

## Summary of comments on revised Environmental Guidance Consultation - 19 July 2007

	Respondee	Date	Comment	ORR view
1	Transport Scotland	17/9/07	<p>The environmental licence condition should be extended to include the requirement to gather performance data to meet the industry's agreed Key Performance Indicator (KPI) objectives that will be detailed in Annex A of the draft guidance. Making this requirement mandatory would ensure that the reporting of KPI's would reflect the industry as a whole and not just the businesses that choose to collect and report on this data. This is currently only a suggestion under paragraph 7 of the draft guidance document.</p>	<p>Our sustainable development (SD) policy conclusions (April 2007) stated that we would not consider amending the current licence obligation unless it is clear that the industry is not taking its responsibilities seriously. Also, the industry agreed KPIs that have been incorporated into Annex A of the guidance focus on energy consumption and carbon emissions (with others to follow as a better understanding of relevant data sources is achieved). We believe that the majority of data to populate these KPIs will be produced from a limited number of sources (ATOC, Freight operators and Network Rail) and that their publication and our subsequent commentary will encourage those industry parties not participating in the process to do so. At present we feel that changing the licence condition would be an onerous and time consuming process, but one that we will consider using if the approach indicated in our conclusions document does not lead to appropriate industry involvement.</p> <p>Licence holders should note that ORR will consult on any future proposals to amend Annex A to reflect changes to the industry agreed KPIs.</p>

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2	Rail Safety & Standards Board	18/9/07	The statement, under section 7 of the 1996 guidance document, that “Environmental issues should not be perceived as a bolt-on to an operator’s core business interests but as an integral part of running a high quality railway activity”, should be retained and added to the introduction of the new guidance.	We agree that it would be appropriate to emphasise the importance of producing and maintaining an environmental policy. Paragraph 3 amended to include ‘ <i>Environmental issues should not be perceived as a bolt-on to a licence holder’s core business interests but should be an integral part of running a high quality railway activity.</i> ’
3			ORR should make reference to the Government’s sustainability strategy ‘Securing the Future’, demonstrating the link between rail industry action and delivery of key government policy objectives such as reducing greenhouse gases, increased mobility, increased social inclusion and a thriving economy.	The Defra strategy document is already referred to as a source of further information in the ‘Further help’ section, and the purpose of our document is to provide specific guidance on how an operator should fulfil its licence obligation. We propose, however, to amend paragraph 6 to read as follows:  ‘Environmental issues are integral to many industry workstreams, such as those on performance, costs and sustainability. <i>In order to meet the guiding principles and specific priorities set out in the Government’s sustainable development strategy, we also therefore recommend that you consider your environmental arrangements in that wider context.</i> ’ ( <i>Italics show changes from current draft.</i> )

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4			It would be useful to have more detailed guidance on how the ORR plans to monitor the policies.	Paragraph 5 of the guidance states that we will review the policies we receive (covering both new and existing policies). Under the licence condition we do not, however, have a right to enforce any amendments to a licence holder's policy. We will, however, consider the need for a licence condition amendment if it becomes apparent that operators are not taking their duties, or our advice, seriously.
5			<b>Section 7 - Bullet 1</b> – The call for industry commitment to “comply with relevant environmental legislation” should also include the phrase ‘anticipating future changes to legal requirements’ which provides a more proactive stance necessary to ensure future compliance.	The need for a licence holder to anticipate legislative changes is addressed in the specific section on objectives (paragraph 8 of the final guidance).
6			<b>Section 7 - Bullet 3</b> - To promote decision making in the context of wider sustainability, this bullet point should be amended to read “improve your environmental performance in the light of new technology and best practice, where appropriate, and with consideration to social and economic outcomes”.	Whilst we can suggest that a licence holder should take into account social and economic outcomes, we do not consider that this can be a specific commitment as we are currently only able to enforce environmental matters through the licence condition.

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7			<b>Section 9 - Bullet 1</b> – Suggestion that the objective around the identification of responsibilities for environmental issues would be strengthened by encouraging the allocation of responsibility at board/senior management level. It would also be helpful to make a connection between environmental responsibilities and competence.	The 1996 guidance states that the management arrangements should <i>clearly</i> show ‘how managers are made aware of their environmental responsibilities.’ It is therefore considered appropriate to link a level of responsibility back into the revised document, redrafting this bullet as:  ‘which <i>senior manager</i> is responsible for environmental issues and how they, <i>and other staff</i> , are made aware of their responsibilities;’.
8			<b>Section 9 – Bullet 2</b> - Suggestion that environmental considerations should be integrated into all decision making processes, covering investment, projects and day to day operations.	This suggestion links into the current 1996 section 7. Section redrafted as follows:  ‘how you ensure environmental issues are properly considered <i>and integrated into all decision making processes, e.g. investment, new projects and day-to-day activities</i> ;’.
9			<b>Section 9 – Bullet 3</b> – Suggestion that liaison arrangements be extended to include other stakeholders such as ‘NGOs and other duty holders’. The latter reflecting the co-operation needed between operating, infrastructure and rolling stock companies to deal with cross-industry environmental issues.	We agree that this approach would be appropriate to encourage cross-industry involvement in environmental issues. Section redrafted as:  ‘your liaison arrangements with environmental regulators, <i>other industry bodies and other stakeholders</i> (including the Environment Agency, ORR, the Department for Transport, local authorities, the Rail Safety and Standards Board, and other duty holders);’.

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10			<b>Section 9 – Bullet 5</b> – As well as environmental performance and progress against objectives being monitored, performance should also be reported, as appropriate, to support decision making and stakeholder engagement.	This suggestion links back to the current guidance requirement to report information within the relevant organisation. Section redrafted as:  'how you monitor <i>and report</i> your environmental performance and progress against your objectives.'
11			<b>Section – Further help</b> – Suggestion that the RSSB website ( <a href="http://www.rssb.co.uk">www.rssb.co.uk</a> ) be included as a useful source of information, with reference to the following: 'The case for rail 2007' which provides an outline of high level rail issues; T674 research paper on metrics and benchmarking; T618 research paper on traction metrics; and T675 which provides an overview of rail industry research into sustainable development issues.	'Further help' section already includes reference to RSSB's February 2006 document. This has now been annotated further to highlight the fact that other documents on the RSSB may also be of benefit. Also, in order to reflect the fact that new documents may be referred to within the guidance in future, we have now included the list separately at Annex B to the document, and noted that it may be updated in future without further consultation.
12	Railway Industry Association	19/09/07	<b>Section 7 – Bullet 2</b> This requires an impossible commitment to "prevent... adverse effects... on the environment." Suggestion that it would be better to say "seeks to prevent", or possibly "prevents or mitigates".	The current guidance says 'minimise the adverse effect'. Section 7 has been redrafted to read ' <i>prevents, mitigates or remedies</i> ' which reflects the environmental provisions in the Network Code and Stations and Depots Access Conditions (see also item 24 below).
13	Northern Rail	19/09/07	No proposed amendments	
14	ATOC	21/09/07	No proposed amendments	

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15	GNER	21/09/07	<b>Paragraph 1</b> – The wording “be effective within 6 months” could be onerous depending on the complexity of a licence holders intended management arrangements. Proposed that the wording “commence implementation” be used instead.	<p>On reflection it is probably not realistic to expect a new operator to have effective environmental objectives in place within 6 months of a licence coming into force. Certainly the licence obligation is not worded in that way. GNER’s suggestion may not, however, be stringent enough, as ‘implementation’ does not impose a completion date. This sentence has been amended to read:</p> <p><i>‘Your environmental policy, including operational objectives and management arrangements to address such issues must therefore be established within six months of your licence coming into force.’</i></p> <p>This wording is in line with the licence obligation.</p>
16			<b>Paragraph 3</b> – It is assumed that the license holder may not agree with the general feedback on how to improve its policy and arrangements.	See comment at item 4.

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17			<p><b>Paragraph 8</b> – In line with ISO 14001, the wording should be “objectives and targets”. This would facilitate the process of documenting top level objectives directly from the policy statement, and the setting of specific targets to achieve and measure improvements against the objectives and subsequently ORR’s policy statement.</p>	<p>We have not previously used the word targets in relation to the environmental policy guidance, so adopting this proposal would be a material change to what operators currently have to do (noting that the Government White Paper has acknowledged that the industry will set itself targets for reducing CO<sub>2</sub> emissions from next year, with wider targets in place from 2014 onwards). We have, however, redrafted Paragraph 8 to read:</p> <p><i>‘Your objectives (and any associated improvement targets) should be specific, and wherever possible quantify the scale of any improvements planned and the associated timescales.’</i></p> <p>See also item 25.</p>
18			<p><b>Annex A</b> – The use of KPIs in order to promote the environmental advantages of rail transport is fully supported, but GNER calls for full consultation on the development and content of the proposed suite of KPIs to be implemented by the industry.</p>	<p>The KPIs incorporated in Annex A to the guidance have been developed by the industry through the RSSB led Rail Sustainable Development Group (RSDG).</p>

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19	Network Rail	21/09/07	The guidance does not cover other issues of sustainability to a sufficient extent. In deciding environmental policy, social and economic factors need to be taken into account. Also, assessing environmental performance should not be done without balancing the positive and negative impacts of the other elements of sustainability.	The revised guidance reflects a positive decision taken at the outset of our review that we would be unable to enforce non-compliance with requirements to address the wider social and economic SD issues. The guidance does, however, recommend that any environmental arrangements should be considered in the wider SD context.
20			The guidance appears to be based on the policy requirements of a management system standard. It would be useful if explicit reference were included to the three key sustainability goals for the environment as set out in the Government publication 'Securing the Future'. These naturally flow into objectives and action plans, picking up the need to minimise adverse impacts and develop longer-term strategies.	See item 3.

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21			<p>The guidance does not mention any minimum standard, or agreed baseline to start from or compare against, for environmental performance. This particularly relates to the arrangements for KPIs. We welcome their inclusion but the industry needs to identify and agree those to be reported as well as frequency of reporting. It is difficult for Network Rail to fully comment on the policy guidance without seeing or agreeing the KPIs. It would also be useful if the National Rail Trends Yearbook were to include benchmarking of performance so that we can see improvements and deteriorations as well as help to identify continual ways to improve.</p>	<p>See item 18. Network Rail is a member of the RSDG and therefore has been involved in the development of the agreed KPIs.</p> <p>In terms of benchmarking, it is really only feasible to compare performance between GB operators. Our intention at present is to report at a high level within the National Rail Trends Yearbook (i.e. total performance perhaps by country), but for us to also have access to individual operator data. This may then allow us to publish industry level data and comment, through the National Rail Review, on individual TOC performance where this warranted particular mention (i.e. poor performance, or best practice).</p>
22			<p>The inclusion of management arrangements (i.e. plans and responsibilities) goes beyond the realms of a typical policy addressing the issue of implementation of the policy itself. Network Rail support the purpose of this, but do not feel they should form part of guidance on policy.</p>	<p>The inclusion of management arrangements in a policy will allow us to consider whether the operator is taking its environmental responsibilities seriously. These provisions already form part of the current 1996 guidance document and should therefore be retained.</p>

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23			<p>The consultation letter accompanying the draft guidance states that ORR will review but not approve licence holder policies. ORR should include this statement in the policy guidance. This could be added to the beginning of paragraph 5:</p> <p>“Whilst ORR is not required to approve the environmental policies of licence holders .....”</p>	Paragraph 5 has been redrafted to reflect this point.
24			<p>Under paragraph 7, second point, “prevents and mitigates” should be changed to “prevents or mitigates”. It is unrealistic to expect all adverse affects of railway operations on the environment to be prevented altogether.</p>	Agreed. See Item 12.

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25			<p>In the first sentence of paragraph 8, “and wherever possible” should be added so that the sentence is as follows:</p> <p>“Your objectives should be specific, <i>and wherever possible</i> quantifying the scale of any improvements planned and the associated timescales.”</p> <p>This is more reasonable as some objectives cannot have strict timescales, such as general communication which should be continuous.</p>	<p>We accept this point and paragraph 8 has been redrafted. See also item 17.</p>