

**ORR'S Sustainable Development
& Environmental Duties**

Conclusions

April 2007



OFFICE OF RAIL REGULATION



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Executive Summary

1. In October 2006 we consulted on how best to discharge our sustainable development and environmental duties¹. Since we issued our consultation document a number of significant reports have been published that impact on sustainable development (e.g. the Stern and Eddington reports). These have reinforced the need to review our policy. They have further underlined the need to develop and maintain a sustainable rail system for future generations and for the rail industry to promote and enhance the sustainable development and environmental advantages of travelling by rail as opposed to other transport modes. Our consultation recognised the work being undertaken by the industry on identifying the best way to contribute to sustainable development. This work is now more important than ever before.
2. This document sets out our conclusions on how we intend to discharge our duties. Our policy takes account of the Government's strategy on sustainable development and the Stern and Eddington reports. It builds on the work being undertaken by the rail industry and takes account of the responses to our consultation. As there was a significant level of consensus on the way forward, we have moved straight to final conclusions, rather than issue draft conclusions as originally indicated in our consultation document.
3. In setting out our policy position we also set out the workstreams that we intend to take forward, with the rail industry, to deliver a more sustainable railway as part of a more sustainable transport system. In particular we will:
 - (a) ensure that the industry monitors its sustainability including environmental performance, and assess and comment on the results. By end October 2007, working with the industry, we will ensure that a set of key performance indicators is in place to monitor industry performance and that these will be published in National Rail Trends by the end of 2007.
 - (b) review key aspects of industry incentives and processes to ensure that sustainable development concerns are adequately taken into account.

¹ ORR's sustainable development & environmental duties – a consultation document, ORR, October 2006 (available at <http://www.rail-reg.gov.uk/upload/pdf/304.pdf>).

As part of this we will, following consultation with the industry, issue revised environmental guidelines, incorporating sustainable development issues by end December 2007;

- (c) test Network Rail's plans and the emerging conclusions of the periodic review from a sustainability perspective;
 - (d) integrate our sustainable development policy with our other policies, and review our own sustainable development performance; and
 - (e) be prepared to use our influence as independent regulator of the rail industry to pursue sustainability objectives.
4. We will also reassess our performance against other similar regulatory bodies during 2008-09 to ensure that we are continuing to adopt best practice.

1. Introduction

1.1 This document sets out:

- (a) our conclusions on how we intend to discharge our statutory sustainable development and environmental duties; and
- (b) publishes our sustainable development policy statement.

Background

1.2 Section 4 of the Railways Act 1993 (as amended) (the Act) places two specific statutory duties on ORR that are particularly relevant to sustainable development:

- (a) to contribute to the achievement of sustainable development; and
- (b) to have regard to the effect on the environment of activities connected with the provision of railway services.

1.3 The environment is one of three key pillars of sustainable development, the others being society and the economy. When, in this document, we make reference to “sustainable development”, we are referring to the way in which we discharge both of our relevant duties.

1.4 As part of our 2006-09 Corporate Strategy and Business Plan² we gave a commitment to take a more proactive role in discharging these duties. On 11 October 2006 we therefore published a consultation document that:

- (a) examined the way in which our current activities contribute to sustainable development; and
- (b) made a number of proposals to improve the way that we discharge our duties in order to address the three pillars of sustainable development more effectively.

² *Corporate strategy 2006-09 and business plan 2006-07*, ORR, April 2006 (<http://www.rail-reg.gov.uk/upload/pdf/280.pdf>).

- 1.5 We held a workshop on 24 November 2006 attended by both industry representatives and other interested parties.³ The aim of this workshop was to encourage discussion both of the proposals identified in our consultation document, and any wider sustainable development issues affecting the railway industry. We also held discussions with a number of bodies on specific issues that they wished to draw to our attention.
- 1.6 We are grateful to everyone who responded to our consultation document. All the responses are published on our website and the respondents are listed within this document at Annex A. The responses have also been summarised in a report produced by Enviro Consulting Limited,⁴ whose original advice on potential sustainable development initiatives contributed toward the proposals outlined in our consultation document.
- 1.7 Twenty-nine responses were received to the consultation from rail industry bodies and other parties with an interest in sustainable development issues. Responses suggested that there was general support from Network Rail and train operators for us to influence and facilitate industry sustainable development initiatives, but highlighted the need to ensure that our approach aligns with “better regulation” principles, in particular:
- (a) stating that the field of environmental improvement is already a crowded one and we should identify and focus on areas where we can add the most value;
 - (b) supporting our proposal to develop an agreed set of a ‘significant few’ measures of rail’s environmental impact;
 - (c) firmly opposing any proposals to introduce an environmental charge and indicating that there is a need for considerable caution in relation to the use of price signals for environmental ‘externalities’; and
 - (d) suggesting that we should avoid greening all our activities simply for completeness.

³ A note of the sustainable development workshop and list of attendees can be found on our website at <http://www.rail-reg.gov.uk/server/show/nav.1399>.

⁴ *Office of Rail Regulation consultation review*, Enviro Consulting Limited, January 2007 (available on our website at http://www.rail-reg.gov.uk/upload/pdf/enviros_final_review-190107.pdf).

- 1.8 A number of other views were expressed, ranging from:
- (a) support for all of our proposals, noting that they were consistent with best practice within Europe;
 - (b) a suggestion that we should not do anything on sustainable development, concentrating instead on marketing rail's environmental advantage over other modes and reducing track access charges as a means of further encouraging modal shift; and
 - (c) a general view that our proposals did not go far enough, and that we should be more intrusive by introducing stronger compulsion and in some cases a view that we should seek to 'promote' sustainable development.
- 1.9 In developing these policy conclusions, it is not our intention to summarise the responses received in any detail, although we do comment on key themes that emerged through the consultation process.
- 1.10 Our consultation document indicated that we would initially publish draft conclusions, with final conclusions to follow in May 2007. In the light of the responses received, which we consider give a clear indication of the role that ORR is expected to play, we have opted to publish our conclusions directly so that our proposals can be taken forward without delay. Where we intend to take forward any further workstreams in order to implement our proposals, we have outlined this intention at the appropriate place within the document.

Structure of this document

- 1.11 This document is structured as follows:
- Chapter 2 sets out the objectives that underpin our sustainable development policy statement, and the approach that we intend to take to implement it.
 - Chapter 3 publishes our sustainable development policy statement.
 - Chapter 4 explains our views on the initiatives that we originally proposed, and our intentions for taking these forward.

Next steps

1.12 In line with the proposals set out in the remainder of this document, we will take the following actions:

- (a) by end October 2007, working with the industry, ensure that a set of key performance indicators (KPIs) is in place to monitor industry performance. We envisage that these indicators will first be published by the end of 2007 (paragraphs 4.3 to 4.15);
- (b) by end December 2007, review and reissue our environmental guidance, issued in accordance with the current environmental licence condition, to ensure that it is fit for purpose (paragraphs 4.16 to 4.18);
- (c) evaluate on an annual basis Network Rail's contribution to sustainable development as part their annual assessment (paragraphs 4.21 to 4.25);
- (d) by end March 2008, review our own sustainable development performance in order to set a good corporate example;
- (e) during 2008-09, reassess our performance against other relevant bodies; and
- (f) continue to work with the industry to:
 - (i) identify the benefits/feasibility of introducing on-train metering and other energy efficient initiatives;
 - (ii) encourage continuous sustainable development improvement; and
 - (iii) in the longer term, review the potential introduction of financial incentives and environmental charges.

2. Sustainable development objectives

Introduction

- 2.1 Until now our approach to our sustainable development duties has been based on the view that, since rail is relatively sustainable compared to other modes of transport, we should focus on improving rail performance and efficiency, and rail's competitive position against other transport modes. We have therefore discharged our duties to date in a way that has reflected this position (see paragraph 1.6 of our October 2006 document).
- 2.2 We consider that the improvement of performance and efficiency must remain a key element of our approach to regulating the industry (e.g. through the 2008 periodic review (PR08) process),⁵ but believe that we should now be adopting a more explicit policy on sustainable development with a particular focus on the environmental pillar. Such a policy should reflect:
- (a) our belief that the rail industry can and should do more to improve its relative performance in comparison to other forms of transport, and that this can be achieved without detracting from its competitive position against other modes (and indeed often enhancing it); and
 - (b) the increasing importance attached to these issues by the public and by government. This does not mean that we will simply adapt our approach because that seems the right thing to do under current circumstances. Any initiatives that we take forward should add distinct value to the industry approach to sustainable development. We do, however, have to have regard to any explicit references to sustainable development objectives contained in general guidance we receive from the Secretary of State or Scottish Ministers. Other government policies, no doubt including the proposed July long term strategic framework for rail and in Scotland the rail strategy, do and will make explicit reference to economic development and social inclusion.

⁵ The 2008 periodic review will determine Network Rail's regulated outputs, revenue requirement and access charges for control period 4 (2009-2014).

Our objectives

- 2.3 Our October 2006 consultation document set out the following specific aims that we considered needed to be addressed in order that we can better deliver our sustainable development duties:
- (a) that the railway industry should better understand its sustainable development performance and the way in which it is measured;
 - (b) to encourage the efficient development and improvement of such performance;
 - (c) to promote the application of best practice principles across the industry; and
 - (d) to ensure that as an organisation we adopt policies and practices, so far as practicable, that will further the UK's sustainable development strategy.
- 2.4 Respondents were generally content with these objectives, although a number of others were also suggested, namely:
- (a) that there should be an overarching objective that ORR's role should be facilitative;
 - (b) that we should focus on promoting the role of the railway in delivering a sustainable rail transport system; and
 - (c) that we should ensure that the industry contributes to government objectives on sustainable development.
- 2.5 We are content that our overall role should encompass all of these principles and have therefore reflected these within our policy statement (set out at chapter 3).
- 2.6 A number of other comments were made which related more generally to the way in which we should approach our role in contributing to sustainable development. These included suggestions that:

- (a) comparisons of performance should be made with other modes to recognise rail's advantage in delivering a sustainable transport alternative;
 - (b) we should set and adopt policies and practices to further UK sustainable development at a reasonable cost to the industry;
 - (c) we should not duplicate the efforts of others, but focus on encouraging the greater use of rail by highlighting its green credentials;
 - (d) we should “ensure” rather than “promote” the dissemination of best practice across the industry; and
 - (e) we should operate light touch regulation informed by research.
- 2.7 We propose to address the majority of these suggestions either within our policy statement or through the implementation of specific initiatives as outlined in chapter 4. In terms of cost to the industry, it is not our intention to cause any unreasonable additional financial burden through the measures we propose. We do recognise that certain limited costs may need to be incurred in establishing and reporting on performance measurement indicators (which are discussed further in paragraphs 4.3 to 4.15). However, as we propose to build on work already being taken forward to develop an industry agreed set of KPIs, we do not believe that cost will be a significant issue. We consider, however, that any costs will be outweighed by the overall benefit that these measures bring in demonstrating and improving the industry's sustainability.
- 2.8 To avoid duplicating other workstreams being taken forward elsewhere, we will work closely with those industry members who are already taking forward a number of worthwhile initiatives, contributing to their projects where we can, and building on their outputs where that is appropriate.
- 2.9 The suggestion that we should ensure that best practice is adopted across the industry picks up on another more general theme of responses to the consultation. This was that ORR should be doing much more to promote the adoption of more sustainable initiatives by Network Rail and train operators, forcing them to adapt their operating practices in a way that would push forward improvements in the environmental performance of the railway. Our sustainable development duty places an obligation on us to “contribute to” rather than actively “promote” sustainable development issues. This was the

underlying theme of our consultation document and we do not consider that this position has changed. We do not believe that we have the legal/legislative powers to force operators to adopt best practice or implement specific initiatives. We also have to strike an appropriate balance between all of our statutory duties,⁶ when exercising our functions.

- 2.10 Therefore, we have concluded that our primary focus should be to communicate with the industry and other interested parties on our role, publicising the performance and benefits of railways to a wider audience, and encouraging the industry to improve its sustainability performance. Where we can perhaps influence behaviour, for example through the publication of information and commentary on best practice, it is our intention to pursue this approach in a suitable manner. Whilst “light touch regulation” may be considered to be an appropriate way forward, this is more about ensuring that we add value through our activities rather than simply defining the way in which we discharge our statutory obligations. We have a clear duty to “contribute to the achievement of sustainable development”, and this document sets out our proposals for discharging this.

Environmental/economic focus

- 2.11 Our consultation document referred to the three recognised pillars of sustainable development (economic, environmental and social) and indicated that our proposals for improvement focused mainly on environmental decision making. In suggesting this approach we recognised that:
- (a) economic considerations of all industry initiatives/plans were taken into account as part of our general activities; and
 - (b) other bodies (Department for Transport (DfT), Transport Scotland, Department for Environment Food and Rural Affairs (Defra) and Network Rail, for example) were better placed to take the lead on developing policies that promote and address social issues.
- 2.12 This proposed strategy drew a mixed response; a number of consultees considered that this was an appropriate approach, whilst others expressed the firm opinion that all three pillars should be treated in equal measure. This latter view reflects the approach that we have endeavoured to adopt

⁶ These can be found on our website at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.5056>.

previously. Indeed, paragraph 1.3 of our consultation document clearly recognised that, within the UK sustainable development strategy, all three pillars are afforded equal importance.

- 2.13 We recognise that our future approach is, however, likely to depend upon the particular activity being addressed, and that the relative emphasis of each consideration may change over time. For example, an access charges review will be principally driven by economic factors, whilst the development of a Route Utilisation Strategy (RUS) could take a more balanced view of each of the three pillars.
- 2.14 The specific activities on which we consulted were focused on the environment as it was felt that this was the area in which, by adapting or strengthening our current activities, we could have the most significant impact. This view remains unchanged.
- 2.15 We believe that we can, however, identify aspects of the wider sustainable development agenda on which we should exercise our functions. These are:
- (a) continuing to improve the performance, efficiency and market position of rail, which will generally be good in sustainable development terms;
 - (b) pressing and facilitating the industry to improve its relative performance on sustainable development, and address areas of specific concern;
 - (c) acting as the 'conscience' of long term sustainability (for instance through the periodic review) and highlighting inter-generational issues, and the need to be responsive to longer term developments and trends; and
 - (d) recognising the railway industry's role in sustainable economic performance (e.g. as highlighted by the Eddington report⁷), and in addressing social inclusion and development of sustainable communities.

⁷ See: *The Eddington Transport Study* at: http://www.hm-treasury.gov.uk/media/39A/41/eddington_execsum11206.pdf.

Our proposed policy approach

2.16 We believe that our duties can best be discharged, and greatest value added, by adopting an approach which comprises the following key elements:

- (a) ensuring the industry monitors its sustainability including environmental performance, with ORR assessing and commenting on the results;
- (b) reviewing key aspects of industry incentives and processes to ensure that sustainable development concerns are adequately taken into account;
- (c) testing Network Rail's plans and the emerging conclusions of the periodic review from a sustainability perspective. This is likely to involve, in particular, testing them in relation to the Government's thirty-year strategy for railways;
- (d) integrating our sustainable development policy with our other policies, ensuring that our own house is in order (e.g. updating our environmental guidance, and looking at the impact on sustainability in the way we carry out our activities). This is an area that we have already started to review;
- (e) not seeking to become an environmental regulator or enforcer for the railway industry, but considering what feedback from our staff in undertaking their safety and economic duties (particularly on the ground) can do to contribute to our policy. At this stage we do not consider it appropriate to seek to modify operator licences (which currently include a specific requirement to produce environmental policies only) to cover sustainable development, but we will keep this under review in the light of our monitoring; and
- (f) being prepared to use our influence more effectively. In particular we will encourage the industry to regard improvement in sustainability issues as part of industry success. We will assess and comment on emerging policies (e.g. the DfT long term strategic framework for rail in July 2007) in the light of our sustainability duties. We will consider whether to encourage/facilitate industry adoption of specific policies (for instance development of on-train metering of traction current, and/or wider use of regenerative breaking).

Chapter 4 contains more specific detail on how we will take forward our specific proposals.

- 2.17 In our business plan for 2007-08 we set out our commitment to ever more focused and effective regulation, and we believe the approach set out above is consistent with this.

Recent developments

- 2.18 A number of external documents relating to the sustainable development agenda have been published since our consultation document was issued in October 2006, all of which may have an impact on the way in which we implement our policy. These include:

- (a) the *Stern Review Report*, published on 30 October 2006.⁸ This recommends that the polluter pays principle⁹ should be applied to all carbon emissions in order to incentivise carbon reductions and limit the impact of global warming. This is on the basis that the economic costs of taking this approach now will be significantly less than those of mitigating the effects of global warming in the long term. It notes, however, that, globally, transport is only responsible for 14% of greenhouse gas emissions (rail transport being responsible for 2% of CO₂ emissions worldwide);
- (b) the Eddington report, published on 1 December 2006. This concluded that whilst most of the transport system works well, some parts are under strain. For a sustainable transport network, the focus should therefore be on alleviating congestion at key pinch points rather than investing in major schemes. It also concluded that transport modes should be appraised alongside each other, and that the process should take the economic, environmental and social costs into account;
- (c) a Defra consultation on measures to reduce carbon emissions in the large non-energy intensive business and the public sector, published on

⁸ See: *Stern Review Report* at: http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm.

⁹ Those who cause environmental damage should offset its effects by compensating for the damage incurred, or by taking precautionary measures to avoid creating such incidents.

8 November 2006.¹⁰ Defra's proposals, if taken forward, will impact on metered electricity supplies where the annual cost is greater than £250k per annum, potentially impacting on train operators and Network Rail. The consultation sought views on the introduction of an emissions trading scheme for energy consumption.¹¹ The scope of application of such measures is currently under review; and

- (d) a report by the Better Regulation Commission entitled *Regulating to mitigate climate change* published on 6 February 2007.¹² This report, in responding to the *Stern Review Report*, proposes seven tests for better climate change regulation. It also makes a number of recommendations relating to carbon pricing, and energy efficiency and innovation, all of which, it suggests, should be completed by the end of 2007.

- 2.19 We have evaluated our policy against the proposals outlined in these documents and are content that it is both robust and sufficiently flexible to adapt to any future initiatives that might be proposed/implemented.
- 2.20 We expect that the forthcoming DfT long term strategic framework for rail will include a focus on the importance of rail as a sustainable mode of transport. In addition, the draft Climate Change Bill was published by Defra on 13 March 2007.¹³ Responses to consultation on the Bill's proposals are required by 12 June 2007 and we will be responding within the context of our sustainable development policy.

¹⁰ See: *Consultation on measures to reduce carbon emissions in large non-energy intensive businesses and public sector organisations* at:
<http://www.defra.gov.uk/corporate/consult/carbon-emissions/consultation.pdf>.

¹¹ Trading schemes involve an overall limit on total emissions, e.g. of carbon, but enable parties to the scheme to trade emission rights so that costs of meeting the limit is minimised. This is achieved because organisations with high costs of abatement of the relevant measure can trade "permits" with those with lower abatement costs.

¹² See: *Regulating to mitigate climate change* at:
http://www.brc.gov.uk/downloads/07/climate_change.pdf.

¹³ See: *Draft climate change bill: consultation document* at
<http://www.defra.gov.uk/corporate/consult/climatechange-bill/consultation.pdf>.

Proposed policy

- 2.21 Our policy statement is set out in chapter 3. This reflects the policy objectives that we included in our consultation document, consideration of the responses received in relation to these, what we currently do to discharge these duties, and our proposed policy approach as discussed above.

3. ORR policy statement

Introduction

- 3.1 We have developed this statement on sustainable development¹⁴ after consulting the industry on 11 October 2006.
- 3.2 This statement sets out our approach to delivering our specific duties in section 4 of the Railways Act 1993 (as amended). These are to:
- “contribute to the achievement of sustainable development”; and
 - “have regard to the effect on the environment of activities connected with the provision of railway services”.

You can find a full list of our duties on our website.¹⁵

- 3.3 We will review this statement at appropriate intervals to make sure that it is still relevant.

Background

- 3.4 We know how important sustainable development is to the UK Governments, as shown in:
- (a) guidance issued to us by the Secretary of State and Scottish Executive; and
 - (b) the Government’s strategy – ‘Securing the future: delivering UK sustainable development strategy’ published in March 2005.¹⁶

¹⁴ Sustainable development is defined in the UK Government's 2005 strategy as:

“to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life, without compromising future generations.”

This means development that provides benefits for society now and in the future without harming the environment for future generations.

¹⁵ Available at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.5056>.

¹⁶ This is available on Defra’s website at www.sustainable-development.gov.uk/publications/pdf/strategy/SecFut_complete.pdf.

Our policy on sustainable development

- 3.5 We will use our regulatory powers and influence to work to develop a more sustainable railway as part of a sustainable transport system.

Putting our policy into action

- 3.6 We will put our policy on sustainable development into practice according to regulatory best practice. This will involve:
- (a) reflecting our sustainable development policy in our other policies; and
 - (b) taking action if we can add value in terms of benefit to the public, and after we have assessed the likely effect our involvement will have.

Aims of the policy

- 3.7 We will set up and put into practice procedures to make sure we consider the environmental, social and economic effect of delivering our and the rail industry's activities, alongside our other duties under section 4.
- 3.8 The railway industry should better understand its performance in terms of sustainable development by effectively measuring and improving it: This will involve:
- (a) developing and maintaining effective ways of measuring performance that help the industry understand its effect on sustainable development; and
 - (b) measuring the performance of individual organisations within the industry and across other industry sectors and forms of transport.
- 3.9 We will encourage the industry to contribute to sustainable development by making sure that arrangements are in place to allow the industry to identify and share best practice.
- 3.10 We will make sure that the industry, its customers and anyone with an interest has access to relevant information relating to the industry's role and responsibilities in dealing with the effect on the environment of its activities so they can tackle any concerns.
- 3.11 We will work with the rail industry and anyone with an interest, to identify research topics to improve how the industry can best contribute to sustainable development. We will encourage the rail industry to carry out this research.

- 3.12 We will review the need to introduce new targets and incentives to make sure we manage sustainable development effectively so we can speak to people in the industry, anyone with an interest, and the Government on the best way that the industry can contribute to sustainable development. We will review, as appropriate, any existing targets or incentives to make sure that they continue to provide the right encouragement to promote sustainable development.

4. Delivering our policy

- 4.1 This chapter sets out the way in which we will implement our policy, with reference to the proposals set out in our October 2006 document and in the light of consultation responses.

Introduction

- 4.2 In chapter 3 of our October 2006 document we set out a number of specific proposals to improve the way in which we discharge our sustainable development duties. As part of our consultation we were interested in gathering views from the industry as to whether there were any initiatives that could be added to those that we had considered. This provoked a wide range of general comments covering issues such as:

- (a) a need to guard against duplicating industry effort;
- (b) communicating the benefits of rail and encouraging modal shift;
- (c) the publication of a formal policy statement; and
- (d) the provision of economic incentives.

We have considered all of these issues in reaching our conclusions.

Key performance indicators

- 4.3 One of the primary thrusts of our consultation document outlined our belief that it is imperative that information published in respect of rail industry performance is robust and is effectively disseminated to a wide audience both within and external to the industry. In our opinion this would help the industry to understand:
- (a) any underlying reasons for changes in performance, either detrimental or beneficial; and
 - (b) how actions undertaken across the industry can influence future trends (through the implementation of best practice principles, for example).

- 4.4 In order to achieve this, we proposed to build on the work currently being undertaken by the Rail Safety and Standards Board (RSSB) to develop a set of standard, cross-industry KPIs. In doing so we realise that the usefulness of such data is dependent upon the industry producing, and taking ownership of, the data underpinning such indicators.
- 4.5 In general, respondents were supportive of the production, publication and use of KPIs to measure industry performance and publicise the environmental benefits of rail transport (both passenger and freight). We have therefore concluded that we will pursue the proposals outlined in our consultation document.
- 4.6 There were a number of key recurring themes expressed by respondents, these being:
- (a) that any such KPIs should be applicable throughout the industry;
 - (b) their production and use should be voluntary, not compulsory;
 - (c) it will require considerable work to fully identify/implement appropriate indicators;
 - (d) any agreed KPIs must add value and not impose additional costs;
 - (e) that, to be of value, KPIs should be comparable with other transport modes;
 - (f) that there should only be a limited number of key indicators; and
 - (g) they should be externally verified to add credibility.
- 4.7 With the potential exception of the voluntary nature of KPIs, these are all views with which we concur. We believe that all sectors of the industry will participate willingly in the collection and publication of the data required to populate such indicators. However, there will only be any value in gathering and publishing such information if it represents a fully inclusive, verifiable data set that can enable the whole industry to be measured both for internal comparisons and against other transport sectors. By taking this approach, the credibility of the data will be established, and the environmental benefits of the industry will be promoted, protected, improved and encouraged.

- 4.8 We recognise that there may be some cost involved in gathering the required data, and this will need to be evaluated as part of the process. We do believe that there are real industry benefits to be gained from adopting such an approach. However, if the industry does not voluntarily deliver on this issue, we will need to consider whether to place a specific obligation on industry parties to participate in this process, e.g. through an amendment to the licence. This is not something, however, that we consider necessary to explore at this stage in the process.
- 4.9 In taking this issue forward we are aware that the RSSB workstream to develop and benchmark an industry set of indicators has also considered how such data can be gathered. We also note the work that ATOC is taking forward to establish details of the energy demand and carbon footprint of passenger journeys, although we note that this work does not currently reflect freight operators or Network Rail. We will continue to work closely with relevant organisations to establish how such workstreams can inform or produce the KPIs that we will use. We believe that such data should be published and commented on by ORR in our quarterly National Rail Trends publication, and also be incorporated into other Government publications such as DfT's *Transport Statistics for Great Britain*,¹⁷ and Defra's *Sustainable development indicators in your pocket*,¹⁸ to ensure consistency of data published on behalf of the railway.
- 4.10 Respondee expressed the view that, not only should the number of KPIs developed be kept to a minimum in order to focus on key significant issues, avoid complexity and minimise the reporting burden, but they should be flexible to reflect changing sustainable development priorities and be equally applicable across all parts of the industry. Our concerns with this suggestion are as follows:
- (a) the requirements of individual stakeholders are likely to be diverse; and
 - (b) subject to constant change, not only on a year-by year basis, but potentially more frequently as specific issues of concern/importance to a particular organisation arise.

¹⁷ Available at <http://www.dft.gov.uk/pgr/statistics/datatablespublications/tsqb/>.

¹⁸ Available at http://www.sustainable-development.gov.uk/progress/documents/sdiyp2006_a6.pdf.

- 4.11 We aim to develop, working with the industry, a limited number of KPIs (maybe five or six) that show how the railways are performing in terms of key, recognisable sustainable development issues. It will be important that such indicators:
- (a) are able to be populated with sufficient and accurate data;
 - (b) are likely to remain relevant over a number of years;
 - (c) provide a good overview of the wider sustainable development agenda;
 - (d) address issues of general industry interest so as to encourage both participation in the programme and improvement of performance; and
 - (e) have some relevance to the general public in order to stimulate interest and understanding.
- 4.12 Industry parties may, of course, wish to develop their own additional KPIs to be used to manage their own business activities.
- 4.13 There is also the question of who should collate such data. Responses on this issue were mixed with the ORR or the RSSB being the preferred choice as leader in this area. We remain of the view that the data underpinning such indicators needs to be produced, verified and owned by the industry in order to provide the credibility that is required to make them meaningful. However, we will publish such data, and provide an independent assessment of, and commentary on, industry performance.
- 4.14 In order to take this process forward we will:
- (a) review the completed work of ATOC and the RSSB to establish what information is already available, its completeness, and how best it can be gathered in future; and
 - (b) consider with industry stakeholders which KPIs will be most appropriate to use, how they might be populated, and how and when they should be published.
- 4.15 Our aim is that a first set of KPIs should be published by the end of 2007. These will be further refined or expanded over time as is considered appropriate.

Licence holder environmental policies

- 4.16 In general, respondents were satisfied that ORR's 1996 guidance¹⁹ should be reviewed and updated to reflect sustainable development issues. They were less convinced of the need to either strengthen the current licence obligation, or require operators formally to report on activities.
- 4.17 We will consider how the scope of the current guidance can be revised to address both wider sustainable development issues and improve the way that performance against such policies is monitored and reported in future. We will consult industry licence holders shortly setting out our proposals.
- 4.18 In respect of the existing licence condition, we do not at present propose to seek to amend this. We will, however, monitor future performance against any revised guidance and consider what further action, if any, might be required to ensure future compliance.

Network Rail Business Plans and Route Utilisation Strategies

- 4.19 Our proposals with regard to both the Network Rail Business Plan and Route Utilisation Strategies were aimed at ensuring that sustainable development objectives are at the forefront of Network Rail's strategic thinking. The general view of consultees was that the rail industry's sustainable development aims and objectives should inform such strategies rather than be informed by them, although it was recognised that it was important not to place any undue burden on Network Rail through such a process.
- 4.20 In taking this issue forward, we have already asked Network Rail²⁰ to propose suitable indicators within its strategic business plan, to be submitted in October 2007, to demonstrate how its proposed activities will contribute to sustainable development.

¹⁹ *Railways operations and the environment: environmental guidance*, ORR, March 1996: <http://www.rail-reg.gov.uk/upload/pdf/29-environment96.pdf>.

²⁰ Paragraph 5.73 of our *Periodic review 2008: Advice to Ministers and framework for setting access charges* document refers, available on our website at <http://www.rail-reg.gov.uk/upload/pdf/316.pdf>.

Network Rail's annual Business Plan

- 4.21 In respect of the annual Network Rail Business Plan, we suggested in our 2006 performance assessment²¹ that Network Rail not only report more fully within future annual reports on the sustainable development initiatives that it has undertaken, but also set out more detailed objectives on such issues within future business plans.
- 4.22 It is encouraging to note that Network Rail, in its response to our assessment, has indicated that information on the environmental initiatives and achievements during 2006-07 will be provided in the Annual Return 2007.
- 4.23 In terms of the proposals outlined in our consultation document, we have already implemented the suggestion that we should require Network Rail to address sustainability issues within its annual Business Plan. Paragraph 6(h) of the guidance that we issued on 13 October 2006²² clearly stipulated that Network Rail should address such matters within its 2007 plan.²³ However, whilst this plan recognises that the delivery of a sustainable railway is one of Network Rail's strategic objectives, and acknowledges the role that railways have to play in delivering sustainable development, it only contains details of a limited number of specific safety and environmental activities that the company is planning to address during the current year. The scope of future plans, and level of information that they should contain in terms of sustainability, is therefore something that needs to be considered further going forward.
- 4.24 We do not, however, propose at this time to seek to make an amendment that formally reflects this requirement in paragraph 5 of Condition 7 of Network Rail's network licence. This position will, however, be reviewed in the light of the content of future Business Plans and Annual Returns.
- 4.25 Such an approach reflects our general intention that all environmental policies should:

²¹ *Annual assessment of Network Rail 2005-06*, ORR, September 2006 (<http://www.rail-reg.gov.uk/upload/pdf/302.pdf>).

²² This is available on our website at http://www.rail-reg.gov.uk/upload/pdf/nrbp2007_notice.pdf.

²³ *Delivering for you, Business Plan 2007*, Network Rail, 3 April 2007, available at <http://www.networkrail.co.uk/aspx/3085.aspx>.

- (a) be widened to include sustainable development;
- (b) include initiatives to improve performance; and
- (c) be reported on annually, outlining achievements against objectives.

Route Utilisation Strategies

- 4.26 In producing a RUS, Network Rail seeks to balance capacity, passenger and freight demand, operational performance, infrastructure maintenance, and costs, to address the requirements of funders and stakeholders. It is therefore already addressing a number of sustainable development issues.
- 4.27 There was, however, general support from consultees that future RUS consultation documents should specifically detail the sustainable development impacts of the strategies being proposed.
- 4.28 The published RUS guidelines²⁴ currently make specific reference to, amongst other things, safety considerations. In order to ensure that appropriate account is taken of sustainable development issues, we propose that the guidelines should also make specific reference to sustainable development initiatives and, as with the recently published Cross London RUS, take account of the Network Rail Environmental Policy. We believe that this would formalise the approach that, in many respects, is already being taken by Network Rail in the RUS development process. We will therefore consult further with Network Rail on this particular issue. We would not, however, anticipate that any changes of approach be implemented in respect of those strategies that are currently being developed.

The access regime

- 4.29 Our primary focus in terms of the access regime related to Part E of the Network Code, which is currently being reviewed by the Economic and Contractual Framework Industry Steering Group (ISG). We sought views on any specific issues that should be included within such a review.
- 4.30 Responses on this issue were mixed, ranging from proposals that Part E:

²⁴ Available on the ORR website at http://www.rail-reg.gov.uk/upload/pdf/rus_guidelines-jun05.pdf.

- (a) should address ongoing problems where all parties are compliant with their environmental obligations;
 - (b) is already consistent with the “polluter pays” principle and therefore does not need to be amended; to
 - (c) should be abolished.
- 4.31 To ensure that all of the expressed views are given appropriate consideration, we will produce a separate summary of the issues raised and forward this to the ISG working group for consideration.
- 4.32 A number of respondents (First Group, National Express Group, and ATOC) expressed concern about an intention to create an “environmental landlord” under the proposed Depots Code.²⁵ This is an issue specific to the working arrangements of the Depots Code, and therefore not strictly relevant to this particular consultation (although we do recognise that any changes to Part E of the Network Code that arise from this package of work may need to be considered for corresponding incorporation into the Stations and Depots codes). ORR’s Stations & Depots team is considering this issue.
- 4.33 In respect of our more general role in approving access arrangements, we remain content that the current application and consideration processes provide us with sufficient information with which to assess the impact of any new or additional train services on sustainable development. We do not therefore propose to make any changes to the current procedures at this time.

Noise and social impact

- 4.34 No specific comments were made on the subject of mitigation of complaints about nuisance caused by railway activities. Our position on this issue, that Network Rail and other licence holders should take proactive steps to prevent such complaints occurring and, where they do, deal with them appropriately, therefore remains unchanged.

²⁵ Our final conclusions on our proposals for the Depots Code are available on our website at <http://www.rail-reg.gov.uk/upload/pdf/274.pdf>.

Health and safety management

- 4.35 We will continue to address our responsibilities by fulfilling our obligation to provide health and safety information to a wide audience (including the publication of relevant KPIs), and providing support and advice on specific safety initiatives organised by the rail industry.

Sustainable development research

- 4.36 We were interested in receiving views on whether ORR should become more involved in sustainable development research activities and, if so, whether the industry would be prepared to fund such work.
- 4.37 The majority message from consultees was that this role is already fulfilled by the RSSB and, whilst ORR should play a supporting role in helping to shape and facilitate the industry research programme, there was no requirement for it to undertake its own separate workstream in this area. Certainly there was no appetite that any such work should be funded by licence holders.
- 4.38 On this basis we will continue to support and contribute fully to the work being undertaken by the RSSB, both in developing the Sustainable Case for Rail and in any further research activities that could improve the future sustainability of the railway, including commissioning such research ourselves where appropriate.

Incentives framework and access charges

- 4.39 Chapter 4 of our consultation document explained the ways in which we considered that more environmentally friendly behaviour could be influenced through greater financial incentives and modifications to the access charges regime. We recognised the need for caution when considering any changes that might increase costs to rail, and which might therefore cause modal shift away from rail, given rail's relatively good environmental performance compared to road and some other forms of transport. Our original proposals indicated that:
- (a) the introduction of any new financial incentive (perhaps linked to the KPIs currently under development) would need to be considered carefully (particularly those issues identified in the consultation document); and

- (b) that no new environmental charge would be implemented at the start of CP4.
- 4.40 Our February 2007 PR08 document - *Advice to Ministers and framework for setting access charges*²⁶ - confirmed that
- (a) we consider that a financial incentive may be useful in the future, but ideally this should only be introduced where all parties have a clear understanding of the KPI(s) that underpin it; and
 - (b) we do not intend to introduce an environmental charge before or during CP4 unless an equivalent charge is introduced for other transport modes.
- 4.41 The February 2007 PR08 document also provides an update on encouraging on-train electricity metering and the extended use of regenerative braking in CP4.
- 4.42 Finally, in order to ensure that the industry, its stakeholders and customers are able to access appropriate information relating to the industry's sustainable development role and responsibilities, we will ensure that our website and quarterly publications are updated regularly to reflect the issues outlined within this document. We will also encourage industry parties to be open and transparent in respect of their sustainable development activities.

²⁶ *Periodic review 2008: Advice to Ministers and framework for setting access charges*, ORR, February 2007.

Annex A: List of respondents

Asset Management Consulting Limited (AMCL)
Association of Train Operating Companies (ATOC)
Mr David N Bradley
Department for Environment Food and Rural Affairs (Defra)
Mr Martin Dover
East of England Regional Assembly (EERA)
English Welsh & Scottish Railway (EWS)
First Group
Freightliner Limited
Greater Manchester Passenger Transport Executive (GMPTE)
Great North Eastern Railway (GNER)
Govia Limited
HSBC Rail
Mr J L Lean
Lloyd's Register Rail
Mayor of London
Merseytravel
National Express Group Trains Division (NEG)
Natural England
Network Rail infrastructure Limited
Northern Rail
Passenger Focus
Pre Metro Operations Ltd
Rail Freight Group (RFG)
Rail Safety & Standards Board (RSSB)
Railway Industry Association (RIA)
Sciotech Project
South West Trains Limited
Transport Scotland