

# Application to the Office of Rail Regulation for an amendment to a passenger track access agreement under section 22A of the Railways Act 1993

## 1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 22A of the Railways Act 1993 for an amendment to an existing track access agreement. Section 22A is the means by which those seeking an amendment to an existing track access agreement to allow the operation of more extensive services apply for a compulsory amendment if they have failed (for whatever reason) to reach agreement with the facility owner.

The form sets out our standard information requirements for considering such applications. It cross-refers throughout to our criteria and procedures (C&Ps)<sup>1</sup> and, where appropriate, to the Industry code of practice for track access application consultations (the Code of Practice)<sup>1</sup>. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues that we will need to consider. Applicants are strongly encouraged to read the C&Ps and the Code of Practice before making an application.

Where an applicant wishes to submit an application direct to ORR and have ORR conduct the industry consultation, this form should be completed fully before submission to ORR. Alternatively, where an applicant wishes either to request Network Rail (for applications where it is the facility owner) to conduct a pre-application consultation or to conduct a pre-application consultation itself, this form should be completed up to section 7.4 before carrying out a pre-application consultation. The remainder should be completed after the consultation, before applying to ORR for directions under section 22A.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Railways Act 1993 and the C&Ps in this respect. We will be happy to discuss prospective applications.

A copy of this form can be accessed electronically and downloaded via the ORR website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)).

## 2. The application

### 2.1 Title of proposed amendment:

[yy<sup>th</sup>] Supplemental Agreement between Network Rail Infrastructure Limited and London & Birmingham Railway Limited ("London Midland")

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

Company: London & Birmingham Railway Limited

Contact individual: [REDACTED]

Job title: [REDACTED]

Address: PO Box 4323

Birmingham

B2 4JB

Telephone number: [REDACTED]

Fax number: [REDACTED]

E-mail address: [REDACTED]

<sup>1</sup> *Criteria and procedures for the approval of track access contracts*, Office of Rail Regulation, 27 November 2008, available at <http://www.rail-reg.gov.uk/server/show/nav.202>. The Code of Practice is set out in Annex A of the C&Ps.

**2.3 Licence and railway safety certificate:** please state whether the applicant intends to operate the additional services itself or have them operated on its behalf

3.9-3.14

Please state whether the proposed operator of the services (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has 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 which the proposed operator has reached in obtaining a licence, exemption and/or safety certificate (as the case may be)

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

### 3. The proposed amendment

**3.1 Executive summary:** please provide an executive summary of the proposed amendment. This should cover the services, the commercial terms, and the applicant's reasons for seeking the amendment in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

3.22

3.84

- the changes provided for in respect of the services in question (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.92**
- any aspects in which the proposed amendment contains bespoke provisions departing from the published model track access contract and the charging, performance and restrictions of use regimes established through ORR's periodic review (or subsequent interim reviews) of access charges; and **2.32-2.38**  
**6.2-6.3**
- any material safety risks that have been identified arising from the proposed amendment and the arrangements for their control and mitigation (by reference to the provisions of the facility owner's safety authorisation and operator's safety certificate). **4.9-4.11**

This application seeks to amend the existing London Midland TAC ("the Agreement") consequent upon the cessation of the Moderation of Competition protections in the West Coast Trains Limited Track Access Agreement which is presently scheduled to expire on April 1<sup>st</sup> 2012.

If approved by the ORR, the services related to the rights sought in this application are expected to commence after this date, probably on a date in May on or around that used for the Subsidiary Change Date.

This application relates to access rights required to operate a new hourly service between Birmingham New Street and Preston or v.v., on Weekdays and Saturdays which would use one of the existing LM paths each hour between Birmingham New Street and Crewe (which currently operates to Liverpool Lime Street). This service would call north of Crewe at Hartford, Warrington Bank Quay and Wigan N.W.

In order to maintain capacity and connectivity towards Liverpool and Merseyside on Weekdays and Saturdays it is proposed to extend the existing LM Euston to Crewe service to Liverpool Lime Street making intermediate calls as now. It is also proposed that this extension of the Euston to Crewe service onto Liverpool Lime Street also operates on Sundays.

All services considered in this application would be operated by Class 350 electric traction which is currently leased by LM.

A business case in relation to these service changes is attached to this application.

It will be noted that another application has been by LM to the ORR under s.22A in respect of a number of additional services between Euston and Crewe via Trent Valley and Stoke ("the xxth

Supplemental Agreement"). These two s.22A applications are being submitted at the same time, but are being handled separately.

There are no departures proposed from the model clauses format for passenger track access agreement, or from the charging regime in force. At this point in time, the proposal has not been formally assessed, but no material safety risks have been identified.

**3.2 Terms not agreed with the facility owner:** please set out here those specific areas of the proposed amendment which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions

3.92

This application is made in connection with the ORR WCML 2012 Capacity Exercise, which was advised to the industry by means of two letters, dated 14 May and 30 June 2010, whereby the ORR wishes to seek formal application from access parties seeking new additional access rights on the WCML upon the expiry of the WCTL TAC no later than the end of October 2010.

Given the nature of this exercise, it is not presently possible to agree terms with Network Rail, and to make a s.22 application as would usually be the case, and therefore this application is made in accordance with s.22A of the Act.

Network Rail has, nevertheless, been kept informed of these service aspirations and provided expert guidance and assistance where possible. The proposed train paths have been discussed with Network Rail to ensure an absence of conflict with existing Firm Contractual Rights or other service aspirations which may be under consideration as part of the WCML Capacity Exercise.

**3.3 Departure from ORR's model passenger track access contract:** please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

2.32-2.38  
6.2-6.3

None.

**3.4 Duration of amendment:** please state the commencement date sought for the proposed amendment, and provide justification for the proposed duration (in particular, giving reference to ORR's policy on long-term access contracts<sup>2</sup> where contracts would be for longer than five years)

4.73-4.79

The rights sought through this proposed [yy<sup>th</sup>] Supplemental Agreement are intended to take effect from the Subsidiary Change Date 2012 and are for the remainder of the term of the LM TAC (Principal Change Date 2014).

It is noted that the industry is currently considering whether the planning requirements associated with the Olympic Games will result in there being no Subsidiary Change Date in May 2012: nevertheless LM believes that the scale of change associated with this proposal is sufficiently limited to permit service introduction in May 2012. However LM recognises that it be possible that introduction of these services could be delayed until December 2012.

**3.5 Scope of section 22A:** please provide a full justification of why you believe the amendment(s)

<sup>2</sup> *Long-term access contracts: final conclusions*, Office of Rail Regulation, June 2005 available at <http://www.rail-reg.gov.uk/upload/pdf/240.pdf>

proposed are ones that fall within the scope of section 22A of the Act. You should, in particular, explain the extent to which the changes proposed would lead to more extensive use being made of the facility owner's network.

3.84

Please refer to section 3.2 above.

London Midland is seeking additional access rights to operate the additional services described in section 3.1, above.

#### 4. The expression of access rights and the consumption of capacity

**4.1 Benefits:** please set out what specific benefits will result from the proposed amendment. In particular, please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators

4.30-4.36

These rights are being sought following the successful introduction by LM of direct services between stations on the WCML north of Rugby and London Euston as part of the enhanced December 2008 WCML timetable specified by the DfT, and the knowledge of passenger demand for these services gained by LM since the services were introduced.

It is evident that the reintroduction of direct services using 100mph Class 350 rolling stock between Euston and those locations which are not regularly served by West Coast Trains Limited has both grown the total market for rail travel and provided increased connectivity on the route.

While the December 2008 WCML timetable provided accelerated and more frequent services on certain routes, it has become apparent that the frequency and capacity provided on other corridors such as Birmingham to Preston has proved inadequate to meet passenger demand. In addition the December 2008 WCML timetable did not address some long standing issues where direct rail services were either poor or absent – for example, between the Vale Royal area of Cheshire situated on the WCML towards Lancashire, or from the Potteries to Merseyside.

This application seeks to address a number of these connectivity issues and to build upon the service offer provided in the base WCML timetable. Our expectation is that the proposed services will meet our forecasts of currently suppressed demand and the comments and aspirations received by LM from a range of passengers and stakeholders. This proposal for additional services seeks to build on existing service patterns which have proven to be resilient and capable of delivering high levels of punctuality and reliability.

Further detail of the service proposals can be found in the business case attached to this application.

**4.2 Congested infrastructure:** please state whether the part(s) of the network to which this application relates have been declared congested by the facility owner, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005<sup>3</sup>

4.82-4.83

Not applicable in relation to this application.

<sup>3</sup> These regulations are available at <http://www.opsi.gov.uk/si/si2005/20053049.htm>

**4.3 Adequacy:** please set out to what extent and by what process (if any) the applicant has satisfied himself that there is sufficient network capacity for the services in the proposed amendment, and the implications for overall network performance and the facility owner's maintenance and renewal activities **4.17-4.40**

None. As indicated in section 3.2 above, the proposed train paths have been discussed with Network Rail to ensure an absence of conflict with other Firm Contractual Rights or other aspirant service proposition.

**4.4 Flexing rights:** please provide a general description of the extent of the facility owner's flexing rights in the proposed amendment, the rationale for the extent of flex provided, including changes from that in the existing agreement in respect of the services in question, and the extent to which the provisions have been agreed with the facility owner **8.25-2.31**

Not applicable in relation to this application.

**4.5 Protected rights and obligations:** please describe the extent to which the proposed amendment contains any protected rights and/or protected obligations (*i.e.* protection from subsequent amendment of the Network Code under Condition C8), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **4.71 - 4.72**

Not applicable in relation to this application.

**4.6 Journey time protection:** please describe the extent to which the proposed amendment affords or varies journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **8.91- 8.103**

Not applicable in relation to this application

**4.7 Other limitations on flexibility:** please describe the extent to which the proposed amendment contains any other restrictive obligations on the facility owner (e.g. regular service intervals, clockface departures etc), and explain the justification for any such provisions by reference to ORR's criteria **4.69-4.70**

London Midland has sought to ascertain with NR the extent of spare capacity available taking into account the timetable scenarios we understand NR has modelled for the ORR as part of the WCML 2012 Capacity Exercise. It is LM's understanding that the rights sought can be accommodated into the range of the standard pattern hour timetables under development.

**4.8 Specified equipment** Where the proposed amendment contains changes to specified equipment (rolling stock), please give full details, including timescales, and the extent to which the vehicle and route acceptance procedure in the Network Code (Part F) has been completed **8.87-8.90**

Not applicable in relation to this application. The proposed services will be operated by Class 350 traction which operate the current services on this route. Class 350 traction is route cleared to Preston and up to the December 2008 Passenger Change Date LM operated a service from Birmingham to this location on Weekdays.

**4.9 Moderation of competition** Where applicable, please describe the extent to which the proposed **4.41-4.44**

amendment seeks contractual protection from the introduction of competing services on specific flows, and explain the justification for such protection by reference to ORR's policy on moderation of competition

No protection is sought in respect of this application. It will be noted that the services described in this application are presently prohibited by the Moderation of Competition provisions contained within Schedule 13 of the Track Access Contract between Network Rail and West Coast Trains Limited, dated 10th December 2008. These provisions cease with the expiry of that Agreement on 1<sup>st</sup> April 2012.

**4.10 Franchise obligations** Please indicate the extent to which the services in the proposed amendment are necessary to fulfil obligations under a franchise or concession agreement

4.3-4.4

These services will be additional to those LM is contracted to operate under the Service Level Commitment (SLC) in its Franchise Agreement

However the Department of Transport has been kept informed of London Midland's service proposals and the details of this application.

The diversion of one Birmingham service to Preston each hour will require a change to the LM SLC.

**4.11 Public funding** Please indicate whether (and if so to what extent) the services in the proposed amendment are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives, and provide a point of contact at that body

3.37  
4.22  
4.35-4.40

**4.12 Passenger Focus** Please state whether (and if so to what extent) the services in the proposed amendment have been discussed with Passenger Focus, and provide copies of any relevant correspondence

4.40

LM has not yet discussed the proposed services with Passenger Focus; however, LM consults widely with stakeholders including Passenger Focus as part of its normal timetable development process, and will do so in relation to these services.

**4.13 Route utilisation strategies (RUSs)** If applicable, please also state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please state the reasons for this.

4.5-4.8

The West Coast Main Line RUS is presently in an advanced state of development and a draft is expected for consultation before the end of 2010. Throughout the development of the RUS LM has actively engaged with NR.

## 5. Incentives

**5.1 Charges and performance** Please set out, and explain the reasons for, any instances where the proposed amendment departs from the charging and/or performance regimes established by ORR's periodic review (or subsequent interim reviews) as reflected in ORR's model track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.43**

There are no departures proposed from the charging and performance regimes currently in force. Amendments to Schedule 7 associated with the introduction of the service to Preston will be proposed to the ORR subsequent to its consideration of this application.

**5.2 Train operator performance** Please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the applicant train operator's own performance **4.27-4.35  
5.1**

None specific proposed in connection with this Application beyond any future performance management initiatives undertaken by LM and NR under the JPIP structure.

**5.3 Facility owner performance** Please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the facility owner's own performance. **4.27-4.35  
5.1**

None known.

## 5.4 Performance regime issues

### *Changes to Schedule 8*

**5.35-5.43**

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

### *Monitoring of services*

- Would all services covered by this application be monitored for performance throughout their journeys, consistent with our policy in paragraph 5.48 of the criteria and procedures? If not, please state what the justification for this is in line with the permissible circumstances described in paragraph 5.49.

The introduction of the new service between Crewe and Preston will necessitate changes to the Performance regime in Schedule 8 and specifically Monitoring Point Weightings in Appendix 1. The draft Supplemental Agreement does not detail such amendments at this point in time, but this will be reviewed, and amendments proposed to the ORR subsequent to its consideration of this application.

**5.5 Restrictions of use** Please indicate and explain the reasons for any instances where the proposed amendment departs from the restrictions of use (possessions) compensation regime established by ORR's periodic review of access charges and the subsequent interim review of the possessions incentives regime **5.69-5.81**

Not applicable in relation to this application. Amendments to Schedule 8 associated with the introduction of the service to Preston will be proposed to the ORR subsequent to its consideration of this application.

## 6. Enhancement

**6.1 Enhancement details** Where the proposed amendment provides for the delivery of any network enhancements, or the services in the proposed amendment are predicated on any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework) **3.103**  
**4.81**

Not applicable in relation to this application.

**6.2 Enhancement charges** Please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's Policy Framework for Investments<sup>4</sup>, and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document) **5.6**  
**5.12-5.14**

Not applicable in relation to this application.

## 7. Other

**7.1 Associated applications to ORR** Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements) **3.17-3.18**

As stated in section 3.1 this application is made in parallel with an application under s.22A for amended and additional access rights on the WCML north of Crewe ("LM proposed xxth Supplemental Agreement")

The xxth Supplemental Agreement would see the enhancement of LM's existing service between Euston and Crewe via Northampton, Trent Valley and the Potteries, and which would be extended from Crewe to Liverpool Lime Street, covered under this application.

**7.2 Supporting information** Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application) **3.35**

On 11 June 2010 London Midland wrote to the ORR setting out its aspirations for Track Access Rights on the West Coast Main Line. This letter was in response to the ORR letter of 14 May 2010 to the industry seeking to identify operator aspirations for the route. In our response we set out our aspirations for additional services between Crewe and Northampton (and for Liverpool and Preston services which are the subject of a separate application). The rights we are now seeking are consistent with those aspirations.

Accompanying this letter was an outline business case for the services. We have taken the opportunity to update this business case to reflect the additional work and analysis we have undertaken since June. The updated business case is provided with this application. Included in the business case is the resource requirement for the services, the modelled revenue forecast and proposed timetable in tabular form.

<sup>4</sup> The Policy Framework for Investments documentation is available at <http://www.rail-reg.gov.uk/server/show/nav.190>.



We also attach a draft Supplemental Agreement to the London Midland Track Access Agreement.

**7.3 Side letters and collateral agreements** Please confirm here that the whole of the proposed amendment between the parties has been submitted with this application and that there are no side letters or other documents which purport to qualify or otherwise affect the proposed access amendment

6.12-6.16  
6.21

Not applicable in relation to this application.

**7.4 Confidentiality exclusions** where applicable, please explain clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed amendment sent to consultees for the pre-application consultation process (if undertaken). Alternatively, where an application has not been subject to pre-application consultation, the applicant should state what elements of the application and proposed amendment they would wish ORR to exclude from publication.

3.27-3.32

*Code of Practice:*  
17-20

In excluding, or seeking the exclusion of, any information, the applicant should have regard to the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Further guidance is provided in the Code of Practice. Subject to its decision on such exclusions, it is ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, ORR is obliged to send a copy of the application **in full** to the facility owner)

LM believes that elements of this application and the supporting business case are commercially confidential and full disclosure would be detrimental to the business.

Accordingly, we have provided with this application a redacted mark up of the application and business case. It is this redacted version that we would expect the ORR to publish.

If there are any items redacted that the ORR believes should be published as part of the industry consultation, LM requests that these are discussed with the applicant prior to publication.

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

*Code of Practice:*  
10-15,  
35-41

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

If a pre-application consultation has not been carried out, please explain what informal discussions have been held with those third parties who might be affected by this application and the nature of any concerns raised.

Not applicable in relation to this application.

**8.2 Resolved issues:** please detail any issues raised in response to the consultation that have been resolved to the satisfaction of the consultee. You may wish to refer to responses attached to this form.

*Code of Practice:*  
45-46

Not applicable in relation to this application.

**8.3 Unresolved issues:** please detail any issues raised in response to the consultation that have not been resolved to the satisfaction of the consultee, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you do not think these issues should preclude ORR's approval of the application.

**Code of  
Practice:  
47**

Not applicable in relation to this application.

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

Not applicable in relation to this application.

**8.5** Please list here any further information being provided to ORR to support the application that was not made available to consultees in any pre-application consultation held as part of this application and listed in section 7.2. If the applicants wish ORR to consider excluding this information from subsequent publication they should justify why the information is of a confidential nature, following the guidance provided in section 7.4 above.

Not applicable in relation to 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 (including section 22A), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution*

**3.36**

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

Signed	Date
Name (in caps) ALEX HYNES	Job title COMMERCIAL DIRECTOR
For (company) LONDON & BIRMINGHAM RAILWAY LIMITED	

## 10. Submission

### 10.1 What to send

Please supply, in hard copy, the signed top copy of this application form, one copy of the proposed draft amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

3.35

Please also supply the application, the proposed amendment and, insofar as it is possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting).

3.33-3.34

### 10.2 Where to send it

Manager, Track Access Team  
Directorate of Access, Planning and Performance  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

ORR Passenger Form 22A February 2009