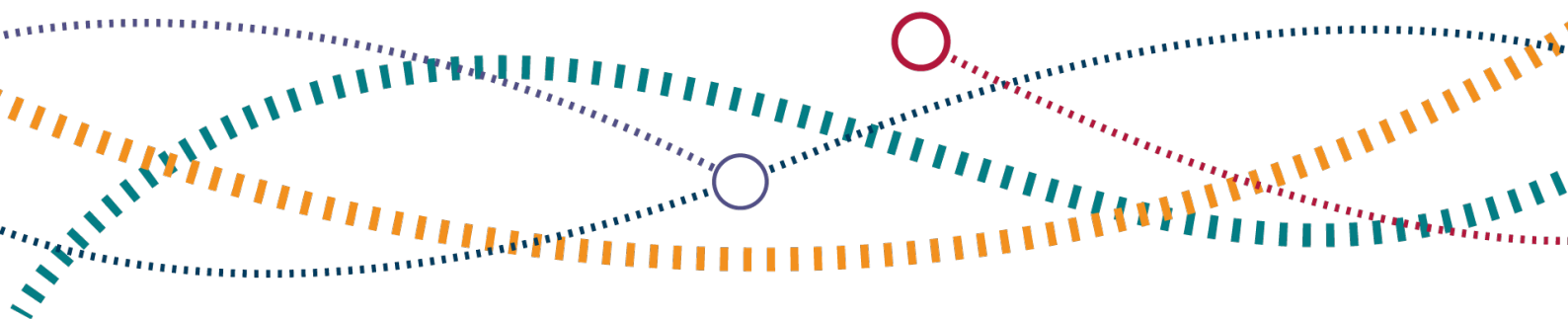




# Developing ORR's approach to Sustainable Development and Environment

## Consultation Conclusions

21 September 2022



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# 1. Executive Summary

- 1.1 The growing scale and pervasive nature of the environmental and sustainability challenges we face as a society increasingly impact our operations and the areas we regulate. We are committed to supporting the delivery of the UK and devolved governments' sustainable development policy objectives and fulfilling our environmental and sustainability statutory duties with respect to rail and road. Our ambition is to support a step change in sustainable development outcomes through the exercise of our functions, to support the industries we regulate and to behave consistently with these policies as an organisation.
- 1.2 Today we have published our revised Sustainable Development Policy Statement and revised Guidance on Environmental Arrangements for Railway Licence Holders. We also set out our plans for improving rail industry environmental data, and have overhauled our webpages to provide ongoing updates on what we are doing – both corporately and in our rail and road regulatory activity.
- 1.3 Our Sustainable Development Policy Statement sets out how we incorporate sustainable development principles in delivering our functions, as well as our internal corporate activities and processes.
- 1.4 Rail licence holders have a condition in their licence requiring them to put in place a written environmental policy, operational objectives and management arrangements (together referred to as “the environmental arrangements”), taking into account ORR guidance. We have published an updated version of the guidance to reflect current environmental good practice, make it more enduring, and ensure consistency with legislative and policy requirements of UK and devolved governments. We have also updated our expectations around the provision of environmental data – moving from industry key performance indicators to a more holistic and transparent joint ORR and industry approach.
- 1.5 We will work with the rail industry to agree proportionate additions to the environmental data we currently collect and publish. In particular we will continue to work with the Rail Safety and Standards Board (RSSB). We will complement their work developing environmental performance measures and data tools for industry use, which we currently understand are not intended for public release, by ensuring an increasing level of whole industry, quality assured environmental data are published in the public domain as Official Statistics.

1.6 Following our consultation on these documents last year, we received concerns over the timing of our changes in relation to the process of rail reform. We do not consider that reform is a reason to delay the updates. We expect the majority of industry licences to remain, and our updated guidance, which reflects the latest view of environmental challenges and policy responses, should remain suitable for the foreseeable future. While Great British Railways (GBR) will have a new licence, we note that the government's consultation on legislative changes to implement rail reform proposes that GBR's licence will include a specific duty on the environment, as well as an increased focus on transparency and role for ORR in monitoring and enforcing this. We will update our approach as appropriate as the reform process progresses, but consider the documents that we have published today form a good basis for the likely future actions required.

1.7 Our next steps are to:

- monitor receipt of licence holders' revised environmental arrangements updated as a result of the revised guidance;
- work with industry and RSSB to develop an environmental data catalogue to show what environmental data is available, where it can be found and where there are gaps, to inform the development of improved publicly available whole industry environmental data;
- continue to expand our annual [Rail Emissions](#) release, including broadening coverage beyond traction energy usage and corresponding carbon emissions.

## 2. Introduction

- 2.1 Our consultation '[Developing ORR's approach to sustainable development and environment](#)' ran from 15 September to 9 November 2021. This document contains our conclusions from that consultation. Alongside this document we have published a revised Sustainable Development Policy Statement ('policy statement') and revised Guidance on Environmental Arrangements for Railway Licence Holders ('guidance'), draft versions of which formed part of the consultation and an Impact Assessment for the guidance (see Annex 3).
- 2.2 The consultation stated that we need to increase the focus on environment and sustainable development issues across all our functions, supporting the policy agendas and legislative requirements of UK Government and devolved administrations.
- 2.3 In rail, we committed to placing an increased focus on environmental and sustainable development issues, including in periodic review 2023 (PR23). In July 2022, we published the [PR23 policy framework initial consultations](#) which sets out our proposals, including environmental sustainability outcome measures. In May, 2022 we published, following consultation, a document setting out [our role and approach to the development of the third road investment strategy](#). This highlighted the importance of environmental sustainability, and particularly the net zero challenge, to that process and the advice we will provide to government.
- 2.4 We received twenty-three responses to the consultation from the rail industry, stakeholders and funders. Twelve of these focused on the sustainable development policy statement and eleven on the guidance on environmental arrangements. No responses were received from roads sector representatives. We summarise the consultation responses in the annexes and have published the responses in full on [our website](#).
- 2.5 Respondents were generally supportive of our proposed approach in both areas although some specific issues were raised. We address these issues in Chapter 3.
- 2.6 In Chapter 4 we explain our consultation conclusions and how we have developed the policy statement and guidance. Chapter 5 sets out our next steps.

# 3. Key issues raised by consultees

3.1 In this chapter we summarise the key themes raised by consultees in relation to each of our proposed documents as well as our proposals around data. We have included more detail in the annexes. We explain how we have considered the responses in the finalised policy statement and guidance in Chapter 4.

## Sustainable Development Policy Statement

3.2 Respondents broadly supported the approach and content of our draft sustainable development policy statement.

3.3 In the draft statement, we listed **criteria** we proposed using to assess what sustainable development and environment activities we could or should undertake in rail. The criteria are that any activity should be appropriate, proportionate, effective, additional, and aligned. The policy statement expands on these criteria.

3.4 The responses contained a variety of suggestions on the relative priority we should give to each criterion, as well as alternatives such as the use of risk-based assurance approaches.

3.5 Specific issues raised included:

- the **timing** of our proposed changes given the ongoing process of rail reform, the uncertainties about how sustainability will be addressed in this, and where responsibility for it will lie; and
- the potential for **duplication of roles** more appropriate to other bodies in the rail industry such as RSSB; and
- the potential for **duplication of activity** already underway in the rail industry responding to environmental and sustainable development requirements from governments.

3.6 Other respondents asked that we clarify our roles and responsibilities in relation to other actors in this space, and provide more detail of how we would **implement** the policy and/or go further on this agenda. We also note respondents concerns which suggested the rail industry and its supply chain is sometimes slow to engage with environmental or sustainable solutions.

## Guidance on Environmental Arrangements for Railway Licence Holders

- 3.7 Most respondents supported the proposed approach and content of our revised guidance. As with the policy statement, concerns related to:
- (a) the **timing** of proposed changes during rail reform, which included that the guidance could become redundant as a result of post-rail reform responsibilities and changes; and
  - (b) the potential for **duplication** of existing activities and roles.
- 3.8 One response suggested our guidance should not be changed without a review of existing environmental requirements on operators, both rail specific requirements and those applicable to all businesses, to avoid duplication, and a consideration of the cost-effectiveness of additional activities.
- 3.9 Other respondents however thought we should go further and faster – requiring more of operators, for example, to align the issues they address, report and provide data on and also expanding the scope of the guidance from environment to sustainability.

### Transparent whole rail industry environmental data

- 3.10 In our draft guidance we proposed to remove the annex specifying industry key performance indicators (KPIs) that the industry agreed to supply or develop over time. Instead, we proposed that licence holders engage with us and wider industry stakeholders to improve the breadth, quality and disaggregation of whole rail industry environmental data.
- 3.11 Respondents largely supported improving the transparency and availability of environmental data in the rail industry, but varied in their opinion of our proposals for achieving this, with some supporting and some opposing.
- 3.12 The value to the rail sector, passengers and stakeholders of an ‘open by default’ approach to data sharing (as set out in the Williams-Shapps Plan for Rail) was highlighted. The role of indicators in driving environmental performance was acknowledged but calls were also made to ensure consistent and aligned environmental reporting requirements across the industry.
- 3.13 Questions were raised about data collection roles and responsibilities, with one respondent (RSSB) suggesting our proposals duplicated roles they currently

perform, and it is not appropriate for ORR to step into this area. RSSB also raised concerns about the timing of our proposed changes during rail reform, and the focus on environmental rather than wider sustainability data.



# 4. Our consultation conclusions

- 4.1 In this chapter we respond to the issues raised by consultees and give our position on them. Since the consultation closed we have discussed some of these issues with stakeholders and, in particular RSSB, to clarify their comments and work towards an agreed position.
- 4.2 As highlighted in Chapter 3, there were issues across both documents relating to timing, duplication and roles. In general, we acknowledge the issues raised, but consider it important that we act now to refresh our out-of-date policies which date from 2007.
- 4.3 We explain in more detail our consideration of the issues raised across both documents, and then focus on the specific issues in each document. We conclude the chapter with a summary of the changes we have made to the policy documents we consulted on.

## Timing and rail reform

- 4.4 ORR is the independent economic and safety regulator of the rail industry. We have statutory duties on environment and sustainable development, and we expect to retain these. The revised sustainable development policy statement is intended to provide transparency on our approach to these duties and indicate our future direction.
- 4.5 We need an up-to-date policy which can inform our work in the short and medium term. The policy statement is an intentionally high-level framework that will guide further ORR activity consistent with our duties, industry activity and governments' environment and sustainable development agendas. It will guide our response to activities flowing from the Whole Industry Strategic Plan (WISP), Sustainable Rail Strategy (SRS) and/or other policies and processes in rail.
- 4.6 We also think there is value in updating our out-of-date guidance now. Our approach is consistent with our developing understanding of rail reform and we consider it to complement rather than duplicate wider industry activity. Existing licensing arrangements for most rail operators will remain in place. GBR will be issued with a new licence, but the DfT's recent consultation document makes it clear that GBR will be mandated through its licence to consider environmental principles in its operations. Our guidance could support that.

- 4.7 We have refreshed the guidance to reflect good practice on environmental management and current environmental challenges, which have increased significantly since the last version, notably in relation to net zero carbon. However, we have not made significant changes in our approach or in the requirements for licence holders.
- 4.8 The guidance addresses the environmental arrangements of individual operators, not the industry-wide strategic response to these issues, which are being considered in the SRS and WISP, and in due course by GBR. We therefore view these processes and our guidance as complementary and that the environmental arrangements we expect operators to have in place will facilitate delivery of wider strategic activity and objectives.
- 4.9 We have carefully considered the guidance requirement for existing licence holders to update and send us their environmental policies within six months of the guidance being issued. As a result, we have modified the wording of the guidance from, “Existing licence holders should *review and update* their environmental arrangements within six months of this guidance being published and send a copy of them to ORR”; to “Existing licence holders should *review* their environmental arrangements within six months of this guidance being published, taking the guidance into account, *and where material changes result send an updated summary* [of their environmental arrangements] *to ORR*”. This reflects our expectation that up-to-date environmental arrangements should be in place, but without placing an undue burden on operators.
- 4.10 Respondents also raised concerns about updating environmental arrangements in advance of publication of the WISP and final SRS. We consider the [SRS Prototype](#) (released for consultation in April 2022) and wider details of [rail reform](#) released since the consultation to provide sufficient clarity on the desired industry direction and should allow operators to prepare and or/revise their environmental arrangements in a way that anticipates future requirements.

## Risk of duplication

- 4.11 We consider our role is to build on and complement work being done by industry and government on sustainable development and environment. We have amended our policy statement to make this complementary role clearer.
- 4.12 In relation to the suggestion that our guidance duplicates existing requirements, the substantive requirement of the licence’s environment condition is that operators supply their ‘environmental arrangements’ to us, taking into account any relevant guidance we have issued. Our guidance sets our expectations of

environmental arrangements, but we do not approve their content. Compliance with other requirements can demonstrate appropriate environmental arrangements are in place.

- 4.13 The main concern around duplication related to our proposals for improving publicly available, whole industry environmental data. Some respondents considered we are duplicating other industry activity and roles, e.g. that of RSSB, and other requirements, e.g. those of [Streamlined Energy and Carbon Reporting](#). We discuss this in the developing industry data section at the end of this chapter.

## Use of criteria in the Sustainable Development Policy Statement

- 4.14 Although some respondents suggested prioritising specific criteria for our activity in rail, we do not agree since our intent is that the criteria are considered in the round.
- 4.15 It was suggested that we should use the proportionality criterion to increase the allocation of resources to specific areas, for example, rail decarbonisation in Scotland. We do not consider this the role of the criteria. The criteria are to assist prioritisation of our activities. The resources we allocate to different regulatory activities are subject to our business planning processes and, in cases where regulated rail bodies are not meeting their commitments, the regulatory escalator.
- 4.16 Our consultation proposed applying the criteria to our rail activity. We now consider there to be value in applying them to both our roads and rail activity in the context of the better regulation agenda and have amended the policy statement to reflect this change.

## Implementing our Sustainable Development Policy Statement

- 4.17 Respondents asked for further detail on how we will implement the policy. We have published details of our existing and future sustainable development activities that contribute to the delivery of the policy on our website and will update them as new activities are developed. Our current activity includes reviewing and refreshing:
- our internal corporate activity on sustainable development including delivery and reporting our progress against the updated [2021-2025 Greening Government Commitments](#);

- how we are embedding sustainable development in our decision-making and governance processes, for example, using our risk register and horizon scanning activities and appointment of non-executive directors to the Board; and,
- how we address sustainable development in our regulatory activity including, development of our whole rail industry environmental data proposals.

## Scope of our guidance

- 4.18 We have considered the suggestion that the guidance should address sustainable development, not just the environment. We note that the licence condition only refers to ‘environmental matters’ so we cannot extend this to sustainability without changing the licence. We do not view a licence change at this point to be proportionate. However, our guidance indicates licence holders can cover wider sustainable development issues if they choose, and we would encourage them to do so.
- 4.19 Regarding requests for more ambition, it is funders’ role to set the policy objectives for the rail industry – including on the environment. However, we have a duty to have regard to environment in exercising our functions and wish to contribute and enable progress where it is consistent with our duties and role.
- 4.20 We were asked to provide clarity on roles and responsibilities and relationship to environmental regulators and standards setting bodies:
- We note that it is for environmental regulators to enforce compliance with environmental regulations and law. ORR has to ensure an environmental policy is in place in relation to train operators’ licenced activities and hold Network Rail to account for its environmental commitments.
  - We recognise, however, that there is value in joint working between economic and environmental regulators and will continue to explore how best to deliver this. We will also continue to contribute to the United Kingdom Regulators Network (UKRN) activity in this area.
  - The Environment Act 2021 requires new legally binding environmental targets to be set, and creates a new, independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations in England. Environmental Standards Scotland will perform a similar role in Scotland, and a body to perform this

role in Wales is being developed. We will work to understand the requirements the formation of these bodies may place upon us.

## Developing whole rail industry environmental data

- 4.21 Our consultation indicated we want to improve rail industry environmental data. Good quality, publicly available whole industry data is important for transparency, to inform policy, regulatory and industry activity and for public confidence in the industry. It is consistent with the Williams-Shapps Plan for Rail (WSPR) commitment to a data sharing approach 'open by default' and also enables the diverse uses of our current published Official Statistics to be developed.
- 4.22 There is currently little publicly-available, whole-industry, environmental data. We think there is value in addressing this to ensure adequate data exists to inform policy, regulatory and industry needs. In the longer term we consider the increasing importance of environmental issues means we may need better environmental data to fulfil our environmental duty.
- 4.23 We intend to work with the rail industry in our Official Statistics role to develop better publicly available whole industry environmental data. We want to work collaboratively to agree incremental additions to the environmental data we currently collect and publish, in particular, building on and complementing RSSB work to develop environmental performance measures and data tools. Delivered in the right way this could reduce burdens on the industry by aligning data collection and reporting requirements.
- 4.24 We will keep the level of industry cooperation on environmental data transparency under review. We note that Section 80 of the Railways Act 1993 contains the power for ORR to require information to be provided by licence holders to allow us to fulfil our functions and duties. However, we rarely use this power as most data issues are resolved by agreement.
- 4.25 We acknowledge that rail reform will address roles and responsibilities in this area as outlined above. However, we consider that better and publicly available whole industry environmental data will be required under all likely outcomes and action is needed now. The actions given in the next steps section are intended to be consistent with our current duties and role, the likely longer term structures and needs of the industry, and the scale of environmental challenges that now need to be addressed.

- 4.26 We have continued our ongoing engagement with RSSB and have specifically addressed the concerns it raised in its consultation response about our approach to environmental data. We have clarified our respective roles and responsibilities (see box below) and view both ORR's and RSSB's work as complementary. We have made revisions to the final version of the guidance to make our intended role clearer.
- 4.27 RSSB is working to significantly increase the environmental tools available to industry. This is focused on supporting the industry, and GBR in future, in internal performance management. These data are not primarily intended or necessarily suitable for public release as whole industry data. However, we currently understand that over time and following appropriate quality assurance further environmental data will be placed in the public domain, for example, summary data on air quality may be made publicly available in 2023. We are seeking in our Official Statistics role to increase the level of transparency around industry performance on these key issues of national importance, and to incentivise and support further industry action. RSSB have indicated their support for our approach outlined here and willingness to work collaboratively to the objective of better publicly available whole industry environmental data.

### **RSSB and ORR roles and responsibilities on whole industry environmental data**

In response to strategies and plans set out by funders, and alongside activity led by industry parties such as Network Rail:

RSSB is:

- Providing 'thought leadership' across the industry on sustainability issues
- Conducting research on behalf of industry
- Supporting the industry through use of tools
- Leading on key strategic pieces such as the Sustainable Rail Strategy/Sustainable Rail Data Framework – including defining industry reporting parameters and KPIs

ORR should:

- Continue to publish Official Statistics on traction energy and carbon emissions
- Seek to (proportionately) improve the scope and disaggregation of Official Statistics that it produces – in conjunction with RSSB and industry

- Continue to use other regulatory tools to secure progress, e.g. periodic review, holding to account activity.

## Changes to the policy statement and guidance

4.28 We have made changes to the final versions of the policy statement and guidance we are issuing today from the versions we consulted on. The substantive changes are noted below.

4.29 In the sustainable development policy statement we have:

- Added text to make the differences between our roles in rail and road clearer;
- Amended the text related to the criteria to assess our sustainable development and environment activities to reflect our decision to apply the criteria to both rail and road (as noted above).

4.30 In the guidance we have:

- Moderated the text in relation to requiring existing licence holders to update their environmental arrangements following publication of the revised guidance (as noted above);
- Made changes to clarify our intended role and approach to developing whole industry environmental data (as noted above);
- Added text on the requirements of environmental matters licence condition; and
- Reorganised some of the text to make the distinction between the requirements of the licence and our guidance on meeting these requirements clearer.



## 5. Next steps

- 5.1 We have now published revised versions of both our Sustainable Development Policy Statement and our Guidance on Environmental Arrangements for Railway Licence Holders.
- 5.2 We have updated our [environment and sustainable development webpages](#) with our current activities, relevant industry initiatives, and our internal corporate activity, including our progress against Greening Government Commitments. We welcome feedback on any further improvements we can make to these pages and can be contacted by email: [environment@orr.gov.uk](mailto:environment@orr.gov.uk). We will update these pages as our activities develop.

### Guidance

- 5.3 Existing licensees should review their environmental arrangements within six months of the guidance being published, taking the guidance into account. Where material changes result an updated summary of the environmental arrangements should be sent to ORR.
- 5.4 We will monitor receipt of environmental arrangements and may report on the number we receive each year or make them available on our website. We may provide general feedback on the content to individual licensees.
- 5.5 Once the revised arrangements have had time to bed in, we may conduct a review of the arrangements we have received with a view to identifying areas we think could be improved. We would publish the conclusions to promote good practice across the industry and improving environmental performance.

### Whole Rail Industry Environmental Data

- 5.6 We will develop an **environmental data catalogue**, working with RSSB, to align the catalogue with the Sustainable Rail Data Framework, and the wider industry to avoid duplication of activity. The data catalogue will be a navigational aid for industry and other stakeholders, capturing what rail data is available in different areas of environment and sustainability, with an initial focus on carbon and emissions. We expect the catalogue to be updated and extended over time. The process of developing and updating the catalogue will be used to engage the industry on environmental data and how publicly available whole industry environmental data can be developed.



5.7 We will continue to **expand the ORR [Rail Emissions](#) statistical release:**

- The August 2022 release (covering passenger and freight train operators' traction energy usage and emissions for financial year 2021-22) included additional data and analysis such as a new emissions measure using a new dataset on vehicle kilometres. It also signposts other published data (although is not as comprehensive as the data catalogue).
- We will use the data catalogue process to identify potential additions to the Rail Emissions release for August 2023 and subsequent years aiming to broaden the release from energy and emissions to a wider 'Rail Environment' data release in future.

5.8 We will update our approach as appropriate in response to developments in rail reform, but consider the above 'no-regret' enabling actions of future activity required under the likely outcomes of rail reform. We will work on the basis that better environmental data can be seen an investment not an unnecessary burden. Better environmental data can add value for industry, governments, regulators. For example, economic efficiency, environmental management/outcomes, reputational benefits, planning, investment and industry coordination could all be improved with better data.

# Annexes

## Annex 1: Summary of responses to Consultation on a Revised ORR Sustainable Development Policy Statement

1. This annex to our Consultation Conclusions summarises the responses to our [Consultation on a Revised ORR Sustainable Development Policy Statement](#).
2. We received 12 responses to this consultation, which were largely supportive that ORR is reviewing and refreshing its approach in light of the scale of challenges in this area. The need for collaboration and close working with ORR on this agenda was highlighted by a number of respondents.
3. The responses are summarised below under the questions asked in the consultation.

### Question 1: Do you agree with our proposed criteria for our rail role?

4. Respondents were broadly supportive of the proposed criteria (Arriva, Department for Transport (DfT), Direct Rail Services, East Midlands Railway, Network Rail, Rail Industry Association (RIA), RSSB, Transport Scotland, Volker Rail). RSSB suggested that we clarify that the criteria should be applied to determine whether any new activity is required at all.
5. Some respondents commented on the priority given to different criteria. Arriva wanted to see a stronger focus on the 'additional' criterion, East Midlands Railways considered 'proportionate' and 'additional' to be priorities, and Transport Scotland considered the 'proportionate' criterion to be of key significance.
6. Comments were made on each of the criteria:
  - (a) Appropriate
    - RSSB raised the impact of rail reform and respective organisational roles. It highlighted the importance of assessing whether ORR should have a role in light of other actors in this area and that any role is consistent with ORR's duties. RSSB suggest it would be most appropriate for ORR to consider how best to use its economic regulatory powers to drive sustainability outcomes within the rail industry by, for example, the use of price incentives.

(b) Proportionate

- RSSB acknowledged that ORR has limited resource and finite sustainability capability. It endorsed a proportionate approach. RIA also considered it appropriate to use economic regulation to drive sustainability outcomes, and that building on ORR's existing powers and tools is a proportionate approach.
- RSSB recommended that we should consider our approach based on the materiality and significance of environmental and social impacts. East Midlands Railway said it supported an approach which is reflective of its existing risk-based assurance and risk management approaches.
- Transport Scotland asked whether Scotland's earlier targets on carbon will be considered as part of the proportionality criteria, for example, by ORR providing more resources or higher priority for decarbonisation in Scotland, and if so, ask how this would be delivered or made explicit.

(c) Effective

- RSSB highlighted that there is already industry momentum in the sustainability space and that they will continue to advise on areas where there is existing impetus, defined regulation and clear policy, such as decarbonisation and air quality, noise, biodiversity etc. In such a scenario RSSB considers that there is not currently an effective role for ORR to play.

(d) Additional

- Arriva said they would like to see full consideration of the impact of recent environmental legislation, guidance and strategy on rail, including in the environmental requirements of businesses' annual financial reporting.
- RSSB fully endorse this criterion given the potential for significant overlap between ORR and RSSB activities. They highlight the need to work together, complementing not duplicating resources or requirements on operational railway businesses where resources are constrained.

(e) Aligned

- RSSB note that we have an important role in influencing change, particularly by bringing regulatory powers and economic incentivisation to bear on the periodic review process.

- 2 Transport Scotland said they were glad to see ORR's recognition of the requirement for the rail industry to move to a more sustainable future. It asked how our Sustainable Development Policy Statement will be considered in day-to-day operations and as part of our decision-making processes, both strategic and operational.
- 3 RIA supported ORR developing its economic and safety regulator role rather than 'reinventing the wheel' to address sustainability objectives. It also raised industry roles and responsibilities, noting how complex it can be to navigate the activities undertaken by different parties. It felt this can be difficult for the supply chain, especially companies new to rail.
- 4 East Midlands Railway would like clarification on the role, remit and interrelationship between ORR and other regulators and external stakeholders, for example, environment agencies, local authorities, water and sewerage undertakers and external management system certification bodies.
- 5 Direct Rail Services encouraged ORR to use its influence with Network Rail on electricity pricing given the recent financial challenges of electric freight operations and contradiction with the principles of sustainable development.

## **Question 2: Do you agree with the approach and content of our new Sustainable Development Policy Statement?**

- 6 The approach and content of the Sustainable Development Policy Statement was broadly supported by respondents (Arriva, DfT, Direct Rail Services, East Midlands Railway, GBR-RAIL, Network Rail, RIA, RSSB, Transport Scotland and Volker Rail).
- 7 RSSB indicated overall support for the updating of our Sustainable Development Policy Statement and the importance of ORR establishing an up-to-date position.
- 8 RIA highlighted that the need for sustainability data to be consistent and reliable is a high priority and if ORR can play a role as the regulator to overlook this without duplicating work going on in the industry, then that must be supported.
- 9 DfT welcomed the recognition in the policy statement that accessibility is a key element of sustainable development.
- 10 Transport Scotland were broadly supportive of the content and approach of policy statement. They suggested ORR make the purpose of the document clearer for wider public consumption, e.g. including an explanation of why ORR is incorporating sustainable development principles into delivering of its regulatory functions.

- 11 Two concerns were raised in regard to the content of the policy statement:
- (a) Merseyrail raised a concern about ‘when appropriate to do so’ wording for use of our regulatory powers. They were unclear who determines this and about the potential for unworkable requirements being placed on operators.
  - (b) RSSB commented on paragraph 15 of the policy statement on the importance of good quality, readily available data in understanding progress toward sustainability. While agreeing that good data is crucial, RSSB were clear that they consider the role of designing and implementing performance measures sits within their remit as technical centre of excellence for sustainability for the rail industry, and is not a role for ORR.
- 12 Responses from Arriva, Network Rail, RSSB and Transport Scotland indicated that while the overall approach was supported, further detail on how it will be delivered would be desirable. This included details of activities that would result from the policy (Arriva), illustrations of how they would be delivered (RSSB), and overarching targets that link back to the strategies of the organisations ORR regulate (Network Rail).
- 13 RIA would welcome clear communication on any new ORR activity that relates to environment and sustainability and especially how it affects the supply chain.

### Industry roles

7. RSSB provided detailed comments on the roles of different rail bodies in the context of the Sustainable Rail Strategy (SRS) intended to inform the Whole Industry Strategic Plan (WISP). RSSB are also leading a related Sustainable Rail Data Framework (SRDF) project intended to give the industry capability to assess performance and track progress against the flagship goals and initiatives of the SRS.
9. RSSB highlighted their capacity, knowledge and track record to lead these processes and ability to negotiate with operators to ensure the design of options which are practical to implement. The holistic approach to the SRS and broad sustainability coverage is highlighted with carbon emissions, local air pollution, biodiversity, water, circular economy and noise as well as social sustainability included in it.
- 14 RSSB considers ORR should not take a role in developing and implementing performance management for sustainability as this would be a duplication and inefficient use of increasingly scarce funding.
- 15 However, RSSB also considers that ORR must ensure that the rail industry makes progress through the regulatory regime, including monitoring. It suggests it is happy to explore further with ORR how its regulatory responsibility needs to be constructed.

RSSB recognise ORR role as a producer and publisher of Official Statistics, and notes that consideration needs to be given to whether ORR needs to be the recipient of sustainability data in order to fulfil its regulatory role.

10. East Midlands Railway highlights it is supportive of RSSB's response to consultation. They suggest ORR's policy statement should be aligned to the emerging SRS, and that this is fundamental to regulation consistent with ORR's proposed criteria.

## Any other comments

11. Arriva consider it may make more sense to allow rail reform to develop further before concluding on the detail of changes to our Sustainable Development Policy Statement, noting in particular the impact on industry roles.
12. Network Rail highlight the government's [Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts](#) (PPN06/20). It suggests that ORR's policy statement should be expanded to take account of the UK Government Social Value Model. Network Rail has, for example, published its Social Value Framework in order to align with PPN06/20.
13. RSSB notes that Control Period 7 presents an opportunity for Network Rail to continue to build on its recent sustainability achievements with delivery broadening across the whole sustainability agenda, with ORR having a role in encouraging this.
14. Transport Scotland highlights the UK Government's hosting of the UN's COP26 in Glasgow in November 2021, and the commitments made at it. It notes that sustainable development policy will only increase in priority for governments, companies and organisations. It considers ORR may need to allow for mechanisms to reflect this and that there may be opportunities – and an expectation – for ORR to make more substantive policy proposals to deliver a more sustainable railway.
15. GBR-Rail supports ORR's policy refresh but note the gap between existing industry aspirations and delivery. It felt the industry can be slow to engage with sustainable and environmental solutions, even when these deliver considerable CAPEX and OPEX cost savings, mitigate health and safety risks, increase operational resilience as well as deliver carbon neutral solutions. They highlight that rail reform creates uncertainty and leverage is required by government bodies to drive take up of new technologies, otherwise net zero targets will not be met.
16. Transport Scotland point to the recently established Environmental Standards Scotland (ESS) and ask ORR to consider how its support and holding to account of

the rail sector on environmental and sustainable development matters will align with this new body, and the extent of any planned engagement.

17. The Woodland Trust welcomed ORR's policy refresh but considers our current approach to regulation of biodiversity impacts to be very light, and narrow in focus and that the protection of irreplaceable habitats such as ancient woodland is an essential component of sustainability. This is relevant to the activities of Network Rail and National Highways as large infrastructure managers. It recommends ORR should make greater use of its powers in relation to the impact of construction and maintenance activities in road and rail, and also assess Network Rail's progress against the Varley Review's recommendations. It considers that the construction of new road and rail infrastructure is one of the primary causes of the destruction and deterioration of ancient woodland and veteran trees and that the loss of irreplaceable habitats currently constitutes a gap in how ORR regulates National Highways and Network Rail.



## Annex 2: Summary of responses to Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders

1. This annex to our Consultation Conclusions summarises the responses to our [Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders](#).
2. We received 11 responses to this consultation, with most respondents supporting our proposal but a few responses raising concerns about the timing of our proposals in relation to rail reform, the potential for duplicating other activity in this area and whether the roles we proposed ORR fulfil are appropriate.
3. The responses are summarised below under the questions asked in the consultation.

### Question A: Do you agree with the proposed approach and content of our revised *Guidance on Environmental Arrangements for Railway Licence Holders*?

4. Support for the proposed approach and content of our revised Guidance on Environmental Arrangements for Railway Licence Holders varied among respondents. There was overall support from DfT, Direct Rail Services, East Midlands Railway, Network Rail, RIA, Transport Scotland, and Volker Rail. Transport for London supported the intent of the proposals but was concerned at their timing.
5. Arriva, Merseyrail, and RSSB raised concerns with the proposed approach around timing, duplication and roles. RSSB disagree that it is the most appropriate, effective approach, especially given the current timing in the context of rail reform.

### Concerns raised by respondents

6. The timing of proposed changes during ongoing industry structural reform and the potential for duplication by ORR of activities already being conducted by others in the industry were the main concerns raised by Arriva and RSSB.
7. RSSB said that it understands the intent behind revising the guidance but states it has concerns about their timing and therefore the potential effectiveness of the proposed changes being made against the backdrop of rail reform.
8. RSSB note that our consultation states that 'updating our guidance document now will help us to support the industry in creating useful and relevant environmental



policies and practices'. RSSB disagree that the proposed revisions will be materially effective in supporting industry. It felt instead that the industry will be confused and find them unhelpful. It believes that it is better to allow the WISP and particularly the SRS to be finalised before we take the steps proposed.

9. RSSB suggest that while there is major uncertainty surrounding the make-up of the industry, bringing in new changes which could be made redundant in the short term would be viewed as an inappropriate use of ORR resources. RSSB also believe our proposals around data represent a duplication of reporting effort required of Train Operating Companies by DfT.
10. Arriva similarly highlight that rail reform is likely to see the transfer of roles between existing rail industry parties. They suggest this process should be allowed to develop further before concluding the detail of changes in ORR's guidance.
11. Arriva also highlight the requirements now required of businesses in their annual financial reporting in the area of sustainable development (Streamlined Energy and Carbon Reporting) which they suggest are broadly parallel to those proposed by ORR for train operators. They suggest that no changes to the current guidance should be made without: a full review to remove duplicated requirements, a consideration of the cost effectiveness of any additional activities, and the WISP being available.
12. Transport for London and RIA, while supportive of the guidance, raise the issue of making changes during rail reform. Transport for London are unsure that making changes now would deliver an overall benefit in performance and suggest waiting for sustainability reforms to be implemented as part of rail reform. RIA highlight that the supply chain is concerned that the updates to ORR guidance remain consistent in the future and are not delivered just for "changes sake".

## **Responses supportive of the guidance**

13. Network Rail support the guidance but state they think it could go further. They suggest it would not be unduly burdensome to require licence holders to have sustainability policies (as most do). They consider it would be helpful if operators were asked to focus on the same issues in those policies, with a requirement to support government policy and metrics such as the Greening Government Commitments. This would support better understanding of environment and sustainability performance across the industry which is currently difficult to evaluate.
14. Transport Scotland indicates it is pleased with ORR's proposed revised guidance and that it broadly aligns with Network Rail Scotland's, and in turn the wider Scottish

Government's, environmental and sustainability policies. However, Transport Scotland consider ORR should look to be more explicit in its aims, for example, in relation to freight operators and whole industry environmental impacts.

15. Transport Scotland highlight that it is important that the data available is of as high a standard as possible and that we should be working with the industry to show the benefits of good data collection. For example, for rail freight more data could make it easier for their customers to choose rail over more polluting transport such as road freight. When publishing data they suggest it should be done in a way which, without manipulation of the data, shows the true environmental benefits of rail.
16. Direct Rail Services broadly agrees with the changes and encouragement to implement the same level of improvements. It recognises the importance of having effective environmental management policies and procedures in place, and currently implements a certified ISO14001 Environmental Management system.

### **Focus of guidance on environment not broader sustainability**

17. Network Rail, RIA and RSSB highlight the guidance's focus on environment rather than broader sustainability and suggest the expanded scope is desirable. Network Rail suggest this would bring railway licence holders into line with developments across the rest of industry and government, place an onus on licence holders to address impact under their control, and that waiting until rail reform has been implemented may be too late to begin to tackle the issues the industry faces.
18. RIA suggest that the focus on environment neglects important sustainability outcomes which may mean further amendments and announcements are required. RSSB makes a similar point highlighting that focus on environment overlooks important social sustainability outcomes that railway investment delivers.

### **Wider suggestions and comments**

19. East Midlands Railway indicate they would be supportive of regulatory and external assurance activities that are risk and opportunity based and proportionally focus across the environmental, social and governance agenda – including sustainable procurement, accessibility, diversity and inclusion, community rail and biodiversity management planning. They ask for clarification on the relationship between the guidance, environmental management arrangements and existing safety certificate obligations.
20. Transport for London indicate they would welcome feedback on how ORR would interact with them and the Mayor to clarify the impact of the proposed changes given its role in delivering the Mayor of London's Transport and Environment strategies.

21. RSSB highlight paragraph 1.4 of our consultation document which reads, 'We have not, to date, provided feedback to operators on the content or form of their environmental policies nor conducted any benchmarking of existing policies as a whole'. RSSB state, 'We find it an unmerited assumption that the industry does not already have environmental policies and practices'.<sup>1</sup> RSSB also state that 'It is not mentioned within the consultation that Train Operating Companies already have a duty to report environmental data and are monitored for compliance by DfT (or regional equivalent)'.<sup>2</sup>

## **Question B: Do you agree with our proposals for a process to improve the transparency and availability of environmental data in the rail industry?**

22. Respondents largely supported improving the transparency and availability of environmental data in the rail industry, but varied in their opinion of our proposals for achieving this with some supporting and some opposing.

### **Responses supporting our proposals**

23. DfT indicate agreement with our proposals for a process to improve the transparency and availability of environmental data in the rail industry. DfT also highlighted that an 'open by default' approach to data sharing, as set out in the Williams-Shapps Plan for Rail, will benefit the rail sector and its passengers and stakeholders.
24. East Midlands Railway responded they would be supportive of performance indicators aligned to robust decarbonisation planning across the industry – specifically on the emerging prevalence of Science Based Targets. They also supported a focus on leading performance indicators to support modal shift with the use of normalised, comparable metrics across transport modes.
25. Network Rail agreed with the proposals to improve data collection and transparency and highlighted that for consistency, it would be beneficial to ensure that, as a minimum, all organisations that are regulated by ORR report in line with the government's Greening Government Commitments. They highlighted that this would allow the performance of organisations to be monitored, targets to be set and any

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<sup>1</sup> As a point of clarification, in our consultation text we were referring to the absence of feedback from ORR to the industry on the environmental arrangements they supply us as a condition of their licences. We were not intending to suggest there is absence of environmental policies and practices in the industry.

<sup>2</sup> We would note here that the past and current data supply obligations of public sector operators to Department for Transport are referred to in paragraph 1.16 (b) of our consultation document.

necessary actions to be planned and delivered. They consider data collection should be expanded to include social value metrics.

26. Direct Rail Services indicated they recognise the importance of collecting and verifying environmental data. They noted that the freight industry uses similar rolling stock and has similar challenges in recording and reporting of data with a view to reducing the impact the industry has on the environment. They considered transparent key performance indicators are critical in decarbonising rail freight.
27. RIA welcomes the focus of the proposals on the industry supply chain, particularly in relation to carbon emissions, such as though adoption of Science Based Targets, as the supply chain is concerned that clients are slow to take up environmental solutions. RIA would like see incentives for uptake of innovative solutions to improve environmental performance but suggest a concern that a proliferation of different measures of environmental impact is wasteful of resources and therefore costly.

## **Responses which do not support our proposals**

28. Arriva want a comprehensive review of all data capture and publication arrangements before a new process is developed and consider that until then, no changes should be made to avoid disruption and wasted effort. They consider this review should include activity by DfT, Network Rail and RSSB and involve the Great British Railways Transition Team. The review should develop a single, coherent and effective arrangement for environmental data which can then be implemented.
29. Merseyrail consider improvements in industry environmental data should come from practitioners who manage and use the data and not a regulatory body. They note RSSB activity in this area.
30. RSSB provided detailed comments on our proposals. The response acknowledges the need for the industry to possess the capability to appropriately monitor and report its performance. It considers this to be met by the SRS and SRDF and consider our proposals will lead to duplication of reporting requirements. It also suggests that ORR does not need the capability to set targets and monitor performance.
31. RSSB suggests they see a potential role for ORR in terms of a monitor of data collection and analysis to assure compliance. It suggests ORR should be a recipient of the data to allow production and publishing of Official Statistics in a similar way to safety performance. RSSB envisage its role as being an independent industry technical body to collect, analyse, and share data. It wants the industry to self-monitor and self-regulate as much as possible. RSSB consider the model of sector

level oversight and regulation used in standards and safety effective and one that could be used for sustainability to allow the sector to collaborate and set out how it would meet the regulatory expectations without an interventionist approach.

32. Transport for London do not support our proposed role ‘in bringing together existing data and publishing it at a greater level of disaggregation’. This is because, TfL is already working closely with RSSB and DfT, through the Transport Industry Efficiency Strategy (TIES) programme on improving the metrics, collation and mobilisation of data across multiple environment (carbon, biodiversity, waste, water etc) and social data areas. As such, TfL consider that this proposal may represent a duplication of work for an already resource constrained industry.

## Wider comments

33. DfT provide clarification on the environmental data they collect from train operating companies (TOCs). They note that data reporting requirements will be standardised with the transition to National Rail Contracts. TOCs will be required to report specific measures using RSSB’s online Environmental Reporting Tool and other reporting mechanism (e.g. there are separate workstreams covering air quality). The RSSB tool will show annual data from the first year of reporting (typically 2021/22 or 2022/23), allowing changes to be tracked over time. DfT is working with RSSB to populate historic data in the tool so greater comparison and monitoring of progress is possible. DfT note that the RSSB online Environmental Reporting Tool (and therefore data within it) is not publicly accessible.
34. DfT agree that there would be benefit in a publicly accessible set of rail environmental data, building on the small set of rail statistics that ORR already publishes annually. DfT also agree that benefit would come from a dataset that incorporated the whole industry, rather than just those on National Rail Contracts and note that freight and open access operators can voluntarily report to RSSB’s online Environmental Reporting tool but there is currently no mechanism requiring them to do this. Network Rail does not report using the tool.
35. RIA highlight that the guidance’s approach of asking licence holders ‘to provide data on issues for which they have a significant impact’ needs better definition as operators might interpret issues for which they have significant impact differently. Additionally, they consider that such a selective sharing of data might prevent innovative and creative solutions from suppliers as they will have limited data sets.
36. Merseyrail comment that the proposal to use reputational incentives may unfairly penalise TOCs particularly if used without an explanatory context / narrative around operator performance.

## **Collaboration, co-ordination and clarity of roles**

37. Responses from DfT, East Midlands Railway and TfL were supportive of increased transparency but consider more needs to be done to address collaboration, coordination and clarity on roles to avoid duplication of efforts.

## **Broadening our approach to sustainability data**

38. RSSB consider that we should broaden 'environment' to 'sustainability' as a priority in seeking to implement new requirements on the industry. They do however recognise that this would require broader changes to the licence which are more onerous to implement.
39. Transport Scotland ask us to consider presenting information in our annual Rail Emissions statistical release broken down into electric and diesel multiple unit EMUs and DMUs, and ideally to include freight data too. They consider this would bring the data in line with road vehicles split between petrol, diesel and electric vehicles and make the environmental benefits of electric and independently powered traction clearer both in ORR releases and when data is used by others.

## **Any other comments**

40. Arriva would like to see us focusing on the strategic imperatives needed to support the delivery of rail reform and the Traction Decarbonisation Network Strategy.
41. RIA suggest that lowering unit cost of services, optimised access management flexible timetabling and short-term planning capability would all help to encourage modal shift.
42. Transport Scotland would like ORR to play a role in managing the impact of recent increases in electricity prices and their impact on freight operators e.g. through the "UK Regulators Network".



## Annex 3: Impact Assessment

This impact assessment covers our environmental guidance and details our objectives in this area, the options we have considered to meet them and the impact of these options on the industry, users and wider stakeholders. We have not produced an impact assessment for the sustainable development policy statement as it is a high-level guiding framework. Specific proposals that result from the policy statement will be accompanied by impact assessments as appropriate.

**Impact Assessment:** ORR Guidance on Environmental Arrangements for Railway Licence Holders

**Date:** September 2022

**Stage:** Final

### Section 1: The issue

1. The wider sustainable development and environment legislative and policy context has changed significantly over the last few years, e.g. targets in net zero legislation, new biodiversity legislation and governments' policy. ORR is updating its sustainable development policy statement and related guidance on environmental arrangements for railway licence holders. This is to bring these documents up to date and reflect the current context. We set this context out in more detail in the [covering letter](#) to our consultation.
2. Licence holders are required under the "Environmental Matters" condition of their licence to have a policy designed to protect the environment from the effects of their licensed activities. These must also establish supporting objectives and management arrangements to give effect to their policy. Together these three elements of a policy, operational objectives and management arrangements are referred to as "environmental arrangements", which the licence holder must send to ORR. Currently, we take a light-touch approach. We do not provide feedback on the environmental arrangement nor assess their quality or how they work to support environmental outcomes.
3. Through our existing guidance to licence holders we require provision of data for two Key Performance Indicators (KPIs) from operators. From these KPIs, ORR currently publishes GB level statistics for the industry on energy consumption and the resulting estimated carbon emissions (separately for passenger and freight). There are some

further environmental data available in the industry (e.g. for public sector passenger operators) but this is not held in one place. We consider this level of data availability may impede the industry and its stakeholders in understanding the extent of the industry's impact on the environment and the ways that this can be addressed and impact the ability to make decisions in future.

## Section 2: The objectives

4. Our objectives are to:
  - (a) **Deliver our environment and sustainable development duties and support governments' environmental objectives:** to reflect the increased public focus on environmental concerns, ensure that ORR is using its powers appropriately to help deliver governments' objectives now and in future;
  - (b) **Issue clear and up-to-date guidance:** ensure that licence holders have clear and up-to-date guidance about what they need to do to meet the obligations of the Environmental Matters licence condition;
  - (c) **Avoid undue burdens:** ensure that any new expectations on licence holders are not unduly burdensome; and
  - (d) **Avoid perverse outcomes:** avoid any perverse outcomes from our change in policy, particularly in relation to achievement of wider environmental objectives.

## Section 3: The options

### Option 1: Do nothing

5. Under this option, we could update our guidance simply to reflect environmental good practice and the current legislative and policy environment, but not make any changes to our policy approach. This would continue the light-touch approach that ORR has taken to date on compliance with the environmental condition of the licence.

### Option 2: Update our policy approach under the current industry structure

6. This option is to update our documents to reflect the environmental good practice and the current legislative and policy context, but also make small changes to our policy approach to give better effect to the outcomes that governments wish to see. The policy changes we propose are:
  - Policy change 2A: Update the requirements around provision of data to establish an industry process to over time improve the quality, range and transparency of data in the industry;



- Policy change 2B: Establish an expectation that ORR will provide feedback to licence holders on their environmental arrangements including potentially, at an appropriate juncture, through use of reputational incentives created through public reporting.

### **Option 3: Modify rail licences to give ORR more environmental powers**

7. While maximising our existing policy positions under existing legislation across our rail and road functions, under this option we could also:

- Policy change 3A: seek to strengthen our environmental powers under the railway licence to give ORR more power to require outcomes from licence holders and ORR sign-off of their environmental arrangements; and
- Policy change 3B: seek to extend the licence requirement to cover sustainable development and climate and weather resilience issues, as well as environment.

### **Option 4: Wait to update our policy approach after rail reform has taken effect**

8. Rail reform legislation will result in changes to the industry structure and roles. Responsibilities in the sector may change, and Great British Railways will operate under a new licence issued by DfT which may contain different environmental requirements to current railway licences. Under this option we would defer any changes in our policy until after rail reform has taken effect.

## **Section 4: Option assessment**

### **Option 1: Do nothing**

9. We have rejected this option as although it meets objectives (b) and (c) it would be unlikely to meet objective (a) – Deliver our environment and sustainable development duties and support governments’ environmental objectives, as it would continue a very light-touch approach to environmental issues and would not support developing a better understanding across the rail industry of the impact it has on the environment. It would also be unlikely to meet objective (d) as the rail industry would likely risk be left behind, both compared to other industries generally and specifically other transport modes, and unable to justify its benefits and future funding requirements without improved information of its environmental impacts in particular.

### **Option 2: Update our policy approach under the current industry structure**

10. This is our preferred option. Policy changes 2A and 2B both contribute to meeting all four of our objectives. In particular, it best reflects objective (a) because we will be

using the powers that we currently have to greatest effect, rather than seeking to amend the licences at this time.

*Policy change 2A: Update the requirements around provision of data to establish an industry process to gradually improve the quality, range and transparency of data in the industry*

11. We consider this policy change meets objective (a) “deliver our environment and sustainable development duties and support governments’ environmental objectives” and we note the prominence given to environment in the [DfT consultation on legislation to implement rail transformation](#). The industry will need a clearer understanding of how it is delivering key government objectives, such as progress towards net zero in CP7 and beyond. This proposal supports gaining better information. We have identified that most carbon emissions estimates for rail traction are based on ORR’s published statistics for the industry and as such it is important that we work to continuously improve the quality and scope of this data.
12. Objective (b) “clear and up-to-date guidance” is met because we will be updating the guidance to reflect current best practice and the current legislative and policy environment.
13. This policy change risks failing to meet objective (c) “not unduly burdensome” as it places additional requirements on the industry. However, we consider that it does meet this objective for the following reasons:
  - Legislation is increasingly placing requirements on companies to report environmental data. For example, the [Streamlined Energy and Carbon Reporting](#) requirements means that all companies over a certain size must report on their emissions and energy use. We intend to take a proportionate approach and focus our efforts on what data is currently available and to prioritise areas where there is clear government direction and/or a clear and significant impact from rail.
  - We propose to work in dialogue with the industry to develop our approach in this area, starting initially with what we can learn from the data that is currently available and agreeing the areas of most significant impact with industry. An alternative approach would have been to independently develop a set of requirements. We recognise there will likely be a range of views and methodologies in the industry, and we expect to need to provide leadership in this area but wish to work through the issues in a prioritised way. We recognise the strong role that RSSB is playing in the industry on a range of sustainability matters. We hope to build on this, complementing rather than

duplicating, their role and that we can work together with the industry to improve understanding of its environmental impacts.

- Better environmental data can add value for industry, governments, regulators – for example, by enabling improved economic efficiency, environmental management/outcomes, reputational benefits, planning, investment and industry coordination. Collecting appropriate data can be therefore seen as an enabling investment rather than an unnecessary burden.
- We have highlighted that we will have appropriate regard to any commercial confidentiality issues when considering how we publish data. Where appropriate we will take into account legitimate concerns around commercial sensitivity and other relevant exemptions for disclosure, including those established through dialogue with affected operators.

14. Objective (d) “avoid perverse outcomes” is also at risk under this option, however again we consider that our approach means that our proposal has appropriately mitigated this risk.

- There is a risk of potential perverse outcomes in this area e.g. that if rail information is more transparent and disaggregated in comparison to information for other modes (e.g. road, aviation, maritime) then this could have the effect of unduly worsening the appearance of rail as a mode, which may or may not be the case – this will be difficult to establish if we are unable to compare appropriately with different modes. We will work across our rail and road functions and also with Department for Transport, Transport Scotland, Transport for Wales and other regulators to improve the comparability of information. We will also ensure that we take a proportionate approach to the data we collect and what we share.

*Policy change 2B: Establish an expectation that ORR will provide feedback to licence holders on their environmental arrangements including potentially, at an appropriate juncture, through use of reputational incentives created through public reporting.*

15. We consider that this policy change meets all four objectives.

16. Objective (a) “Deliver our environment and sustainable development duties and support governments’ environmental objectives” is met because we are increasing our focus on the arrangements licence holders put in place to ensure delivery of environmental objectives.

17. Objective (b) “clear and up-to-date guidance” is met because we are making clear in our guidance that we may provide feedback and that we may in future conduct a fuller review of the quality of the arrangements and policies produced by licence holders, including that we may choose to publish this.
18. Objective (c) “not unduly burdensome” is met because creation of a policy and supporting management arrangements is already a requirement which has been in place since the first licences were created in 1994. Our focus is on ensuring that these are fit for purpose.
19. We do not anticipate any issues that would suggest that objective (d) “avoid unanticipated outcomes” would not be met.

### **Option 3: Modify rail licences to give ORR more environmental powers**

20. We have rejected this option at present. Firstly, it would require more time to make the relevant changes, thereby slowing action. Secondly, we consider there is much that we can achieve through updating our existing guidance and by working constructively with the industry under option 2. We would prefer not to pursue the formal modification of the Environmental Matters licence condition at this time – which would avoid additional burdens on licence holders.

*Policy change 3A: seek to strengthen our environmental powers under the railway licence to give ORR more power to require outcomes from licence holders and ORR sign-off of their environmental arrangements; and*

21. This option does not meet objective (a) “Deliver our environment and sustainable development duties and support governments’ environmental objectives” or objective (b) “clear and up-to-date guidance”, because it does not result in a timely regulatory response to the changing context and legislative and policy context. It also does not meet objective (c) “not unduly burdensome” because it does not reflect that there is considerable activity and impetus in the industry currently. We consider that we can work constructively with the industry through the existing licence condition and in future the proposed stronger emphasis on environment in the GBR licence. It also reflects that ORR can do more than it currently is under the existing licence condition. However, we will keep this under review and, if necessary, seek further powers in future if we do not see an appropriate response from the industry.

*Policy change 3B: seek to extend the licence requirement to cover sustainable development and climate and weather resilience issues, as well as environment.*

22. This option primarily fails to meet objective (c) “not unduly burdensome”. We understand that many licence holders already have sustainable development policies (e.g. as a consequence of their contractual arrangements or as good corporate

governance). Similarly, climate and weather resilience issues are frequently core safety and operational imperatives and therefore it is unlikely that the industry requires any further push from ORR on these issues (although we are keen to see joint working on these where possible between Network Rail and its customers in particular). We will encourage licence holders to give consideration to these issues when producing their policies and wider management arrangements.

#### **Option 4: Update our policy approach after rail reform has taken effect**

23. We do not believe this option satisfies objectives (a) or (b). There are opportunities to improve environmental management across the sector now which are not contingent on the implementation of the government's reform programme and can add value by being taken forward now.



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