights.

**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.

Following identification of the services which were running without any level of access rights, West Midlands Trains supplied a list of train head codes within the respective routes in order for Network Rail to obtain performance data. Having undertaken an analysis of the data and discussed further with the performance team, On-Time has seen improvements in the data when measuring May '23 against Dec '23. Whilst generally on-time still isn't great, there are also mitigating factors which explain these (services running along the WCML where there is known congested infrastructure, unplanned delays on the network and known seasonal issues which occur throughout the year).

However, T3 and T15 for which the TOCs are measured against are much better and continues to show trends of upward growth between the May '23 and the Dec '23 TT.

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

The application has been circulated internally amongst Network Rail's NW&C maintenance colleagues and no concerns have been raised.

## 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 application to grant these firm rights to West Midlands Trains will see the quantum of services in Schedule 5 Table 2.1 for Passenger Train Slots within the Track Access Contract increase by 16.

Annex A shows a marked up copy of the Schedule 5 tables with the changes enacted and Annex B shows a clean version of the tables from a previous consolidated agreement.

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

Not applicable to this application

**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 to this application

**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.

West Midlands Trains' Dec '24 application has been through the necessary approval processes with the DfT and WMRE (West Midlands Rail Executive). The Dec '24 timetable bid aligns with their commitments in their NRC & ABP.

**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.

Not applicable to this application

**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 to this application

## 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:

As part of this application for the quantum of rights, it has been identified there are a number of competing aspirations for capacity from PCD 2024 and beyond.

Below is a summary of the applications where competing aspirations have been identified.

### Aspirant Open Access Operators

Across the NW&C region, there are currently three aspirant open access applications at present and discussions were held internally to ascertain whether these services would provide any conflicts on the network. The rights being sought within this application had been agreed and supported up to PCD 2024 and further discussions will have to take place as to whether capacity exists in the timetable to accommodate the services alongside the listed aspirant operators below.

Below is a summary of the 3 open access applications:

- **GUT Stirling:** 4 tpd each direction, SCD 2025 – SCD 2035 (Stirling, Larbert, Greenfaulds, Whifflet, Motherwell, Lockerbie in Scotland and Carlisle, Preston, Nuneaton, Milton Keynes, Euston)
- **WSMR:** 5 tpd each direction, SCD 2025 – SCD 2032 (Wrexham General, Gobowen, Shrewsbury, Telford Central, Wolverhampton, Darlaston, Walsall, Coleshill Parkway, Nuneaton, Milton Keynes, Euston)

- **Alliance Rail:** 5 tpd each direction, PCD 2025 – PCD 2032 (Cardiff Central, Newport, Severn Tunnel Junction, Gloucester, Birmingham New Street, Derby, Sheffield, Doncaster, York, Newcastle, Edinburgh Waverley)

### CrossCountry Trains

As part of the timetable change, XCTL will seek to introduce a daily though service in each direction between Cardiff and Edinburgh, promoting Union Connectivity. This utilizes existing paths between Birmingham and Edinburgh, and the rights required are new access rights. Network Rail are not currently supportive of these rights and no agreement has been reached to sell the rights as of yet.

- 2 SX rights 221 Cardiff – Birmingham
- 1 SX right 221 Nottingham – Birmingham
- 2 SX rights 221 Birmingham – Bristol Temple Meads via Gloucester
- 1 SX right 221 Birmingham – Cardiff
- 1 SX right 221 Gloucester – Cardiff
- 1 SX right 170 Nottingham – Gloucester
- 1 SO Seasonal and 1 SU Seasonal right 221 Birmingham – Newcastle
- 2 SX rights 221 Newcastle – Birmingham plus 1 Seasonal SO and 1 Seasonal SU 221 right
- 1 SX right 221 York – Birmingham plus 1 Seasonal SO and 1 Seasonal SU 221 right
- 1 SX right 221 Manchester – Birmingham

### West Midlands Trains

As part of their Dec '24 application West Midlands Trains are seeking a new quantum of rights for services to run between Birmingham New Street and Kings Norton which are covered in the 22<sup>nd</sup> Supplemental Agreement for their Camp Hill line application. Below lists the quantum being sought for services to run to and from Birmingham New Street

1						2		
2 <sup>nd</sup> Service Group EJ03 West Midlands New Street Locals								
Service description						Passenger Train Slots		
From	To	Via	Description	TSC	Timing Load	Weekday	Saturday	Sunday
Birmingham New Street	Kings Norton	Moseley	3.76	????	172	33	33	15
Kings Norton	Birmingham New Street	Moseley	3.77	????	172	34	34	15

West Midlands Trains are also seeking capacity for further additional services from PCD 2024 for services to run between Birmingham New Street – Shrewsbury and within the Birmingham New Street – Liverpool corridor. Below lists the quantum for these services to run to and from Birmingham New Street.

From	To	Via	Description	Timing load	Day of week	Required
Wolverhampton	Birmingham New Street	Direct	3.31	350	SX	1
Birmingham New Street	Crewe	Penkridge / Madeley	4.1	350/110	SX	2
Crewe	Birmingham New Street	Madeley	4.4	350/110	SX	1

From	To	Via	Description	Timing load	Day of week	Required
Birmingham New Street	Shrewsbury	Wolverhampton	4.8	170	SX	4
Birmingham New Street	Shrewsbury	Wolverhampton	4.8	170	SX	1



The final competing aspiration we have identified from West Midlands Trains themselves are covered within their 30<sup>th</sup> Supplemental Agreement and they are seeking an additional quantum of services to run between on the Cross City line from SCD 2025. Below lists the full quantum being sought

From	To	Via	Description	TSC	Timing Load	Weekday	Saturday
Birmingham New Street	Lichfield City	Direct	3.1	12272323 22272000	323	1	1
Birmingham New Street	Lichfield Trent Valley	Direct	3.2	12272323 22272000	323	<u>53</u> 30 <sup>th</sup> <u>35</u>	<u>53</u> 30 <sup>th</sup> <u>35</u>
Birmingham New Street	Bromsgrove	Direct	3.3	12272820	323	35	33
Birmingham New Street	Redditch	Direct	3.4	12272323 12272820	323	36	36
Birmingham New Street	Longbridge	Direct	3.5	12272323	323	1	3
Blake Street	Birmingham New Street	Direct	3.6	12272323	323	0	0
Lichfield City	Birmingham New Street	Direct	3.7	22272000 12272323	323	0	0
Birmingham New Street	Blake Street	Direct	3.8	12272323	323	0	0
Lichfield Trent Valley	Birmingham New Street	Direct	3.11	12272323 22272000	323	<u>54</u> 30 <sup>th</sup> <u>36</u>	<u>54</u> 30 <sup>th</sup> <u>36</u>

**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.

Not applicable to this application

**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.

Not applicable to this application

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

The performance of these services will be kept under regular review. Network Rail and West Midlands Trains will monitor performance along these lines of route every four to six weeks and feedback findings to their respective performance teams for visibility.

**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.

Due to the requirement by the ORR to submit unsupported applications by the 20<sup>th</sup> of May 2024 Network Rail have not been able to fully agree the application or take the proposed application to a SOAR panel.

## 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).

Not applicable to this application

**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 to this application

## 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.

Alongside this application for firm rights for these services, West Midlands Trains also have four applications which are currently being made in parallel to this one. It should be noted there is no direct crossover with this application.

28<sup>th</sup> Supplemental Agreement – Application for quantum of 16 rights as part of their Dec '24 timetable change bid

22<sup>nd</sup> Supplemental Agreement – Application to run weekday and weekend services between Birmingham New Street and Kings Norton as part of the investment into the new Camp Hill stations.

30<sup>th</sup> Supplemental Agreement – Application for additional quantum of rights to run on the Cross City Line as part of their SCD 2025 Timetable Change Bid.

31<sup>st</sup> Supplemental Agreement – Application for additional quantum of rights on the Birmingham Snow Hill lines as part of their SCD 2025 Timetable Change Bid.

**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 to this application

**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 to this application

## 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 **17<sup>th</sup> May 2024**

Name (in caps) **SCOTT TURNER**

Job title

Network Access Manager

For (company) **West Midlands Trains Ltd**

## 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)