

## Application to the Office of Rail Regulation for a passenger track access agreement, or amendment to a passenger track access agreement under sections 17-22A of the Railways Act 1993

### 1. Introduction

Please use this form to apply to the Office of Rail Regulation (ORR) for:

- directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.3. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps). The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model passenger track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: [www.rail-reg.gov.uk](http://www.rail-reg.gov.uk).

## 2. The application

**2.1 Title of proposed contract or supplemental agreement** (please also include the section of the Railways Act 1993 under which you are applying):

GREAT NORTH EASTERN RAILWAY COMPANY under section 17 of the Railways Act 1993

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail	Company: Great North Eastern Railway Company
Contact individual: Rachel Gilliland	Contact individual: Jonathan Cooper Alliance Rail Holdings on behalf of Great North Eastern Railway Company ("GNER")
Job title: Customer Manager	Job title: Head of Contracts
Address: Network Rail Kings Place 90 York Way London N1 9AG	Address: Alliance Rail Holdings 88 The Mount York YO24 1AR
Telephone number: 07767 644397	Telephone number: 01904 628904
E-mail address: <a href="mailto:rachel.gilliland@networkrail.co.uk">rachel.gilliland@networkrail.co.uk</a>	E-mail address: <a href="mailto:jc@alliancerail.co.uk">jc@alliancerail.co.uk</a>

**2.3 Licence and railway safety certificate:** please state whether you intend to operate the services yourself or have them operated on your behalf.

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.

**C&Ps paras 3.9-3.15**

The applicant intends to operate the services itself under the Great North Eastern Railway Company name (GNER). GNER is an Alliance Rail Holdings Company.

GNER does not yet hold a valid train operating licence or a valid safety certificate. It intends to commence operations during the timetable commencing December 2016 using new build Class 390 rolling stock. Applications for an operating licence and a safety certificate will be made well before commencement of operations.

### 3. The proposed contract or amendment

**3.1 Executive summary:** please provide an executive summary of 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). **C&Ps para 3.22-3.28**

Please also 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). **C&Ps paras 4.9-4.11**

Please also state the commencement and end dates for the proposal, and for new agreements or extensions to existing agreements, provide justification for the proposed length of the application, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#). If you are a franchised operator, please state the expiry date of your franchise. **C&Ps paras 4.72-4.79**

Date of commencement: Principal Change Date in December 2016

End date: Principal Change Date in December 2031

GNER plans to introduce the following passenger service starting during the December 2016 timetable:

- King's Cross to Edinburgh calling at Newcastle.

Track access rights will also be needed for associated empty stock movements, diversionary routes and depot access. Station access rights will be required for the following stations:

London King's Cross, Newcastle and Edinburgh.

GNER is discussing with Network Rail how the infrastructure improvements including track balises to allow the operation of tilting Class 390 services will be funded. This will see a material reduction in journey times promoting significant modal shift from air to rail.

**Note:** Network Rail has already identified the London – Edinburgh rail market is sub optimal in its [Draft] Network Specification of February 2014 (London North Eastern and East Midlands).

Depot access is under consideration and the fleet is expected to be maintained in the Newcastle area and at suitably located Alstom depots.

This will be a new contract with services operating under 'open access' provisions.

Trains will be formed of 9 coaches, will operate at maximum line speed, and will be capable of operating at 140mph if this is permitted once ERTMS is installed on the route.

Using high performance rolling stock will ensure that the best use is made of available capacity on the ECML.

These services will attract new patronage to the rail industry by competing directly with the airlines.

**3.2 Terms not agreed with the facility owner (for applications under sections 17 or 22A only):** please set out here any areas of the application which have **not** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions. **C&Ps para 3.102**

Network Rail has advised GNER that it is not currently in a position to quantify the available capacity on the ECML in December 2016. It is therefore unable to agree at the moment with GNER's assessment that there will be capacity for the proposed Edinburgh to London service. Network Rail does accept that a number of CP4 schemes will create additional capacity on the ECML. Some of those schemes are not yet complete. Even where the work is physically complete, many of the capacity benefits have not yet been fully realised. The East Coast Connectivity Fund is targeted at further capacity and journey time enhancements by the end of CP5. We agree with Network Rail that a timetable recast will be necessary to make optimum use of this additional capacity. Timetable recasts for the ECML, as defined in the Calendar of Events, are scheduled for both December 2016 and December 2018.

GNER has supplied Network Rail with the results of work commissioned by Alstom to determine the parts of the route suitable for enhanced permitted speeds for tilting trains. Network Rail will review this and GNER expects to commission further work from Network Rail to enable this to be treated formally as an infrastructure enhancement project.

Network Rail has proposed to carry out a capacity analysis study focused on December 2016. The remit will be shared with the ORR and GNER. We expect that the results of this study will provide the ORR with sufficient information about capacity and performance to make a decision on this application. The timescale for this work has not yet been confirmed, though we expect work to start shortly after this application is made.

Access rights policy is currently under review within Network Rail. GNER would not be happy with quantum only rights for this proposal so is seeking some protection for journey time and interval. However, we do accept the need for a reasonable amount of flex to be built into the contract, especially on departure times. Whilst we have not yet agreed terms, as this will also depend on results of the capacity and infrastructure studies, we understand Network Rail is willing to negotiate these items. GNER is confident it can reach agreement with Network Rail on this in due course.

**3.3 Departures from ORR's model passenger track access contract:** please set out and explain here any:

- areas where the drafting of the application changes ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made. **C&Ps paras 2.34-2.37**
- 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 passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate). **C&Ps paras 5.1-5.44**
- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete. **C&Ps paras 6.2-6.3**

This agreement is based upon the Passenger Track Access Model Contract, which is intended for franchised operators. Therefore this contract has been amended to reflect use for Open Access. In addition amendments have been made in relation to RPI updates and to reflect the recent changes to Part D of the Network Code. This contract does not however include the CP5 amendments.

A reopener clause has been included for 'Events' as defined in the Network Code.

#### **4. The expression of access rights and the use of capacity**

**4.1 Benefits:** please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also describe any significant changes in the pattern of services, their benefits to passengers and any impact on other operators, including freight operators. Where appropriate, please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application. **C&Ps paras 4.26-4.35**

The service proposed is:

- **London King's Cross to Newcastle and Edinburgh**

Services will operate at hourly intervals between King's Cross and Edinburgh though balancing moves at the start and end of the day will see some services start and terminate at Newcastle.

There will be a slightly reduced service on Saturdays (earlier finish) and Sundays (later start).

Services are planned to be introduced during the December 2016 timetable using new build electric class 390 rolling stock in 9-car formation. Development of the route, train performance and availability discussions have been on-going for a significant period with Alstom Transport, with pricing established for both rolling stock and maintenance.

From London, GNER services will operate non-stop to Newcastle, then go forward to Edinburgh. The significant investment in the fleet of up to 12 x 9 car Pendolinos to utilise tilt technology, will see a material reduction in journey times, particularly in the north of England and within Scotland. By lowering end to end journey times to 3h 43m, there will be significant modal shift from air, as rail now becomes very competitive on journey times. Further improvements on the ECML with the introduction of ERTMS and other improvements could see these end to end journey times further reduced to less than 3½ hours.

In its [Draft] Network Specification of February 2014 (London North Eastern and East Midlands) Network Rail has stated, under the heading:

***Business demand for shorter journey times between major cities***

*Present passenger figures for the ECML suggest the rail share of the Edinburgh – London market is sub-optimal, with substantial numbers of passengers opting to travel by air. Continued focus will be required on timetable development, minimising the time penalty of station stops and exploiting the improved capability of new rolling stock.*

These proposals ensure that passengers to and from London, and between Newcastle and Edinburgh benefit from significant journey time reductions to the North East and Scotland, well before HS2 delivers further improvements, addressing the demand identified. There will be a significant and early economic benefit to the regions served. The industry arguments that support the investment in HS2 also apply equally to the introduction of this new service.

Trains will have a capacity of around 500 seats, although the exact layout has still to be finalised with the manufacturer.

The DfT has stated that the ECML will not have tilting trains as part of the franchise. However, with the high performing Hitachi Super Express Train providing journey time improvements of its own, through better acceleration and braking than existing trains, then this proposal offers a significant opportunity to totally upgrade the ECML passenger offering prior to the introduction of HS2.

GNER will fund the lease/purchase of a new fleet of up to 12 x 9 car 140mph capable Class 390 Pendolino trains.

The current off-peak LDHS service provision on the ECML is 7 trains per hour in a number of hours both in the Up and Down direction. CP4 enhancements (as shown in the Network Rail Delivery Plan) indicate that they should provide at least 1 additional LDHS path per hour in the off-peak, and 2 additional in the peak. In addition, further funding has been approved for CP5 to further increase capacity and reduce journey times. This service targets significant modal shift from the 42 daily flights between Edinburgh and the various London airports, and the 9 daily flights at Newcastle.

**4.2 Adequacy:** please set out how you have satisfied yourself that there is enough network capacity for the services in the proposal. Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. **C&Ps paras 4.12-4.45**

The paths sought are planned to provide a regular daily service, and will additionally provide competition at Newcastle and Edinburgh.

The following CP4 infrastructure enhancement schemes have all been justified in part on increases in capacity for LDHS services on the ECML:

- York station approach – fourth track
- Finsbury Park to Alexandra Palace additional running line
- Hitchin flyover
- Peterborough additional platforms
- Level crossing upgrades
- GN/GE Joint Line upgrade for frequent freight use
- North Doncaster chord (Shaftholme flyover)

Very limited benefit has yet been realised from the completed schemes such as the Hitchin flyover. The last two of these schemes have not yet been completed. There is therefore additional capacity to be utilised from May 2014 onwards. GNER agrees that a timetable recast will be necessary to make best use of this. Network Rail has included a December 2016 timetable recast in its latest Calendar of Events.

There are several schemes planned during CP5 that will create further additional capacity. These include:

- King's Cross to Alexandra Palace ETCS
- Woodwalton to Huntingdon four-tracking
- Peterborough station central turnback
- Werrington grade-separated junction
- Doncaster east side enhancements (including additional platform)
- Third track north of York station

GNER is confident that these enhancements will create capacity not just for this proposal, but for others as well. Currently 'open access' has slightly more than 1 train path per hour (most off-peak), and the DfT has indicated that its further requirement on the ECML (for the incoming franchise) is for 6 LDHS trains in the off peak hours.

This capacity level is currently achievable now on the ECML prior to the output of the CP4 interventions. Once these come on stream, and with further investment to be made in CP5, then this proposed service – which in any case will be the fastest service on the ECML – will be able to be accommodated by December 2016, or very soon afterwards.

As the trains will be new build and homologated, GNER expects them to be very reliable.

**4.3 Flexing rights:** please provide a general description of the extent of any limitations on the facility owner's flexing rights in the proposal. Please provide the rationale for the extent of any limitation on the flex provided, including any changes to pre-existing services, and the extent to which the provisions have been agreed with the facility owner. **C&Ps paras 2.27-2.33**

The level of flex proposed in this contract is sufficient for Network Rail to move the service around the clock-face to accommodate other operators.

**4.4 Journey time protection:** please describe whether the proposed contract gives journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the reasons for this, with reference to ORR's criteria. **C&Ps paras 8.90-8.103**

GNER is seeking maximum journey time protection to protect the investment to be made. Achieving these journey times is paramount in the business case put forward.

**4.5 Specified equipment:** please give full details of any changes to specified equipment (rolling stock), including timescales, and how much of 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 being sought. **C&Ps paras 8.87-8.90**

GNER will be using rolling stock in the form of a full line speed tilting EMU to take advantage of the EPS nature of parts of the infrastructure once this has been upgraded.

**4.6 Franchise obligations:** please explain whether the proposed services are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps paras 4.3-4.4**

Not applicable

**4.7 Public funding:** please state whether (and if so to what extent) the proposed services are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives. Please also provide a point of contact at that body. **C&Ps paras 3.52, 4.25, 4.35-4.39**

The proposed services require no public funding.



**4.8 Passenger Focus and, where applicable, London TravelWatch:** please state whether (and if so to what extent) the proposed services have been discussed with these bodies. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

GNER has advised Passenger Focus of its intentions and has fully consulted via Network Rail prior to this formal submission to the ORR.

**4.9 Route utilisation strategies (RUSs):** if applicable, please 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 explain the reasons for this. **C&Ps paras 4.5-4.8**

The significant journey time improvement is relevant to all RUSs, and is acknowledged as a change that spurs generation of traffic, particularly in this instance significant modal shift from air.

## 5. Incentives

**5.1 Train operator performance:** please describe any planned projects associated with the operation of the proposed services aimed at improving your performance. **C&Ps paras 4.26-4.36**

The investment in the infrastructure and the operation of a service with proven trains will reduce operational performance risk by utilising reliable rolling stock.

GNER will work closely with Network Rail to develop detailed contingency plans that can be implemented in the event of disruption.

**5.2 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. **C&Ps paras 4.26-4.36, 5.1**

The installation of on-train monitoring equipment will allow Network Rail to more robustly manage its infrastructure.

**5.3 Monitoring of services:** would all proposed services be monitored for performance throughout their journeys, consistent with our policy in paragraph 5.50 of the criteria and procedures? If not, please state the reasons for this is in line with the permissible circumstances described in paragraph 5.51 of the criteria and procedures. **C&Ps paras 5.50-5.56**

Services will be monitored consistent with ORR policy.

**5.4 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. **C&Ps para 5.38-5.40**

GNER does not currently operate rail services. The performance regime will be agreed once the application is approved.

## 6. Enhancement

**6.1 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). **C&Ps paras 4.80**

Investment will need to be made in the infrastructure to enable tilting trains to use an Enhanced Permitted Speed (EPS) profile. This will involve the installation of TASS balises (for authorising tilt), and potential cant/gauging work as is identified as being necessary. Alstom Transport has commissioned detailed work on the potential speed profile using data supplied by Network Rail. GNER is discussing with Network Rail how these enhancements will be delivered.

GNER is also discussing with Network Rail other potential schemes where line speed improvements can be made, which will benefit all operators.

GNER is also discussing, with Alstom and a third party, a project to build a new servicing and maintenance facility in the Newcastle area. The site currently under consideration is rail-connected on a leased site. GNER will fund the investment in this new facility.

**6.2 Enhancement charges:** please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's [Policy Framework for Investments](#), and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document). **C&Ps paras 5.6, 5.12-5.14**

The precise way the enhancements are to be funded is subject to continuing discussions with Network Rail.

The funding of these enhancements will be in line with Network Rail's criteria and the ORR's Policy Framework for Investments. Investment in rolling stock will be either via a conventional lease, a full service provision lease or via a capital purchase.

## 7. Other

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**7.1 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). **C&Ps paras 3.18-3.19**

Further applications in relation to station and maintenance access will be made following this application.

**7.2 Supporting information, side letters and collateral agreements:** please:

- state here any relevant information in support of the proposal, including a list and explanation of any other material being submitted (and supply copies with the application). **C&Ps para 4.33**
- 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. **C&Ps paras 6.12-6.16, 6.21**

Financial details regarding costs and revenue for the service group are commercially confidential and will be provided to the ORR under separate cover.

**7.3 Confidentiality exclusions:** please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the proposed contract sent to consultees for any pre-application consultation process, and provide reasons. If there has been no pre-application consultation, you should state any parts of the application and proposed contract you want us to exclude from publication. **C&Ps paras 3.29-3.34**

Any associated side letters to be provided along with the business case information and details of investment as outlined in 7.2.

**Note: Where a pre-application consultation is to be undertaken in line with the Code of Practice, the remainder of this application should not be completed until after that consultation has been completed**

## **8. Pre-application consultation**

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

- state who conducted the consultation;
- list all train operators, franchising authorities 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 28 days, please explain the reasons for this.

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If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **C&Ps paras 3.62**

Network Rail conducted the pre-application consultation over a period of 6 weeks ending 24<sup>th</sup> January 2014. Responses were received from the following organisations:

- First Group
- Northern Rail
- East Coast Mainline Company Limited
- Freightliner
- DBS
- Transport Scotland
- Department for Transport
- NEXUS
- WYPTE (Metro)

**8.2 Resolved issues:** please set out any issues raised by consultees which have been satisfactorily resolved. You may wish to refer to responses attached to this form. Please explain any changes as a result of the consultation.

GNER has replied to all of those who responded to the consultation. The wording of this application form has been amended in the light of comments from respondents and our further consideration. We have also clarified the areas of disagreement with Network Rail that remain.

**8.3 Unresolved issues:** please set out any issues raised by consultees which have **not** been satisfactorily resolved, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you think these issues should not stop ORR approving the application.

Alliance has responded to all consultees. We believe the issues that we have not been able to resolve are limited to

- a) those that are subject to Network Rail's assessment of available capacity and
- b) those that are in the hands of the ORR, based on the evidence supplied with this application

## 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, 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 **C&Ps para 3.40***

***In the case of agreed applications under section 18 or 22, Network Rail should fill in the required 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 .....

Name (in caps) ..... Job title .....

For (company) .....

## 10. Submission

**10.1 What to send:** please supply, in hard copy, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information. **C&Ps para 3.39**

Please also supply the application form, the proposed contract or amendment and, where 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). **C&Ps para 3.37-3.38**

### 10.2 Where to send it:

Manager, Track Access Team  
Directorate of Railway Markets and Economics  
Office of Rail Regulation  
One Kemble Street  
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