

## APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT, UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

### 1. Introduction

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

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

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 7. You should fill in the rest of the form after the consultation and before applying to ORR.

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

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

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timings and the issues we will consider. You should use our current [model freight track access contract](#) as your starting point. Please read the guidance before completing the contract and this form.

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](#).

You may also use and adapt this form 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](#).

## 2. The application

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

2nd Supplemental Agreement in relation to the Track Access Contract (Freight Services) for the Core Valley Lines within the Wales and Borders Rail Franchise between Seilwaith Amey Cymru / Amey Infrastructure Wales Limited. and Freightliner Limited.

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (" <b>AIW</b> ")	Company: Freightliner Limited (" <b>the operator</b> ")
Contact individual: Nick Rowe	Contact individual: Chris Matthews
Job title: Regulatory and Customer Manager	Job title: Track Access Manager
Telephone number: + 44(0)7885 225692	Telephone number: 07866 152753
E-mail address: <a href="mailto:Nick.Rowe@amey.co.uk">Nick.Rowe@amey.co.uk</a>	E-mail address <a href="mailto:chris.matthews@gwrr.co.uk">chris.matthews@gwrr.co.uk</a>
Address: Transport for Wales CVL Infrastructure Depot / Ty Trafnidiaeth, Trefforest Industrial Estate, Pontypridd, Wales CF37 5UT	Address: 6th Floor, The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

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

Freightliner Limited will operate these services.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Act or an exemption under section 7, or a European licence with a GB Statement of National Regulatory Provisions issued under the *Railway (Licensing of Railway Undertakings) Regulations 2005* **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006?

If the answer to either (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate (as relevant).

The operator holds valid operating licences under Section 8 of the Railways Act 1993 and regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 (as amended) ('**the Licensing Regulations**') as well as a Statement of National Regulatory Provisions granted under Regulation 10 of the Licensing Regulations.

Freightliner Limited also has a Safety Certificate under regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006

### 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, in the case of an amendment, fully highlight the changes from the previous version of the contract.

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).

Please also state the commencement and expiry dates for the proposal, and, for new contracts or extensions to existing contracts, provide justification for the proposed duration of the contract where the total exceeds five years.

#### **Background:**

This application is to make amendments to schedule 1 of the Contract to reflect the following:

- The change of registered address of Freightliner and
- The change of name of Amey Keolis Infrastructure Limited to Seilwaith Amey Cymru / Amey Infrastructure Wales Limited.

**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. Please state the efforts you are making to resolve any disputes.

All terms agreed with the facility owner.

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

- Areas where the drafting is different to ORR's published template freight track access contract. Please 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 freight track access contract, including the financial implications (e.g., establishment of an access charge supplement or rebate).

- New processes (e.g. self-modification provisions) which have been added. Please demonstrate how these new processes are robust and complete.

None

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

**4.1 Benefits:** Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Why do you need these new rights (if any)? Please describe any significant changes in the pattern of services and any impact on other operators, including other freight operators. 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.

The rights of the Train Operator are unchanged.

**4.2 Adequacy:** please set out how you have satisfied yourself that there is enough network capacity for the proposed and/or amended services (or will be at the time of service operation). Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. Please confirm whether the proposed Rights will involve operation over an area subject to a Declaration of Congested Infrastructure, or whether the capacity requirement will result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code).

The rights of the Train Operator are unchanged.

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

The rights of the Train Operator are unchanged.

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

The rights of the Train Operator are unchanged.

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

The rights of the Train Operator are unchanged.

**4.6 Long term planning process:** please state which Route Studies are relevant and whether the proposed rights are consistent with them. If they are not consistent please give the reasons. See Network Rail's [website](#). What consideration has been given to any issues emerging from relevant Events Steering Group concerning capacity on the routes covered by the application (if Network Rail network).

Not applicable

## 5. Incentives

**5.1 Train operator performance:** please describe any planned projects or initiatives associated with the operation of the proposed services aimed at improving your performance (including faster or longer trains).

Not applicable

**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 performance.

Not applicable

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

None

## 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).

Not applicable

**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).

Not applicable.

## 7. Other

**7.1 Associated applications to ORR:** please state whether this proposal 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).

None

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

Not applicable.

**7.3 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).
- 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.

None

**7.4 Confidentiality exclusions:** please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the application 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 you want us to exclude from publication.

None

## 8. Pre-application consultation

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

**8.1 The consultation:** has a pre-application consultation been carried out in line with the [Industry code of practice for consultations](#)? If yes, please:

- state who conducted the consultation;
- list all train operators and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and

- state the period allowed for the consultation. If this was less than 28 days, please explain the reasons for this.

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.

Not applicable

**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.

Not applicable

**8.3 Unresolved issues:** please set out any issues raised by consultees which have ***not*** been resolved to the consultee's satisfaction, 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.

Not applicable

## 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*

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

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

Signed  Date 27/10/2021

Name (in caps) NICHOLAS ROWE Job title: Regulatory and Customer Manager  
For (company) Seilwaith Amey Cymru / Amey Infrastructure Wales Limited.

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

Signed:  Date: 27/10/2021  
Name (in caps): CHRIS MATTHEWS Job title: Track Access Manager  
For (company): Freightliner Limited

## 10. Submission

**10.1 What to send:** please supply, in hard copy or electronic format, 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.

### 10.2 Where to send it:

Freight Track Access Manager  
Access and Licensing Team  
Directorate of Railway Markets and Economics  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN

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