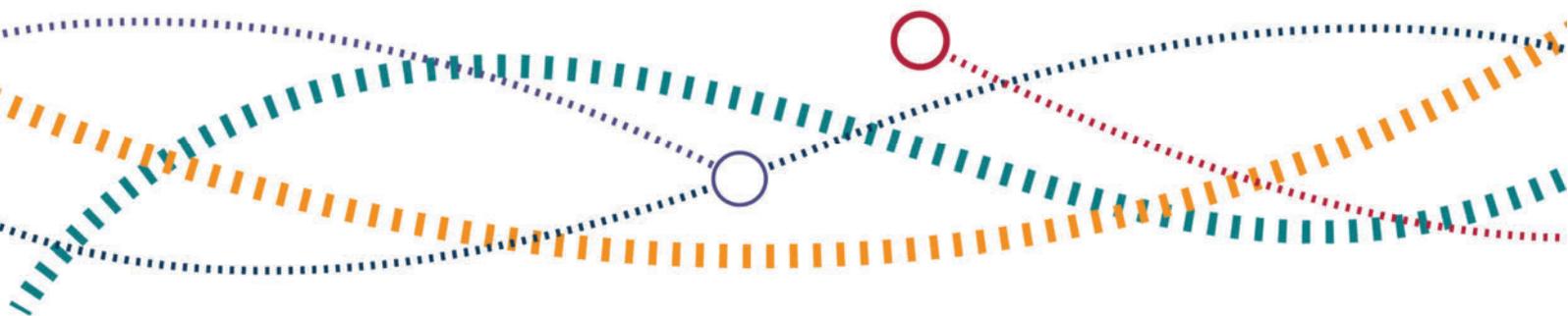




# Developing ORR's approach to Sustainable Development and Environment

## Responses to September 2021 consultation

21 September 2022



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# **Responses to Sustainable Development Consultation**



## Response to ORR’s Consultation on a Revised ORR Sustainable Development Policy Statement

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

<b>Full name</b>	Richard McClean
<b>Job title</b>	Transition Director
<b>Organisation</b>	Arriva
<b>Email*</b>	
<b>Telephone number*</b>	

\*This information will not be published on our website.

### Our criteria for our rail regulatory role

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

Arriva broadly agrees with the criteria proposed for ORR’s role in sustainable development in rail.

However, Arriva would like to see a stronger focus on the “additional” criteria. In particular, Arriva would like to see full consideration of the duties that have emerged for railway and other businesses in the area of sustainable development from the many items of legislation, guidance and strategy that have come into play recently – including those listed in the ORR’s consultation document (paras 1.6 to 1.9)

Arriva would also highlight the additional requirements required of businesses in their annual financial reporting in the area of sustainable development which seem to broadly parallel to those proposed by ORR for train operators.

**What changes are we proposing to our policy?**

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

Arriva broadly agrees with the approach and content proposed for ORR’s revised Sustainable Development Policy Statement.

However, Arriva notes that the strongest theme relates to how ORR will comply with its various obligations and duties and would like to see a greater focus on articulating the activities that ORR will undertake in order to “contribute to the achievement of sustainable development” in rail.

**Are there any other comments you would like to make?**

The structure of the rail industry is and will continue to change significantly as the Williams-Shapps “Plan for Rail” is refined and implemented. This process will inevitably see the transfer of roles between existing rail industry parties – particularly leadership and delivery roles. There will also be new bodies established and new priorities determined. Arriva would highlight that Great British Railway is not referenced in the consultation document.

In this context, it may make more sense to allow this process to develop further before concluding on the detail of changes in the ORR’s Sustainable Development Policy Statement.



Department  
for Transport

Philip Luxford  
Director, Rail Integration and Security  
Department for Transport

9 November 2021

By email: [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk)

Dear Daniel Brown,

### **Consultation on developing ORR's approach to environment and sustainable development**

I am providing a response on behalf of the Department for Transport (DfT) to the above consultation. With pressing action required from all organisations on the global challenges of climate change and biodiversity loss, we welcome the decision by ORR to review its approach to environment and sustainable development.

#### **Sustainable Development Policy Statement**

We agree with the proposed criteria for the rail regulatory role and with the approach and content of the new Sustainable Development Policy Statement. We do not see any issues with the proposals. We welcome the ORR's recognition that accessibility is a key element of sustainable development.

#### **Guidance on Environmental Arrangements for Railway Licence Holders**

Question A: We agree with the proposed approach and content of ORR's revised Guidance on Environmental Arrangements for Railway Licence Holders.

Question B: We agree with ORR's proposals for a process to improve the transparency and availability of environmental data in the rail industry. As set out in the Williams-Shapps Plan for Rail an 'open by default' approach to data sharing will benefit the rail sector and its passengers and stakeholders.

At point 1.16b ORR states that the amount of environmental data required to be reported to DfT through rail contracts varies by operator. As Train Operating Companies (TOCs) transition onto National Rail Contracts environmental reporting requirements will be standardised and not vary between TOCs. Through National Rail Contracts TOCs are required to report data using RSSB's online Environmental Reporting tool.

The data required to be reported through the RSSB tool is similar to the data suggested by ORR at point 1.17 with Train Operating Companies (TOCs) required to report on traction energy, non-traction energy, carbon emissions and embodied carbon, water, waste, and environmental management. 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.

Air quality data is not routinely gathered but a new DfT-funded air quality monitoring network is being rolled out by RSSB at approximately 100 stations in England and Wales. A report on the data will be published annually once the monitoring network has been established. Some of the other suggested data points such as progress towards net zero will be reported by TOCs to DfT in strategy documents as requirements of National Rail Contracts.

The RSSB online Environmental Reporting tool is not publicly accessible, and we agree that there would be benefit in a publicly accessible set of rail environmental data, building on the rail statistics that ORR already publishes annually. We agree with the view expressed in 1.18, that benefit would come from a dataset that incorporated the whole industry, rather than just those on National Rail Contracts. 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.

As ORR highlights, duplication of work is undesirable and so it will be important that ORR, RSSB, Network Rail, Great British Railways, DfT and others work together to ensure duties are clearly defined and duplication of effort or outcomes does not result.

We presume that at 1.19a ORR is referring to signposting to existing complete datasets, rather than data that exists but is spread across various locations (such as TOC websites) making it hard to analyse.

### **Concluding remarks**

I hope that you find these comments to be helpful. DfT remains committed to working closely with ORR on delivery of its statutory duty to have regard to the impact of rail on the environment.

Yours sincerely,

*Philip Luxford*

Philip Luxford

Director, Rail Integration and Security



## Response to ORR’s Consultation on a Revised ORR Sustainable Development Policy Statement

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

<b>Full name</b>	John Murray
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<b>Email*</b>	
<b>Telephone number*</b>	

\*This information will not be published on our website.

### Our criteria for our rail regulatory role

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

DRS broadly agrees with the proposed criteria. As part of Nuclear Transport Solutions are reviewing our sustainability strategy with a plan to reach Carbon Net Zero by 2050.

DRS would encourage the ORR to use its influence with Network Rail in regards to electricity pricing. Recent events have highlighted the financial challenges of running electric freight and in many cases, it is more cost effective to operative fossil fuel traction as opposed to OLE. This is in direct contradiction with the principles of sustainable development.

**What changes are we proposing to our policy?**

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

DRS broadly agrees with the approach to the new Sustainable Development Policy. The general approach aligns with current DRS sustainable development strategies.

**Are there any other comments you would like to make?**

No.



## Response to ORR’s Consultation on a Revised ORR Sustainable Development Policy Statement

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Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

<b>Full name</b>	Tom Gunton
<b>Job title</b>	Environment & Sustainability Manager
<b>Organisation</b>	East Midlands Railway
<b>Email*</b>	
<b>Telephone number*</b>	

\*This information will not be published on our website.

### Our criteria for our rail regulatory role

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

Yes, EMR are in support of, and agreement with the proposed criteria to the ORR’s regulatory role in rail.

EMR are also supportive of the “RSSB’s response to The Office of Rail and Road’s consultation on a Revised ORR Sustainable Development Policy Statement” – 26<sup>th</sup> October 2021, and specifically consider the proposed criteria of “proportionate” and “additional” to be priority areas.

EMR consider existing external and internal audit and assurance activities across its Energy & Environmental Management Systems (which provides a risk-based framework for managing EMR’s environment and sustainability agenda) to be robust and effective. Via this framework proactive working relationships exists with environmental regulators - EMR would be supportive of an ORR regulatory role which considers and is reflective of these existing layers of assurance and risk management.

EMR would like clarification on the role, remit and interrelationship between the ORR and other regulators and external stakeholders – i.e. Environment Agency, Local Authorities, Water and Sewerage Undertakers and external management system certification bodies.

**What changes are we proposing to our policy?**

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

Yes, EMR are in support of, and agreement with the approach and content of the ORR's new Sustainable Development Policy Statement.

EMR are also supportive of the "RSSB's response to The Office of Rail and Road's consultation on a Revised ORR Sustainable Development Policy Statement" – 26<sup>th</sup> October 2021.

EMR consider the alignment (of the ORR's new Sustainable Development Policy Statement) with emerging industry Sustainable Rail Strategy (SRS) a priority and fundamental to regulation consistent with the proposed criteria described in Question 1.

EMR 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 the aspects of sustainable procurement, accessibility, diversity & inclusion, community rail and biodiversity management planning.

**Are there any other comments you would like to make?**

EMR welcome the ORR's emerging position in this area and supportive of additional, aligned external assurance activity to move this agenda forward.

**Shaw, Ben**

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**From:** Natalie Cartwright [REDACTED]  
**Sent:** 09 November 2021 13:06  
**To:** Sustdev Consultation  
**Cc:** [REDACTED]  
**Subject:** [EXTERNAL] Response to ORR's Consultation on a Revised ORR Sustainable Development Policy Statement

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

I have read your Consultation on a Revised ORR Sustainable Development Policy Statement with interest. I absolutely agree with your intent to embed environment and sustainable development in all that you do now, it is critical in beginning to achieve net zero targets.

However as an SME, specialising in depot maintenance solutions for the rail sector, our experience has been that whilst the rail industry abounds in Environmental Policies it does not execute them.

We have found the rail industry slow to engage with sustainable and environmental solutions even when, like our product, they deliver considerable CAPEX and OPEX cost savings, mitigate health and safety risks, increase operational resilience as well as deliver carbon neutral solutions.

SMEs in the rail supply chain are innovative and agile and now, more than ever, need to deliver solutions that will reduce carbon emissions, water and energy consumption and waste.

However a long transition over to Great British Railways and consultations still ongoing re: Passenger Service Contracts make for a very uncertain future. Who will pay for these solutions? Who can afford them?

Unless sufficient leverage is applied, by a Government Body, for the take up of these new technologies, net zero targets will not be met.

Kind Regards

Natalie Cartwright



**Natalie Cartwright**  
R&D Market Research

[REDACTED] [www.gbr-rail.com](http://www.gbr-rail.com)



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## Response to ORR's Consultation on a Revised ORR Sustainable Development Policy Statement

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## ORR's Guidance on Environmental Arrangements for Railway Licence Holders

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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<b>Email*</b>	
<b>Telephone number*</b>	

\*This information will not be published on our website.

## Key concerns across both consultations

### #1

Particularly in the Sustainable Development Policy the document talks about using regulatory powers etc. “when appropriate to do so”.

Who will determine what is appropriate with the concern being we end up dictated to something that doesn't work for us?

Later in the piece it says “when appropriate we will look to improve industry data”, again this should come from the practitioners who manage and use the data not a regulatory body. This is already something being worked on through the RSSB.

### #2

This is mainly on the Environment Arrangements, but the document talks about using reputational incentives to influence change and making our data publicly available.

This may unfairly penalise TOCs particularly without the correct context / narrative around the data.



## Response to ORR's Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [envguidance.consultation@orr.gov.uk](mailto:envguidance.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

<b>Full name</b>	Dr Rossa Donovan
<b>Job title</b>	Principal Environment & Sustainability Specialist
<b>Organisation</b>	Network Rail (Technical Authority)
<b>Email*</b>	[REDACTED]
<b>Telephone number*</b>	[REDACTED]

\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

Consultation Question 1: Do you agree with the proposed approach and content of our revised *Guidance on Environmental Arrangements for Railway Licence Holders*?

A: We believe that this could go further. In the impact assessment it is noted that most Railway Licence Holders already have sustainability plans/policies in place, therefore it would not be unduly burdensome to require all RLHs to have sustainability policies in place, and it would be helpful if they 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 enable a better understanding of environment & sustainability performance across the whole industry, as currently performance of RLHs is difficult to evaluate. Expanding the remit of the guidance to cover all aspects of sustainability is also important because it will bring the RLHs in line with the advancements that are happening across the rest of the industry and in government. It would also allow the RLHs to state their proposals for social sustainability and also place the onus on them to tackle environmental issues within their control, such as air quality in stations. The RLHs need to have the same level of regulatory scrutiny as the rest of

the rail industry. Waiting till 2024 may be too late to begin to tackle the many issues that the rail industry is facing.

Consultation Question 2: Do you agree with our proposals for a process to improve the transparency and availability of environmental data in the rail industry?

A: Yes, we agree with the proposals to improve data collection and transparency in the rail industry. For consistency, it would be beneficial to ensure that, as a minimum, all organisations that are regulated by the ORR are reporting in line with the government's Greening Government Commitments. This would allow the performance of organisations to be monitored, targets to be set and any necessary actions to be planned and delivered. The data should be expanded to include social value metrics as well.

**Improving rail industry environment information**

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

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

A: Yes, we agree that the proposed criteria are appropriate.

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

A: Yes and No. We think that the approach is appropriate but there is very little content on what is proposed or required for the different areas of sustainability. At present this is very high level and would benefit from some overarching targets that tie back into the strategies of the organisations the ORR regulates.

**Are there any other comments you would like to make?**

In accordance with Procurement Policy Note 06/20, the scope of this document should be expanded to take account of social value themes and outcomes within the UK Government Social Value Model. Network Rail has, for example, now published its Social Value Framework in order to align with PPN06/20.

## **PROPOSED REVISED ORR POLICY STATEMENT ON SUSTAINABLE DEVELOPMENT RESPONSE FROM THE RAILWAY INDUSTRY ASSOCIATION (RIA)**

### **1. INTRODUCTION**

This submission constitutes the response from the Railway Industry Association (RIA) to the above call for evidence published in September 2021.

### **2. BACKGROUND TO RIA**

- 2.1 The Railway Industry Association (RIA) is the voice of the UK rail supply community. We help to grow a sustainable, high-performing, railway supply industry, and to export UK rail expertise and products. RIA has 300+ companies in membership in a sector that contributes £43 billion in economic growth and £14 billion in tax revenue each year, as well as employing 710,000 people.
- 2.2 It is also a vital industry for the UK's economic recovery, supporting green investment and jobs in towns and communities across the UK; for every £1 spent in rail, £2.50 is generated in the wider economy. RIA's membership is active across the whole of railway supply, covering a diverse range of products and services and including both multi-national companies and SMEs (60% by number). [www.riagb.org.uk](http://www.riagb.org.uk)
- 2.3 RIA provides its members with extensive services, including:
  - Representation of the supply industry's interests to Government, Network Rail (NR), TfL, HS2, ORR and other key stakeholders
  - Providing opportunities for dialogue and networking between members, including several Special and Technical Interest Groups
  - Supply chain improvement initiatives
  - Provision of technical, commercial and political information every week
  - Export promotional activity, through briefings, visits overseas, hosting inwards visits
  - Organising UK presence at exhibitions overseas.

### **3. SUSTAINABLE DEVELOPMENT POLICY**

- 3.1 The Office of Rail and Road (ORR) is updating the Sustainable Development Policy, which sets out criteria for prioritising new rail activity on Sustainable Development and Environment.
- 3.2 RIA supports the five criteria (appropriate, proportionate, effective, additional, aligned) set for any new activity ORR is to undertake in the environment and sustainability area.
- 3.3 ORR has the opportunity, as the statement recognises it is functionally an economic and safety regulator, for it to be both appropriate and highly beneficial to the industry for the organisation to use its economic regulatory hand to drive sustainability outcomes. It is good to see the ORR directing the authority and tools that they already have towards sustainability rather than reinventing the wheel (proportionate). These criteria allow the ORR to maintain its position as an economic and safety regulator, but to do so in a way that will drive sustainability priorities alongside.
- 3.4 For the supply chain, especially companies who are new to rail, it could be difficult to navigate the complicated stakeholder map across the industry and the various activities each of these stakeholders are undertaking. Therefore, aligning the work and making sure any new activity is not being duplicated is essential.

- 3.1 The need for sustainability data to be consistent and reliable is high priority and if the ORR can play a role as the regulator to overlook this without duplicating work going on in the industry, then that must be supported.
- 3.2 We would welcome clear communication on any new ORR activity that relates to environment and sustainability and especially how it affects the supply chain.

#### **4. GUIDANCE ON ENVIRONMENTAL ARRANGEMENTS FOR RAILWAY LICENCE HOLDERS**

- 4.1 ORR is also updating its Guidance on Environmental Arrangements for Railway Licence Holders. ORR acknowledges that further changes are expected to the industry's legislative and contractual framework considering the Williams-Shapps Plan for Rail, however the supply chain is concerned that the updates to ORR guidance remain consistent in the future and are not delivered just for "the change's sake".
- 4.2 There is also concern that the complete focus on environment neglects important sustainability outcomes, which will create and cause further amendments and announcements.
- 4.3 We welcome the intent to increase the transparency of information about rail environmental performance, as this allows the suppliers to identify gaps and opportunities to provide solutions.
- 4.4 ORR expects operators "to provide data on issues for which they have a significant impact, rather than a 'one size fits all' approach". This criterion needs better definition, as operators might interpret issues for which they have significant impact differently. Adding to that, such a selective sharing of data might prevent innovative and creative solutions from suppliers as they will have limited data sets.
- 4.5 RIA welcomes ORR's intent to collaborate with RSSB on environmental data and information aggregation and not duplicate the work that is currently being done, but rather build on its role as producer and publisher of official statistics and bring the industry data on key issues under one roof.
- 4.6 ORR should work closely with the projects already underway in this space to ensure that they are filling gaps (ie the role of a regulator, monitoring data collection, and some analysis) rather than duplicating efforts, in line with the criterion set out in the parallel consultation around the ORR playing an 'appropriate' role in the industry in this field.
- 4.7 ORR is asking operators to consider their own environmental impacts and also those of the suppliers, particularly in relation to carbon emissions, such as though adoption of Science Based Targets. RIA welcomes this focus as the supply chain is concerned that clients are slow to take up environmental solutions. We would also like to see incentives for the uptake of innovative solutions to improve environmental performance. We are however concerned that any proliferation of different measures of environmental impact is wasteful of resources and therefore costly.
- 4.8 Overall, sustainability of a railway organisation requires that the organisation delivers its passenger and freight services in a sustainable manner with respect to minimizing carbon emissions per unit of operations. Most railway organisations have programmes in place to reduce their carbon emissions. However, lowering the unit cost of services is also essential from a sustainability perspective as lower operations unit costs encourages modal shift to rail from more carbon intensive transport modes such as road or air. So, lowering the unit cost of operations has a massive sustainability impact.
- 4.9 A critical enabler for a railway to reduce its unit cost of operations is optimised (engineering) access management involving a trade-off between maintenance 'efficiencies' (cost savings) and the 'value' of train services (revenue, societal benefits etc). Optimised access management fundamentally delivers the best access plan for the railway that delivers the timetable at the most economic cost. This outcome drives down the cost of operations and hence encourages modal shift and lower societal carbon emissions.

- 4.10 A more flexible timetabling and short term planning capability would help to encourage more haulage firms to utilise rail more than road to move freight as this would allow for greater flexibility for goods to be moved by rail.

***If you would like further information, please contact Senior Technical & Policy Manager Milda Manomaityte at [REDACTED].***

RSSB's response to  
The Office of Rail and Road's  
consultation on a Revised ORR  
Sustainable Development Policy  
Statement

For the attention of Daniel Brown, ORR Director, Economics, Markets & Strategy

26<sup>th</sup> October 2021 – V1.0 FINAL

## Foreword

This document provides RSSB's response to the ORR's Consultation on a Revised ORR *Sustainable Development Policy Statement*. The consultation is intended to provide transparency on ORR's approach to the delivery of their duties on Sustainable Development

This response specifically considers:

- The ORR criteria for its rail regulatory role.
- Commentary on the approach taken and content of the ORR revised *Sustainable Development Policy Statement*
- Wider comments connected to the Sustainable Development Policy.

RSSB has responded on the specific areas mentioned in the consultation: we have based our responses on the work we do leading the development of the industry sustainability strategy and the support provided to industry through analysis, standards and research.

## About RSSB

Through research, standards and analysis RSSB helps its members deliver a better, safer railway. We develop technical and operational standards, provide analysis and insight into health and safety data, carry out research and promote sustainability principles.

RSSB plays an increasingly central role facilitating and overseeing work on sustainability in the rail industry. Over recent years this has focussed on decarbonisation, air quality and social value; with valuable research and standards development assisting to deliver the outcomes.

RSSB leads the GB rail industry's Sustainable Rail programme which is governed by the cross-sector Sustainable Rail Executive, which reports to the Rail Minister, RSSB Board and Network Rail.

Commissioned by Great British Railways Transition Team, RSSB is currently leading the co-creation of the Sustainable Rail Strategy, which will be an integral part of the Whole Industry Strategic Plan.

In addition, on behalf of industry we facilitate Standards Committees, System Interface Committees, groups that focus on safety and risk and health and wellbeing and the rail research and innovation programme. For more information about what we do see the RSSB website: <https://www.rsb.co.uk/>.

## 1. ORR criteria for their rail regulatory role

The ORR have developed the following criteria to guide prioritising new activity in sustainable Development:

- (a) **appropriate**: is the activity appropriate to ORR’s role in the wider industry structure, and aligned well to our statutory role / remit (now and in future e.g. ‘post-Williams-Shapps Plan for Rail’);
- (b) **proportionate**: is the activity proportionate, reflecting ORR’s need to prioritise resources across the breadth of specialist issues:
  - (i) to the extent to which the issue impacts rail
  - (ii) or the extent to which rail impacts on the issue and to ORR’s priorities and resources in delivering its broader functions;
- (c) **effective**: can we be effective in enabling us to help governments achieve their goals.
- (d) **additional**: is the activity additional to that of other bodies (DfT, Transport Scotland, Network Rail, RSSB, environment agencies, local authorities), and not duplicating effort; and
- (e) **aligned**: is the activity aligned to ORR’s strengths as an organisation (e.g. monitoring, efficiency, design of economic incentives).

### ORR Consultation question 1. Do you agree with our proposed criteria for our rail role?

1. Broadly, we are supportive of these criteria being implemented consistently by the ORR in actioning their duties and fulfilling their role in rail.

As well as being used to prioritise new activity, these criteria should be applied to determine if any new activity is required in this space at all.

In response to each in turn:

2. a) Appropriate – given the current period of reform, stimulated by the *Williams-Shapps Plan for Rail* and the uncertainties this introduces around the future industry structure, in particular the roles of the individual organisations within it, it is very important to assess if it is appropriate for ORR to take a role.

At Paragraph 1.13 the ORR describe its role in rail as; ‘*both an economic and safety regulator*’. The paragraph also states; ‘*In rail we have a duty to contribute to the achievement of sustainable development and to have regard to environment in exercising our functions*’. When considering the appropriateness of ORR developing their role, it should consider how it can remain true to these responsibilities and recognise where other organisations are already acting. Furthermore, it would be most appropriate for the ORR to consider how best to use its economic regulatory powers to drive sustainability outcomes within the rail industry. For example, to use price incentives to deliver the goals within the Sustainable Rail Strategy.

3. b) Proportionate – RSSB acknowledges that the ORR has limited resources and finite sustainability capability. We endorse an approach where ORR engagement on sustainability is proportionate and prioritised to their role as economic regulator. We recommend that the ORR should consider its approach based on materiality and significance of issues regarding their environmental and social impact.
4. c) Effective – this is a sound criterion. Given that many organisations and in fact, at an industry level, there is already momentum in the sustainability space. For example, RSSB 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 there is not an effective role for ORR to play.
5. d) Additional – RSSB fully endorse this as a criterion given the clear potential for significant overlap between the ORR and RSSB.

As our teams already recognise, there is a need to work together to complement our organisations’ activities as opposed to duplicating resources and requirements placed on others, particularly those operational railway businesses where resource is particularly constrained.

6. A practical way of addressing this is to jointly develop an agreed way of working and set these out in an agreed Code – like the one that exists in the Standards domain – for work in sustainability. It would define the scope, boundaries, and roles of our working relationship. It would also enable a governance arrangement where the sector collectively agrees the best course of action, with independent and objective expertise of RSSB, and based on the principles approved and monitored by the ORR.
7. e) Aligned – Again, a good criterion which can be impactful. For the rail industry to deliver sustainable operations and growth, the ORR will play an important role to influence change. Bringing regulatory powers and economic incentivisation to bear on the periodic review process (see Section 3), if set up appropriately, would be powerful.

## 2. What changes are we proposing to our policy?

### Q2. Do you agree with the approach and content of our new Sustainable Development Policy Statement?

8. Overall RSSB supports the updating of the ORR Sustainable Development Policy Statement and the application of the policy to all your activities.

9. It is important for the ORR to establish an up-to-date position on these increasingly significant aspects. As regulator, the ORR will need to take on appropriate responsibilities to ensure that the rail industry makes progress on improving sustainability performance. For example, providing the right mechanisms within the regulatory regime for policy objectives to be met.
10. The ORR state that the policy *'is intended to provide transparency on our approach to the delivery of our duties on sustainable development, succinctly stating our policy, its aims, and how we will put it into practice'*. However, the policy could contain further information on the detail of the *'how'* it will deliver these aims. As an example, the policy states *'our licensing activity'* as a mechanism but does not illustrate how this could be applied.
11. At paragraph 15, the proposed revised policy states that:
 

*'Good quality, readily available and appropriately disaggregated data is crucial in helping our regulated industries (and their stakeholders) understand their progress towards sustainability objectives. When appropriate we will seek to improve industry data as a key step to improved performance'*. Applying the criteria identified for ORR's rail regulatory role in section 1, RSSB considers that this would likely not be proportionate and may well be duplicating work already being undertaken by other parts of the industry. The key words in the policy wording therefore are *'when appropriate'*.
12. We certainly agree that *'Good quality, readily available and appropriately disaggregated data is crucial..'* but we are clear that it is not for the ORR to seek to design and implement the performance measurement approach for the industry. This sits squarely within the remit of the RSSB in our role as technical centre of excellence for sustainability for the rail industry.
13. As colleagues at ORR are aware, RSSB is currently leading development of the Sustainable Rail Strategy (SRS) co-creating it with the rail industry, ultimately for it to be integrated by GBRTT within the Whole Industry Strategic Plan. The SRS consists of goals, strategic focus areas and initiatives needed to deliver an even more sustainable industry.
14. Moreover, it is helpful to describe RSSB's work on sustainable development as taking both a Strategic & Programmatic approach. The RSSB Sustainable Rail Programme, largely funded by the DfT, is an overall initiative made up of two closely interwoven and complementary parts:
  - a. Strategy – The plan to address the need. Confirms the direction of travel, sets the objective for sustainability in rail, defines flagship industry goals, metrics, and route maps. This is the SRS.
  - b. Programme – The range of activities needed to deliver the strategic direction and ensure it is implemented, this is where coordination and facilitation are crucial along with development and provision of the solutions and necessary tools. This is how the SRS is embedded and ultimately delivered.

15. Without a strategy the programme will be incoherent, inefficient, and less effective. Without a programme of action, the strategy will not be recognised nor responded to.
16. To be successful we need to drive system-wide change for sustainability which requires extensive engagement and communications on the strategic ambition. Railway colleagues need to understand and buy into the ambition, identify the role that they and their organisation play and have clarity on the actions they need to take day to day.
17. Measuring the impact of the SRS is essential. RSSB are already providing for this measurement and reporting as part of our Sustainable Rail programme. For example RSSB is already managing the industry Environment Data Tool and the Rail Carbon Tools. For the industry-wide Sustainable Rail Strategy to be effective a step change in performance management and reporting is needed.
18. Alongside the SRS development RSSB now have a funded project underway which will begin to provide the industry performance management capability needed to embed the SRS. This is known as the **Sustainable Rail Data Framework**. This Data Framework will provide the essential visibility of sustainability and has very significant potential to generate change. By giving the industry the capability to assess performance and track progress on the flagship goals and initiatives set out in the Sustainable Rail Strategy.
19. This is a direct response to the The Williams-Shapps Plan for Rail which sets out at paragraph 53:
 

*A single measurement methodology for carbon across railway operations will be adopted alongside other new methodologies to support this, including for construction, maintenance and energy.*

***Data on progress will be published regularly and transparently, and regions will be benchmarked against each other to unlock improvements, incentivise change and enable targeted action on local issues such as air quality at stations and noise.***
20. RSSB has the capacity and knowledge to lead the industry to the necessary detailed level and from our technical work developing the SRS, as well as R&D project pedigree, have the knowledge of appropriate metrics, KPI's data sources and reporting frequency.
21. RSSB needs to define the metrics and KPIs, something we will do through the development of the SRS. It will be crucial to negotiate the approach with operators engaging with them to design the approach to ensure practical implementation.
22. It is also worth being aware that the coherent and holistic nature of the SRS means that the approach being taken is not just looking at prominent issues such as carbon emissions or local air pollution, the data framework is also going to set out the right approach in relation to biodiversity, water, circular economy and noise as well as providing for social sustainability.

23. We are very clear that although ORR does not need to take a role in developing and implementing performance management for sustainability, this would be a duplication and therefore inefficient use of increasingly scarce funding.
24. However, there is certainly a role for the ORR to regulate and monitor. RSSB would be very happy to explore how that responsibility needs to be constructed with ORR, recognising the influence that can be brought to bear by a regulator to enable sustainability performance improvement.
25. Recognising that the ORR has played a role in the past as producer and publisher of official statistics, part of the assessment that needs to take place with regard to any new role in the sustainability space should to consider if ORR needs to be the recipient of sustainability data in order to fulfill its regulatory role. Again, RSSB will be pleased to look into this with ORR colleagues to ensure the right outcome.

### 3. Are there any other comments you would like to make?

26. RSSB welcome the proactive steps being taken by ORR to review and develop their activities in support of the sustainability agenda. By building upon existing activities it already undertakes, placing an increased focus on environmental and sustainable development issues, including in periodic review 2023 (PR23) will add weight, requiring the industry to act.
27. CP7 presents a further opportunity for Network Rail to continue to build on its recent sustainability achievements, with delivery broadening across the whole sustainability agenda, the ORR can play a constructive role by encouraging this.
28. RSSB look forward to developing collaboration with ORR to control, guide and influence sustainability in the railway. We would like to thank the ORR for their continued involvement and support in the various workstreams in which they participate.

**END.**



## Response to ORR’s Consultation on a Revised ORR Sustainable Development Policy Statement

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### Our criteria for our rail regulatory role

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

We are pleased that your Sustainable Development policy broadly reflects that of Transport Scotland and align with the ongoing work of Network Rail Scotland region who lead and deliver in this area with our support. Moreover, TS is glad to see that the ORR recognises the requirement for the rail industry as a whole to move to a more sustainable future.

However, Transport Scotland is seeking more information as to how the ORR intends to deliver this.

Some questions are:

- How will ORR ensure that the Sustainable Development Policy Statement is considered during day to day operations i.e. what does this mean in practice?
- Will the ORR implement consideration of this policy as part of its decision making processes, both strategic and operational?

As for the specific criteria, Transport Scotland has considered the “proportionate” element of the criteria to be of key significance. This criteria asks “is the activity proportionate, reflecting ORR’s need to prioritise resources across the breadth of specialist issues”.

In what way will the ORR measure proportionality? Later in the statement, the ORR acknowledges it will take account of the devolved Governments’ climate commitments which are different from those set out by the UK Government.

As some of Scotland’s climate commitments are sooner (i.e. decarbonise the railway by 2035 in Scotland - the ambition for GB passenger network is 2040 ), will this be considered as part of the proportionality criteria? For this specific example, would this mean the ORR providing more resources or placing a higher priority on decarbonisation in Scotland than it would in the rest of GB where the targets are later?

If so how would this be delivered and could / should this be made more explicit under this specific “proportionality” criteria?

### **What changes are we proposing to our policy?**

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

Transport Scotland is broadly content with the statement. However, it is important to consider this from the perspective of the general public, who will have access to the document.

The document itself does not make it wholly clear to the reader “*why*” the ORR is producing the statement in the first place. This could be considered as the “purpose” and perhaps there is an opportunity for the ORR to explain why it is looking to incorporate sustainable development principles in delivering its regulatory functions.

**Are there any other comments you would like to make?**

As the ORR is aware, the UK Government hosted the UN’s COP26 in Glasgow in November 2021. Given the commitments made at that Conference, , sustainable development policy will only increase in priority for the UK administrations and Governments along with companies and organisations across the globe. Therefore, with the prospect of more and more frequent policies and proposals emerging to meet those demands, the ORR may need to allow for mechanisms to reflect this growth and acceleration.

From a Transport Scotland perspective, it seems there may be opportunities – and an expectation - for the ORR to make more related substantive policy proposals in line with the necessity to deliver a more sustainable railway.

A new organisation, Environmental Standards Scotland (ESS)<sup>1</sup>, has recently been established in Scotland. Transport Scotland would ask the ORR to consider how its role in supporting and holding to account the rail sector on environmental and sustainable development matters will align with that of this new body, and the extent of any planned engagement. TS will work with the ORR (and the ESS) on this matter.

<sup>1</sup> [Home - Environmental Standards Scotland](#)



## Response to ORR's Consultation on a Revised ORR Sustainable Development Policy Statement

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [sustdev.consultation@orr.gov.uk](mailto:sustdev.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### Our criteria for our rail regulatory role

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

Yes

**What changes are we proposing to our policy?**

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

Yes

**Are there any other comments you would like to make?**

VolkerRail Ltd welcomes the proposed criteria for the ORR's rail role and the approach and content of its new Sustainable Development Policy Statement.



9<sup>th</sup> November 2021

**Consultation on developing ORR's approach to environment and sustainable development  
– Woodland Trust response**

Dear Office of Rail and Road

Thank you for the opportunity to comment on the Revised ORR Sustainable Development Policy Statement consultation. I would like to submit the following comments on behalf of **the Woodland Trust** in response to this consultation.

As the UK's leading woodland conservation charity, the Woodland Trust aims to protect native woods, trees and their wildlife for the future. Through the restoration and improvement of woodland biodiversity and increased awareness and understanding of important woodland, these aims can be achieved. We manage over 1,250 sites covering almost 30,000 hectares (57,000 acres) and have 500,000 members and supporters.

**Key recommendations**

- The Office of Rail and Road (ORR) should make greater use of its regulatory powers in relation to the impact of the construction and maintenance activities of National Highways and Network Rail on ancient woodland and veteran trees, with the aim of ensuring that such impacts are minimised and eliminated wherever possible.
- ORR should assess Network Rail's progress against the Varley Review's recommendations as well as biodiversity commitments through the Williams-Shapps plan for Rail as part of its regulatory functions, with the aim of maximising retention of trees on the lineside estate, and ensuring consistent, high-quality communication with local communities.

**Introduction**

We welcome ORR's recognition of the 'growing scale and pervasive nature of the environmental and sustainability challenges we face as a society'. In February, government published the Dasgupta Review on the Economics of Biodiversity, which stated that: 'Our economies, livelihoods and well-being all depend on our most precious asset: Nature.' It found that 'at the heart of the problem lies deep-rooted, widespread institutional failure' to account for nature's worth to society<sup>1</sup>.

Following this, the government has recently accepted an amendment to the Environment Bill to 'halt a decline in the abundance of species' by 2030. Government has also committed to trebling tree-planting rates by the end of this parliament<sup>2</sup>, and recognised that this is a key part of the approach to reach net zero by 2050<sup>3</sup>. Achieving these objectives will require the full participation of institutions within and beyond government, and will require regulators to ensure that economic

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<sup>1</sup> [Final Report - The Economics of Biodiversity: The Dasgupta Review \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92222/final-report-the-economics-of-biodiversity-the-dasgupta-review.pdf)

<sup>2</sup> [Tree planting rates to treble by end of this Parliament - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/tree-planting-rates-to-treble-by-end-of-this-parliament)

<sup>3</sup> [Net Zero Strategy: Build Back Greener - October 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92222/net-zero-strategy-build-back-greener-october-2021.pdf)

activity, including the construction and maintenance of infrastructure, does not come at the expense of the protection of habitats and biodiversity.

### **Ancient woodland and veteran trees**

Ancient woods are areas of land that have been continuously wooded since 1600 in England and Wales, and 1750 in Scotland. Veteran trees are those which show particular features associated with age, weathering or decay, and therefore have high ecological value<sup>4</sup>. Due to their longevity and exceptional value for wildlife, both ancient woodland and veteran trees are recognised as **irreplaceable** habitats, and this is reflected in national government policy. For example, the National Planning Policy Framework (NPPF) states that:

*“development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”<sup>5</sup>*

In addition, the National Networks National Policy Statement (NNNPS) states that:

*“Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Where such trees would be affected by development proposals, the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this.”<sup>6</sup>*

As such the destruction of ancient woodland and veteran trees is **unsustainable**, and inconsistent with the objectives of sustainable development.

Despite national policy, construction of new road and rail infrastructure remains one of the primary causes of the destruction and deterioration of ancient woodland and veteran trees. The Woodland Trust is currently aware of hundreds of threats to ancient woodland and veteran trees from road and rail development. There are likely to be many additional cases that we are not aware of, as we are not statutory consultees and are therefore dependent on our own investigations of development, as well as being notified of potential threats by our supporters.

By definition, it is impossible to recreate ‘irreplaceable’ habitats, such as ancient woodland and veteran trees. **Therefore, the loss of these habitats falls outside of the scope of no net loss and biodiversity net gain targets which Network Rail and National Highways are committed to, and that are regulated by ORR.** As such, despite representing national policy, it is our view that the loss of irreplaceable habitats currently constitutes a gap in how ORR regulates National Highways and Network Rail.

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<sup>4</sup> [Veteran trees - Forest Research](#)

<sup>5</sup> [National Planning Policy Framework \(publishing.service.gov.uk\)](#)

<sup>6</sup> [National Policy Statement for National Networks \(publishing.service.gov.uk\)](#)



activities of Network Rail and National Highways. In order to achieve government's stated ambitions on biodiversity, ORR must significantly broaden the scope and depth of its regulatory approach in order to ensure that tree and woodland protection and enhancement is embedded across the activities of Network Rail and National Highways.

Please do not hesitate to contact us if there are any questions or concerns about the comments we have provided.

Yours sincerely,

Chris Baines

Lead Policy Advocate – Infrastructure

# Responses to Environmental Guidance Consultation



## Response to ORR’s Consultation on ORR’s Guidance on Environmental Arrangements for Railway Licence Holders

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [envguidance.consultation@orr.gov.uk](mailto:envguidance.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

The structure of the rail industry is and will continue to change significantly as the Williams-Shapps “Plan for Rail” is refined and implemented. This process will inevitably see the transfer of roles between existing rail industry parties – particularly leadership and delivery roles. There will also be new bodies established and new priorities determined. In this context, it may make more sense to allow this process to develop further before concluding on the detail of changes in the ORR’s Guidance on Environmental Arrangements for Railway Licence Holders.

To reinforce this point, Arriva notes that and as ORR highlight, it is expected that a “comprehensive environment plan for the rail network will be published in 2022 and will form a key part of Great British Railways’ 30-year strategy”.

In ORR’s consultation on a revised ORR Sustainable Development Policy Statement, one of the criteria listed is that the requirements that emerge from the implementation of this policy should not duplicate existing requirements emerging from elsewhere. In this context, Arriva would like to see full consideration of the duties that have emerged for Railway License Holders in the area of sustainable development from the many items of legislation, guidance and

strategy that have come into plan recently – including those listed in the ORR’s consultation document (paras 1.6 to 1.9)

Arriva would 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 seem to broadly parallel those proposed by ORR for train operators.

It would appear that the ORR’s proposed approaches is largely duplicating requirements that already exist.

Arriva therefore suggests that no changes to the current Guidance on Environmental Arrangements for Railway Licence Holders should be made until:

- a full review to remove duplicated requirements and consideration of the cost effectiveness of any additional activities has been undertaken.
- The comprehensive rail industry strategy is available for consideration.

## **Improving rail industry environment information**

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

The ORR highlight the currently complex and overlapping series of approaches in place across the industry to the collection and publication of environmental data for the rail industry.

Arriva feels that, before embarking on a process to refine and increase the ORR’s arrangements in this area, a comprehensive review of all other data capture and publication arrangements should be undertaken. This should include activity undertaken by DfT, Network Rail and RSSB. The Great British Railways Transition Team should be included in the review in order to include activity that may be undertake by Great British Railways in the future.

Once this review has been completed, the bodies managing environmental data should develop a single, coherent and effective arrangement which can then be implemented.

Until then, no changes to current arrangements should be made so as to avoid potential disruption and wasted effort.

**Are there any other comments you would like to make?**

As the Williams-Shapps Plan for Rail highlights, rail “is the only form of transport currently capable of moving people and heavy goods in a zero-carbon way”.

The Traction Decarbonisation Network Strategy has concluded that the key to unlocking this potential is the extensive roll out of schemes to electrify the rail network and to deploy additional electric trains. In order to make the programme cost effective, it will also be necessary to develop and deploy new traction systems using energy from hydrogen and batteries.

To achieve this in the ambitious timescales required by Government and society will require cross industry focus and coordinated activity.

In order to facilitate this, Arriva would like to see the ORR focusing on the strategic imperatives that will support the delivery of these ambitious programmes and outcomes.



## Response to ORR’s Consultation on ORR’s Guidance on Environmental Arrangements for Railway Licence Holders

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Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

DRS recognises the importance of having effective environmental management policies and procedures in place, and currently implement a certified ISO14001 Environmental Management system. DRS broadly agrees with the changes and encouragement to implement the same level of improvements.

## Improving rail industry environment information

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

DRS recognises the importance of collecting and verifying environmental data. The freight industry uses similar rolling stock and has similar challenges in the recording and reporting of data with a view to reducing the impact the industry has on the environment.

Transparent KPIs are critical to benchmark and work together in the drive towards decarbonising rail freight.

### **Are there any other comments you would like to make?**

No.



## Response to ORR’s Consultation on ORR’s Guidance on Environmental Arrangements for Railway Licence Holders

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Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

Yes, EMR are in support and agreement with the approach and content of the ORR’s revised Guidance on Environmental Arrangements for Railway Licence Holders Sustainable Development Policy Statement.

EMR 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 the aspects of sustainable procurement, accessibility, diversity & inclusion, community rail and biodiversity management planning.

EMR would like clarification on the interrelationship between this guidance document, EMR’s “(environmental) management arrangements” and existing Safety Certificate obligations – acknowledging many elements of Energy & Environmental Management Systems are integrated into EMR’s Safety Management System and wider business process and procedure.

**Improving rail industry environment information**

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

EMR are supportive of the proposals for a process to improve the transparency and availability of environmental data, though would like to ensure this is delivered in a coordinated, aligned manner with other environmental data reporting regimes - i.e. DfT/RSSB Franchise/National Rail Contract reporting, SECR, ESOS etc.

EMR would also be supportive of data, performance indicators which are aligned to robust decarbonisation planning across the industry – specifically focusing on the emerging prevalence of Science Based Target setting across all scopes of carbon emissions. Also, a focus on leading performance indicators to support and encourage modal shift with the use normalised, comparable metrics across transport modes.

**Are there any other comments you would like to make?**

EMR welcome the ORR’s emerging position in this area and supportive of additional, aligned external assurance activity to move this agenda forward.

RSSB's response to  
The Office of Rail and Road's  
consultation on a Revised ORR  
Environmental Arrangements for Railway  
Licence Holders

For the attention of Daniel Brown, ORR Director, Economics, Markets & Strategy

26<sup>th</sup> October 2021 – V1.0 FINAL

## Foreword

This document provides RSSB's response to the ORR's Guidance on Environmental Arrangements for Railway Licence Holders. This response specifically considers:

- The proposed approach and content of ORR's revised Guidance on Environmental Arrangements for Railway Licence Holders
- The proposals for a process to improve the transparency and availability of environmental data in the rail industry
- Wider comments connected to the Environmental Arrangements for Railway Licence Holders.

RSSB has responded on the specific areas mentioned in the consultation; we have based our responses on the work we do supporting the industry through analysis, standard development and research.

## About RSSB

Through research, standards, and analysis RSSB helps its members deliver a better, safer railway. We develop technical and operational standards, provide analysis and insight into health and safety data, carry out research and promote sustainability principles.

RSSB plays an increasingly central role facilitating and overseeing work on sustainability in the rail industry. Over recent years this has focussed on decarbonisation, air quality and social value; with valuable research and standards development assisting to deliver the outcomes.

RSSB leads the GB rail industry's Sustainable Rail programme which is governed by the cross-sector Sustainable Rail Executive, which reports to the Rail Minister, RSSB Board and Network Rail.

Commissioned by Great British Railways Transition Team, RSSB is currently leading the co-creation of the Sustainable Rail Strategy, which will be an integral part of the Whole Industry Strategic Plan.

In addition, on behalf of industry we facilitate Standards Committees, System Interface Committees, groups that focus on safety and risk, and health and wellbeing, and the rail research and innovation programme. For more information about what we do see the RSSB website: <https://www.rssb.co.uk/>.

## 1. What changes are we proposing to our guidance?

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

1. RSSB understands the motivation and intent behind revising the Guidance on Environmental Arrangements for Railway Licence Holders. However, RSSB has real concerns about the timing and therefore potential effectiveness of any of the proposed changes being made.
2. ORR are right to be mindful of the Rail Transformation Programme being led by the DfT. This backdrop of significant, potentially profound, change to the rail industry - in particular the development and implementation of the Whole Industry Strategic Plan - will have a huge effect on the railway. Undoubtedly ORR will need to adjust its role in many other areas, not just these relating to sustainability.
3. In the consultation document the ORR state that you *'expect that delivering the changes in the industry set out in the Williams-Shapps Plan for Rail will result in changes to the industry's legislative and contractual framework'* and go onto remark that *'updating our guidance document now will help us to support the industry in creating useful and relevant environmental policies and practices'*. We disagree that these revisions will be materially effective in supporting industry by 'creating' these documents. On the contrary, it is RSSB's view that the industry will be confused and find these changes unhelpful. Better to allow the WISP and particularly the Sustainable Rail Strategy which forms a core part of WISP, to be finalised before ORR take the steps they propose. Having the benefit of WSIP and SRS will improve the quality of the intended changes by ORR.
4. Firstly, through requiring 'environmental' policies we feel this language hinders the industry understanding sustainability as a term, its broader scope, and the initiatives needed to address it in the future. To continue to reference solely the environment is to ignore the development of social sustainability, impacts upon people and how there needs to be a valuation placed on societal benefits from investments in rail. We find it in contrast to the concurrent ORR consultation on a Revised ORR Sustainable Development Policy Statement. In fact, we believe, though stand to be corrected, that this policy was previously named the ORR Environment Policy which recognised this maturation.
5. At paragraph 1.4 of the consultation document, ORR acknowledge that *'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'*. We find it an unmerited assumption that the industry does not already have environmental policies and practices. For example, environmental policies are a requirement of an ISO 14001 environmental management system accreditation which is a minimum requirement for Train Operating Companies.
6. 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 the

Department for Transport (or regional equivalent). Therefore, for Department for Transport contracted operating companies your proposed new requirements will represent a duplication of reporting effort and resource burden for them.

7. We would also like to point out that whilst 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.

## 2. Improving rail industry environment information

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

8. As set out within the representations made by RSSB to the parallel consultation on the ORR's sustainable development policy, data on sustainability performance will play a crucial part in baselining, as well as measuring the progress being made by the industry. There is a need for the industry to possess the capability to appropriately monitor and report its performance. This need will be met by the Sustainable Rail Data Framework currently being designed by RSSB in parallel with our work to define the Sustainable Rail Strategy.
9. Although the general need is acknowledged, RSSB disagrees with several aspects within the ORR's proposals for the reasons described below.
10. Paragraph 1.11 of the consultation document states;

*'We recognise the strong role RSSB is playing in the industry on a range of sustainability matters, including its report on measurement and target setting for net zero, and its carbon measurement tool'.*

However, ORR fail to also include in the consultation the fact that RSSB also already operate and manage on behalf of Department for Transport, an Environmental Data Tool. This tool is mandatory for operators contracted through the DfT to use to upload their environmental data, which covers a variety of environmental measures already. The exclusion of this information within the consultation means that the consultation does not reflect the current situation, missing a crucial part of the picture. In effect this is leading consultees to a conclusion that no environmental data collection is currently taking place. As stated above, this proposal will lead to duplication of reporting for a significant number of industry organisations.

11. RSSB are very happy to provide further information to ORR colleagues about the environmental data tool, its scope and application.
12. ORR describe how they *'hope to build on this [RSSB tools], complementing rather than duplicating their role..'* As set out in detail in the RSSB response to the parallel ORR consultation, and copied below for the avoidance of doubt, RSSB do not consider it at all appropriate for ORR to seek to step into this area.
13. In our representations from the parallel RSSB consultation response on the ORR Sustainable Development Policy we say:

‘Alongside the SRS development RSSB now have a funded project underway which will begin to provide the industry performance management capability needed to embed the SRS. This is known as the **Sustainable Rail Data Framework**. This Data Framework will provide the essential visibility of sustainability and has very significant potential to generate change. By giving the industry the capability to assess performance and track progress on the flagship goals and initiatives set out in the Sustainable Rail Strategy’

14. For the reason explained above, RSSB therefore disagrees with the following statement made by the ORR; *‘We think that the additional role that we can play for the rail industry in bringing together existing data, and publishing this at a greater level of disaggregation, reflecting our role as producer and publisher of official statistics’.*
15. Informed by the development of the Sustainable Rail Strategy, the **Sustainable Rail Data Framework** will be underpinned by the technical knowledge, expertise, and resources from within RSSB.
16. RSSB will deliver the framework to not only respond to environmental but also social sustainability needs. RSSB is experienced at working alongside industry stakeholders to develop approved solutions and this will be no different. RSSB will facilitate via our industry groups, notably the Sustainable Rail Leadership Group, applying our sustainability expertise to shape the requirement with our membership ensuring that it can be practically implemented.
17. The **Sustainable Rail Data Framework** will be designed to provide appropriate metrics, Key Performance Indicators, and defined reporting frequencies. As with previous tools, we will also facilitate cross industry implementation, and ongoing maintenance and development.
18. We will ensure that the functionality of the framework enables data to be presented in a high-level dashboard format as well as more detailed levels, meeting the needs of different audiences such as funders and relevant regional bodies. It will enable trends, benchmarking and baselining against the overall ambitions and targets that will be set out in the sustainable rail strategy. Ultimately it will be crucial to decision making in the future industry, giving GBR and its partners the capability to make well informed decisions on sustainability.
19. RSSB also question the limited scope of the proposed collection which would only look at environmental data *‘because it is outside the scope of the Environmental Matters licence condition and would require significant consideration and development with stakeholders’.* It is our view that by progressing with such a significant change in approach and role the ORR should reflect the ORR’s internal governance arrangements and seek to broaden ‘environment’ to ‘sustainability’ as a priority in seeking to implement new requirements on the industry. We do however recognise that this would require broader changes which are more onerous to implement.

20. In the proposal it is stated that these changes might support ORR '*activity that we anticipate may become necessary in future years, potentially including setting of targets, performance monitoring*'. RSSB believes ORR as regulator does not need to have this capacity and would be duplicating effort and a role that RSSB is presently already supporting the industry on. We do agree though with the potential for ORR to undertake to design and apply 'appropriate economic incentives' - we would welcome this and are interested to help ORR explore the approach to doing so.

### 3. Are there any other comments you would like to make?

21. RSSB welcomes the opportunity to share our feedback through this consultation.
22. We recognise that the proposals are clearly well intended, however we disagree that these are the most appropriate, effective approach, especially given the current timing (with rail reform gathering pace), the limitation that these are focused on purely environmental concerns and the broader fact, that RSSB is already the lead developer and has a project in motion to take on much of the role that ORR has identified in your consultation document.
23. There is and will continue to be a need for our organisations to work closely together. Particularly, in respect of regulation and the approach ORR can adopt to manage the mandatory reporting of those organisations outside of the remit of the Department for Transport, for example, Network Rail.
24. RSSB do see a potential role for ORR in this space of regulator and monitor of data collection and analysis to assure compliance. Our intention is that the ORR would be a recipient of the data and be able to fulfil its role as producer and publisher of official statistics in a similar way to how this is done for safety performance.
25. This approach would help to ensure that the ORR's role as the regulator does not hinder or inhibit data submission by organisations. We envisage RSSB being enabled as an independent industry technical body to collect data, analyse it, and share it with the ORR in a form that works for them, as well as allowing the industry to self-monitor and self-regulate as much as possible.
26. It is expected that ORR can set principles and expectations of the sector (in line with the Sustainable rail Strategy) which can be delivered through the enabling function RSSB provides (like our role in safety performance reporting).
27. Sector level oversight and regulatory burden on the ORR and the industry can be reduced by using tried and tested approaches which have worked well in standards and safety. Our organisations and teams need to work together on the right way forward.
28. For example, the agreement of the content of standards imposed via the licence conditions, is done via the RGS Code which is approved by the ORR and the standards manual which is approved by the sector. The Code sets the high-level

principles and obligations that the sector must adhere to and which RSSB ensures in its role in supporting collective decision making.

29. This mechanism allows the ORR to allow the sector to collaborate and set out how it would meet the regulatory expectations without an interventionist approach by the regulator. This has proved very effective and a similar approach for sustainability would ensure regulatory oversight and direction but leave the specific solutions and approaches to the sector to agree via an independent source of expertise and coordination in RSSB.
30. ORR would still retain the ability to pursue enforcement action where individual organisational performance does not meet expectations.
31. We welcome a further discussion with the ORR to develop and build on the governance models which have served safety and standards well, and create a proportionate, sector owned approach underpinned by independent expertise of RSSB based on principles set out by the ORR.
32. RSSB would like to thank the ORR for their continued involvement and support in the various workstreams in which they participate.

**END.**

# TfL response to the ORR consultation on a revised ORR Environmental Arrangements for Railway Licence Holders

26 October 2021



# TfL response to the ORR consultation on a revised ORR Environmental Arrangements of Railway License Holders

## Introduction

This document provides Transport for London's (TfL's) response to the Office of Rail and Road (ORR) consultation on a revised ORR Environmental Arrangements of Railway License Holders. The consultation summarises the ORR's:

- Proposed approach and content of the revised Guidance on Environmental Arrangements for Railway Licence Holders
- Proposals for a process to improve the transparency and availability of environmental data within the rail industry
- Wider information relating to the Environmental Arrangements for Railway Licence Holders

TfL has responded to the consultation in its role as integrated transport authority for London, responsible for the day-to-day operation of the Capital's public transport network and management of London's main roads, as well as responsible for meeting the Mayor of London's Transport and Environment strategies.

## TfL consultation response

### A – What changes are we proposing to our guidance?

#### Question 1: Do you agree with the proposed approach and content of our revised Guidance on Environmental Arrangements for Railway Licence Holders?

- 1) TfL welcomes the ORR's intent to help drive performance in the rail industry by revising the Guidance on Environmental Arrangements for Railway Licences Holders.
- 2) However, we are unsure, given the approaching changes that the Williams-Shapps Plan for Rail will have on "*the industry's legislative and contractual framework*" and consequently on yourselves, whether making changes to the guidance, in the short-term, would deliver an overall benefit to performance. We suggest waiting for the sustainability reforms to be implemented as part of the rail transformation programme.

- 3) It is unclear from your consultation documents how your proposed changes would impact TfL given its role in delivering the Mayor of London's Transport and Environment strategies. As such, we would welcome feedback on how the ORR would interact with us and the Mayor.

## **B – Improving rail industry environmental information**

### **Question 2: Do you agree with our proposal for a process to improve the transparency and availability of environmental data in the rail industry?**

- 4) We agree with the ORR that there needs to be an improvement in *“the transparency and disaggregation of environment data in the rail industry”*. However, we do not agree with your proposed additional role *“in bringing together existing data, and publishing it at a greater level of disaggregation”*. This is because, as stated in our response to your parallel consultation on the ORR Sustainable Development Policy, TfL is already working closely with the RSSB and the 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, we consider that this proposal may represent a duplication of work for an already resource constrained industry and would ask that the ORR work closely with the RSSB and DfT to ensure this is not the case.
- 5) We additionally suggest that the ORR could more usefully support the aim of *“improving the transparency and disaggregation of environment data in the rail industry”*, by further utilising your role as regulator in the future to monitor the data collected and assure compliance.

### **Question 3: Are there any other comments you would like to make?**

6. We welcome the steps ORR are taking to ensure they are leading by example and pushing the sustainability agenda forward in rail and road industries. We would like to offer our continued involvement and support in the various workstreams in which you participate.

## Contact

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## Response to ORR’s Consultation on ORR’s Guidance on Environmental Arrangements for Railway Licence Holders

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to [envguidance.consultation@orr.gov.uk](mailto:envguidance.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

Transport Scotland is pleased with the ORR’s work on the Guidance on Environmental Arrangements for Railway Licence Holders 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 considers it appropriate for the ORR to look to maximise this opportunity for review of the guidance and to be more explicit in its aims.

With this in mind, with regards to the following paras:

1.16 (e) - Freight operators do not currently publish environmental data on their websites but do refer to specific sustainability goals and aims such as reducing diesel usage.

1.18 We want to begin to bring together Network Rail and operator data to give a better picture of whole industry impacts on the environment, while avoiding any duplication in doing so. We recognise that freight operators cite concerns about commercial confidentiality issues linked to some datasets and also that better data may be used to criticise rail’s environmental performance in spite of its better performance against modes with less good data. We are **keen to explore** these issues further.

Transport Scotland would find it helpful if the ORR could be more explicit in what its goals are in this area, giving licence holders, Network Rail and Transport Scotland a clear view on its expectations.

In terms of data used/reported, it is important that the data available is of as high a standard as possible. ORR 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 it should be done in a way which, without manipulation of the data, shows the true environmental benefits of rail.

### **Improving rail industry environment information**

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

Transport Scotland agrees with the principle of transparency and availability of environmental data. Clear reporting of data is vital in understanding trends and progress against Government targets. However, the ORR cites improved data collection as part of its updated approach, including via this new publication: [Transport and Environment Statistics: 2021 Annual Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Within this report, Fig. 1 refers to “trains” and states: “Trains use the national rail conversion factor which aggregates diesel and electric rail.” As the dis-aggregated data is already available ([Rail Emissions 2020-21 \(orr.gov.uk\)](https://www.orr.gov.uk)), TS would ask that the ORR (and thus DfT) consider presenting this information broken down into EMUs and DMUs, and ideally to include freight data too.

This should help make the rail data more transparent, and more representative to a wider audience. It would also bring the data in line with road vehicles, where a distinction is made between petrol, diesel and electric cars.

Whilst there may be a reason the data has been presented in this way it sells short the environmental benefits of electric and independently powered traction (battery and hydrogen) which are expected to become a more popular form going forward.

**Are there any other comments you would like to make?**

The ORR should aim to encourage Licence holders to use sustainable practices in the delivery of their services. This would fall in line with its Guidance on Environmental Arrangements for Railway Licence Holders and the Sustainable Development policy statement.

The increases in the Network Rail (NR) price for traction electricity, driven by wider energy market changes, are causing some rail freight operating companies to convert some freight trains from electric to diesel haulage. We consider this the wrong outcome and we wish to avoid this backward step.

As the ORR is aware energy policy is a reserved matter, outwith the remit of Scottish Ministers. However, the UK Government has stated an intention *“to reduce the price of electricity over the next decade by shifting levies away from electricity to gas. A call for evidence is expected to be published with decisions made in 2022”* ([Plan to drive down the cost of clean heat](#)) and to *“Maximise carbon savings from the use of low carbon fuels, including by increasing the main Renewable Transport Fuel Obligation (RTFO) target.”* ([Net Zero Strategy, Oct 2021](#)).

The Scottish Government would echo this desire to move away from fossil fuels and to make far greater use of sustainable energy sources.

Therefore, we would ask the ORR to do all it can to prevent this backward step and to engage with Ofgem as a matter of urgency to identify immediate (and longer-term) solutions to ensure licence holders can continue to choose affordable and importantly sustainable non-diesel energy sources. We would expect this urgent engagement to be led through the “UK Regulators Network” as referenced on Page 5, Section 1.15?



## Response to ORR's Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders

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Please send your response to [envguidance.consultation@orr.gov.uk](mailto:envguidance.consultation@orr.gov.uk) by **9 November 2021**.

Please contact Ben Shaw at ORR with any queries: [Ben.Shaw@orr.gov.uk](mailto:Ben.Shaw@orr.gov.uk).

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\*This information will not be published on our website.

### What changes are we proposing to our guidance?

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

Yes

**Improving rail industry environment information**

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

Yes

**Are there any other comments you would like to make?**

VolkerRail Ltd welcomes the proposed approach and content of the ORR's revised Guidance on Environmental Arrangements for Railway Licence Holders and the process to improve the transparency and availability of environmental data in the rail industry, recognising the role of the RSSB and bringing together the industry approach.