

Consultation on our proposed approach to the duty to cooperate

May 2013

1. The Office of Rail Regulation (ORR) is the independent safety and economic regulator for Britain's railways. We are responsible for ensuring that railway operators comply with health and safety law. We regulate Network Rail's activities and funding requirements, regulate access to the railway network and license the operators of railway assets. We are also the competition authority for the railways and enforce consumer protection law in relation to the railway.
2. We primarily regulate:
 - **Health and safety**
As national safety authority we regulate health and safety for the entire mainline rail network in Britain as well as London Underground, light rail, trams and the heritage sector.
 - **Economics**
Our functions as economic regulator of the mainline railway include setting Network Rail's funding to enable it to carry out its work efficiently, ensuring that it delivers the agreed outputs whilst improving its own efficiency.
 - **Competition**
As a competition and consumer authority we use our powers to ensure that users and funders of railway services benefit from competitive railway markets and that passengers are treated fairly.
3. We also have a number of statutory duties under certain legislation, including the Railways Act 1993, that we must balance when exercising our economic and competition functions. These duties can be found at: <http://www.rail-reg.gov.uk/server/show/nav.94>.
4. Local authorities currently undertake consultation of new planning proposals under the Transport and Works Act 1992, Planning Act 2008 and the National Planning Policy Framework, contacting ORR to seek advice on any implications for the railway of the proposal. Such advice might include alerting authorities to any safety concerns, future projects which could affect their project, or the implications of land disposals and Network Rail land boundary issues.
5. Section 110 of the [Localism Act 2011](#) requires local planning authorities, and certain other public bodies to cooperate in planning processes which are of bigger than local significance, by engaging “constructively, actively and on an ongoing basis” to develop strategic policies. In particular, the duty:
 - relates to sustainable development or use of land that would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a county council;
 - requires that councils set out planning policies to address such issues; and
 - requires councils to consider joint approaches to plan making.

Regulation 4 of the Town and Country Planning (Local Planning) (England) Regulations 2012 names ORR as a “prescribed body” for the purposes of the Localism Act 2011. This brings us into scope and imports upon ORR the duty to cooperate with local planning authorities.

6. Although this statutory duty is relatively new, as noted above there are many aspects of our work where consulting and liaising with local authorities and other public bodies is already well established and has worked well. However, since the introduction of the new duty, we have seen a significant increase in the number of submissions made to us for consideration (from 79 in 2011/12 to 324 in 2012/13 - an increase of 410%). The quality and detail provided in each submission varies, along with the timescales for our response.

7. Our policy to date has been to review all plans to examine whether there are implications for the railway and provide advice and guidance as soon as we are able. However, a significant number of recent consultations have had no such implications and we have found that our limited resource has been taken up reviewing documents in which we have no interest rather than focusing on those where we can add value for the benefit of the local authority.

8. We have therefore proposed some guidance that will explain more background to our role; the information we would find helpful in considering a proposal; and the steps and timescales we think are needed in doing so. We consider that it would be beneficial to all parties if we were to publish guidance clarifying how plans that have relevance to the railway should be submitted to us. The guidance (which is set out at Annex A) aims to set out:

- (a) the circumstances under, and the stage at which, local authorities should include us in their planning consultation;
- (b) how such consultation should be presented to enable us to focus on issues that affect the railway. Sometimes we have to read through a significant number of pages just to find the issue we are being consulted about. At present this also presents a risk that we could overlook implications for an important proposal;
- (c) the timescales planning authorities should adhere to in order to give us sufficient time to process their submission properly;
- (d) our approach for the consideration of consultations, including the timescales we will aim to work within; and
- (e) details of how we can engage with local authorities in the development of their plans.

9. This letter seeks your views on our revised approach that is set out below. Your comments should be sent as soon as possible, but no later than **29 July 2013**, to localism@orr.gsi.gov.uk, or by post to Debbie Daniels, Office of Rail Regulation, One Kemble Street, London WC2B 4AN.

10. All responses will be published on our website and may be quoted from by us. If you wish all or part of your response to remain confidential you should set out clearly why this is the case. Where a response is made in confidence, it should be accompanied by a statement summarising the submission, but excluding the confidential information, which can then be used as above. We will publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld.

11. The final guidance document will be published on our website, and reviewed periodically.

Annex A - delivering ORR's duty to cooperate under the Localism Act 2011 – draft guidance

1. The purpose of this guidance is to set out:
 - which plans local authorities should consult ORR about;
 - what information should be provided to ORR; and
 - how we will work with local authorities to review plans and what timescales should be allowed.

2. The Localism Act 2011 requires local planning authorities and ORR, as well as other public bodies, to cooperate in planning processes, by engaging “constructively, actively and on an ongoing basis” to develop strategic policies. In particular, the duty:
 - relates to sustainable development or use of land that would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a county council;
 - requires that councils set out planning policies to address such issues; and
 - requires councils to consider joint approaches to plan making.

3. A strategic matter in this context is considered to be development or use of land either:
 - having a significant impact on at least two planning areas (district, county or London borough council); or
 - in a “two-tier” area, that is, having a county council and a district council, where the plan is a county matter, or would have a significant impact on a county matter.

4. If a plan concerns a strategic matter as defined above, and requires consideration of transport matters, it can be sent to ORR. ORR will consider land, safety and operational issues and respond to the authority within 12 weeks of the submission date though it may take longer to provide a full response, in which case we will endeavour to set out a time estimate for a response. It may also be necessary for a proposer to meet with ORR to ensure that all implications are understood and the desired outcome is achieved.

5. If a proposer is unsure whether there are railway implications for its scheme they should discuss this with ORR at the outset. If there are clearly no railway implications for a scheme there is no need to include ORR in the consultation process.

6. We understand that plans often include a great amount of information in relation to various aspects of a project. To allow ORR to concentrate its efforts, proposers should clearly state which parts of their submission concern transport matters.

7. In considering consultations/submissions made to us it would be helpful if the documentation sets out:
 - references to existing railways with maps if possible;
 - whether the proposals have been worked up with other parties; and
 - timescales for responses.

8. We will endeavour to:

- review and explain any relevant points or concerns (other proposals at the location or nearby);
- explain any other actions that would need to make the proposal happen (e.g. licensing/access requirements) and other issues that the applicant should be aware of; and
- set out other likely interested parties, and if we consider that there is a need to consult them, for example, the Department for Transport, or Network Rail.

Annex B - consultee list

Department for Communities and Local Government

Department for Transport

Welsh Government

Transport for Scotland

Network Rail

Passenger Transport Executives

Franchised and non-franchised passenger train operators

Freight operators and holders of freight customer track access contracts

Charter passenger train operators

Association of Train Operating Companies

Local Government Association (representative of local authorities, including highways authorities)

Other public bodies with a duty to cooperate:

- Environment Agency
- English Heritage
- Natural England
- Mayor of London
- Civil Aviation Authority
- Homes & Communities Agency
- Transport for London
- Integrated Transport Authorities
- Highways Agency
- Marine Management Organisation
- Local Enterprise Partnerships