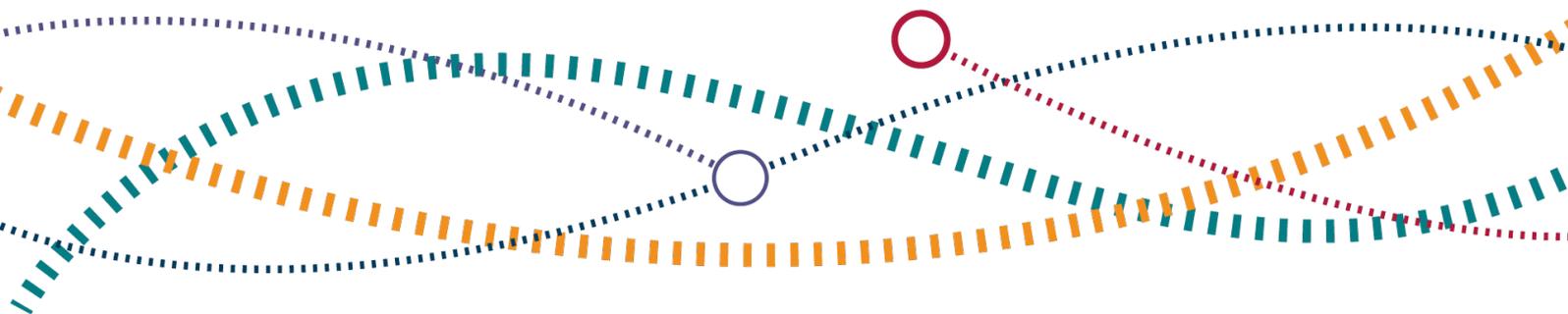




Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders

Proposals to update our environmental guidance to licence holders and improve whole industry environmental information

15 September 2021



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1. Guidance on Environmental Arrangements for Railway Licence Holders

- 1.1 Railway operators are licensed by ORR. All of our current [model licences in use](#) - railway undertaking licences (for passenger, freight, and charter passenger operators) and Railways Act licences (for passenger and non-passenger operators, station and depot operators and for those operating a network) - contain an “Environmental Matters” condition. The wording of this condition is the same for almost all licence holders, with very few variations.
- 1.2 The condition requires licence holders to put in place “environmental arrangements”, comprising a written environmental policy, operational objectives and management arrangements. These policies, objectives and arrangements need to take due account of ORR guidance, be reviewed periodically and be sent to ORR within six months of a licence being granted, and whenever updated.
- 1.3 The purpose of these obligations is to protect the environment from the effects of the activities of licensed organisations in rail. We provide guidance to licence holders to support and guide them on how they should deliver their obligations and to make our expectations clear.

What do we do now?

- 1.4 We receive descriptions of environmental arrangements from operators in line with their obligations. 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.

What changes are we proposing to our guidance?

- 1.5 Our covering letter to this consultation sets out the wider changes in context and legislation. In light of these changes, we want to update our environmental guidance. Although we 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, updating our guidance document now will help us to support the industry in creating useful and relevant environmental policies and practices.

- 1.6 We have considered whether to propose changes to the current licence condition in addition to the changes to our guidance. However, these changes would include areas which are currently outside the scope of the Environmental Matters licence condition – such as requiring licence holders to create a broader sustainable development policy rather than an environmental policy, or requiring that issues concerning weather resilience and climate adaptation are also addressed. Such changes would require significant consideration and development with stakeholders and with the [Rail Transformation Programme](#) ongoing, we do not think this is justified currently. Additionally, amending the condition itself is a longer process compared to changing our guidance to licence holders. This would delay the action we are seeking to implement, and there is much we can achieve with the industry without changing the licence condition. We also note that operators and owning groups often already have their own sustainable development policies which reflect their corporate position, and which sit alongside their policy to comply with their licence requirements. However, we will keep this under review depending on the progress made by the industry and developments in rail reform.
- 1.7 Our intended changes to our *Guidance on Environmental Arrangements for Railway Licence Holders* can be summarised as follows:
- (a) We have updated the language and references to reflect current environmental good practice. We have sought to do this in a way that means that the guidance should not go out of date quickly. We will signpost to more information on our website, which can be more readily updated to reflect development in this fast-changing area, rather than include it in the guidance itself.
 - (b) We appreciate that licence holders must ensure that their arrangements are consistent with the legislative and policy requirements of governments in the parts of Great Britain in which they operate and that devolved environmental requirements may vary (e.g. in relation to biodiversity in Wales, or earlier net zero targets in Scotland).
 - (c) We have updated our expectations around the provision of data. We have removed the annex on industry key performance indicators (KPIs) which specified the KPIs licence holders must supply or develop over time. Inclusion of KPIs in the guidance fixed them with any changes requiring consultation. Instead, we are proposing that licence holders engage with us and wider industry stakeholders to improve the breadth, quality and disaggregation of whole rail industry environmental data. We want to increase the transparency of information about rail environmental

performance. We intend to focus initially on what we can learn from the data that is currently available in the industry on key issues and will develop, through dialogue with the industry, from there. We will expect operators to provide data on issues for which they have a significant impact, rather than a 'one size fits all' approach. We have set out more about this below.

(d) In future we expect to provide feedback on the environmental arrangements we receive from licence holders. We may seek to use reputational incentives to encourage the industry to make further improvements in this area such as assessing and reporting publicly on the quality of environmental arrangements we receive.

1.8 We will expect licence holders to provide us with their updated environment arrangements aligned to our new guidance within six months of its publication. The current requirement that new licence holders shall provide us with their environmental arrangements within six months of their licence taking effect remains in effect.

1.9 A draft of our proposed *Guidance on Environmental Arrangements for Railway Licence Holders* can be found at Annex B.

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

Improving rail industry environment information

1.10 The key change we are proposing to the guidance is to improve the transparency and disaggregation of environment data in the rail industry. We are limiting this to environment data currently, rather than broader sustainability data, in line with the requirements of the licence.

1.11 We recognise the strong role that 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](#). We hope to build on this, complementing rather than duplicating their role and that we can work together with the industry to improve understanding of its environmental impacts.

1.12 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.

- 1.13 This will serve the following purposes:
- (a) help to demonstrate how the industry is performing in relation to environmental issues;
 - (b) help different funders and regional bodies get a better understanding of performance in their areas;
 - (c) enable analysis of trends over time; and,
 - (d) support activity that we anticipate may become necessary in future years, potentially including setting of targets, performance monitoring or appropriate economic incentives.
- 1.14 In its [Decarbonising Transport: A Better, Greener Britain](#), the Department for Transport (DfT) announced the launch of a new annual statistical release [Transport and Environment Statistics](#). The rail emission figures in this release are based on data collected and published by ORR. This highlights the importance of good quality data and the complementary roles of different bodies in this area. Our proposals are focused on the rail industry while DfT's are on intermodal comparisons.
- 1.15 We anticipate that the ability to make good quality intermodal emissions comparisons for both journeys and infrastructure development is going to need to grow in the coming years. Our proposed focus is rail data but where appropriate we will work with industry and governments to enable the development of complementary and comparable environmental data across modes, reflecting the specific requirements in England, Wales and Scotland. We will also continue to work with the UK Regulators Network on these issues to support a consistent, best practice approach with other regulated sectors where possible.
- 1.16 There are various requirements on the industry to collect and supply environmental data but the resulting data is not necessarily readily accessible, available in one place, complete, comparable or at a useful level of disaggregation. Current data sources we have identified are set out below.
- (a) Currently we publish a [Rail Emissions annual statistical release](#). This covers energy consumption of electricity and diesel and provides estimates of total and normalised Carbon Dioxide equivalent (CO₂e) emissions from traction energy for passenger and freight operators at the national level. Data is not published by individual operators. Non-traction emissions are not included.

- (b) Requirements on public sector operators to collect and supply environmental data to the DfT have increased over time in franchise agreements, the recent Emergency Recovery Management Agreements (ERMAs) and subsequent agreements now being introduced. The data operators are required to supply varies across individual agreements. [ERMAs](#) include an 'Environmental Impact Monitoring Dataset' which includes the environmental measures of traction and non-traction energy, carbon emissions (scope 1, 2 and embodied), water, waste, environmental management systems. The granularity and regularity of reporting for each measure is also specified along with requirements for these operators to publish this data on their website in 'widely accessibly forms'.
- (c) Public sector operators publish some of this data on their websites, which is available for different time frames such as the most recent period or year. The amount of data varies by operator, and generally includes traction and non-traction (stations and offices) carbon emissions and percentage of waste recycled. Generally though this data does not track changes over time e.g. year-on-year comparisons are not readily available.
- (d) Network Rail publishes environmental data through its [annual return](#), including energy consumption, Scope 1 and 2 carbon emissions, waste management, and carbon footprint reduction targets. It has also developed a new key performance indicator suite with new measures which it is working to implement internally.
- (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.
- (f) The [National Atmospheric Emissions Inventory](#) publish estimates of greenhouse gas emissions and air quality for rail. These estimates do not come from industry data provided directly but uses ORR's published emissions data and DfT data.
- (g) Government provides [guidance for businesses on measuring and reporting environmental impacts](#) some of which, depending on the size and type of company, contains mandatory requirements which may affect rail operators. This guidance includes:
 - (1) [Environmental reporting guidelines: including Streamlined Energy and Carbon Reporting and greenhouse gas reporting](#);

(2) [Guidance on measuring and reporting greenhouse gas emissions from freight transport operations.](#)

1.17 We think that there are benefits in seeking to bring together this industry data on key issues where rail has a significant environmental impact. This includes issues such as:

- energy use,
- carbon emissions,
- progress towards net zero and zero carbon,
- air pollution,
- resource use,
- water consumption,
- use of environment and energy management systems,
- improving biodiversity, and
- operator engagement with their supply chains on environment.

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.

1.19 In taking a proportionate approach we will:

- (a) where data is already available elsewhere we will use and signpost this rather than duplicating requests for the same data to licence holders;
- (b) focus on securing data where there are the biggest environmental impacts;
- (c) expect provision of data and its quality to gradually improve over time reflecting the relative lack of maturity and differing methodologies for environmental data; and

- (d) continue to have appropriate regard to issues of commercial confidentiality.
- 1.20 We are aware of the extensive work that RSSB has done in relation to environmental data and that it has proposals for more work in this area. With reference to our criteria under our sustainable development policy we want to ensure that our approach in this area does not duplicate work that RSSB is already doing with the industry. This includes data that RSSB are collecting through their online Environmental Reporting Tool.
- 1.21 We propose to run an ongoing process to improve the availability of whole-industry environmental performance data. This would be a structured process in which we work collaboratively with the industry to identify environmental data measures on an annual cycle which we will then publish in a suitable form. It would be similar to the process we use to request and refine data metrics from train operating companies on [Core Data compliance reporting](#) (linked to consumer issues such as complaints handling and accessibility).
- 1.22 To develop new environmental data requirements, we would follow our agreed annual process of:
- (a) developing our proposals and consulting on them with industry;
 - (b) holding workshops with appropriate operators depending on focus of issue;
 - (c) after the workshops, issuing guidance with agreed methodologies and definitions; and
 - (d) a data collection template (or other submission process) would be agreed, and then issued to operators for completion and submission of data in the following year.
- 1.23 We will keep the extent of industry engagement with this process under review, and this may inform our approach to environmental issues as part of our role in implementing industry reform. Should it be necessary we may seek to extend our powers in this area.

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

Responding to this consultation

We are [consulting publicly](#) on this proposed revised *ORR Guidance on Environmental Arrangements for Railway Licence Holders* for eight weeks between 15 September and 9 November 2021. Our related [Consultation on a revised ORR Sustainable Development Policy Statement](#) is running in the same period.

- 1.24 We invite views from stakeholders on the revised documents, consultation questions and wider issues raised by the consultation.
- 1.25 Please respond in electronic form to envguidance.consultation@orr.gov.uk or by proforma at <https://www.orr.gov.uk/media/22738>.
- 1.26 We plan to publish all responses to this consultation on our website. Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes.
- 1.27 In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
- 1.28 If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.
- 1.29 Following the consultation, we will publish:
 - (i) our consultation conclusions including final impact assessment; and
 - (ii) a final revised version of the *Guidance on Environmental Arrangements for Railway Licence Holders*.

Annex A: Proposed Revised Guidance on Environmental Arrangements for Railway Licence Holders

The text below is our proposed revised Guidance on Environmental Arrangements for Railway Licence Holders.

Introduction

1. This guidance applies to all licensed railway operators. These are the passenger and freight train operators holding railway undertaking licences; and the operators of networks, passenger and non-passenger trains, stations, and light maintenance depots, holding licences issued under the Railways Act.
2. As a licence holder, you are required under your “Environmental Matters” obligations to have a policy designed to protect the environment from the effects of your licensed activities. You must also establish supporting objectives and management arrangements to give effect to your policy. Together these three elements of a policy, objectives and management arrangements are referred to as the “environmental arrangements”.
3. This guidance is intended to assist you, as a licence holder, in fulfilling your environmental obligations and to contribute to the objective of environmental protection and improvement. Further information can be found on [ORR’s Sustainable Development webpages](#).
4. We will monitor the environmental arrangements and data we receive from licence holders. We will use this to better understand the environmental impacts, priorities and progress of the rail industry and inform our regulatory activity in this area.

General requirements

5. Good environmental performance – that is identifying, managing, reducing and ideally eliminating your environmental impacts on an ongoing basis – is an integral part of running a high-quality railway and should be embedded in all your activities. Your environmental arrangements - an environmental policy, operational objectives

and management arrangements - must therefore be established within six months of your licence coming into force.

6. You should send a copy of your environmental policy to licensing.enquiries@orr.gov.uk, along with a summary of the supporting objectives and management arrangements to ORR when you first establish them, and also when you make material changes to them.
7. Existing licence holders should review and update their environmental arrangements within six months of this guidance being published and send a copy of them to ORR.
8. You should review your environmental arrangements regularly and keep them up to date, for example, to respond to changes in your own activities and developments in policy, technology and scientific evidence on the environment or relevant changes in legislation.
9. Our expectation is that as a licence holder you commit to continual improvement of your environmental performance. We expect you to identify and address your most significant environmental impacts. Your environmental targets should be consistent with governments' environmental policy objectives and legislative requirements, in particular, that of achieving net zero carbon emissions in Scotland by 2045 and the UK by 2050, and related interim targets.
10. Licence holders may choose to also reflect wider sustainable development or climate resilience issues in their policies to us.

Guidance – our expectations of licence holders

11. Condition 10: Environmental Matters of your licence¹ requires you to establish “environmental arrangements” comprising:
 - (a) a written environmental policy;
 - (b) operational objectives; and
 - (c) management arrangements.
12. Developing and maintaining an environmental management system helps an organisation to identify, manage, monitor and control environmental issues and

¹ This condition number may differ for some licence holders. Alternatively, if your licence was not issued under the Railways Act, your Environmental Matters condition will be found in the corresponding Statement of National Regulatory Provisions.

embed them in ongoing management and operational processes. You may therefore find the development and accreditation of an Environmental Management System based on BS EN ISO 14001:2015 and Energy Management System based on ISO 50001:2011 (their updates or equivalents) an effective way to put your environmental arrangements into effect.

Your Environmental Policy

13. Your environmental policy should be readily available on your website and set out your commitment to:
 - comply as a minimum with any relevant environmental legislation in the part or parts of the country that you operate, recognising that environmental legislation is largely devolved;
 - do business in a way that prevents, mitigates or remedies the adverse effects of railway operations on the environment;
 - continual improvement in your environmental performance in the light of new technology and best practice; and
 - provide reasonable support to industry initiatives to improve environmental performance and contribute to a sustainable railway, including:
 - participating in processes to develop and specify new industry environmental data; and
 - collecting and supplying this data to ORR to allow better whole-industry environmental performance to be reported.
14. The commitments in your environmental policy can be expressed concisely – one or two pages is acceptable – and will be more meaningful if they:
 - are linked to specific and demonstrable activities, which are documented publicly and accessibly, rather than general aspirational statements;
 - include sign-off by a named director accountable for the policy's delivery; and
 - include a policy review date, for example, on an annual basis.

Your Environmental Objectives

15. Your environmental objectives and any associated improvement targets should be SMART – that is Specific, Measurable, Achievable, Realistic and Timebound, and

wherever possible quantify the scale of any improvements planned and the associated timescales. They may usefully cover:

- meeting current legal requirements, or meeting them more effectively;
- anticipating future changes to legal requirements, to ensure compliance by the time they come into effect;
- implementing initiatives in areas not covered by legal requirements, but which would improve environmental performance;
- implementing best practice, whether from the rail industry or other sectors;
- training, staff briefings or communications generally on environmental issues; and
- working with others to identify and share best practice and to develop and implement cross industry environmental initiatives.

16. In setting objectives and targets you may wish to:

- identify and link your objectives to your most significant environmental impacts;
- consider how you can contribute to governments' environmental policy objectives, both generally and those specific to rail, especially but not exclusively, in regard to decarbonisation and achieving net zero;
- consider your own environmental impacts and also those of your suppliers, particularly in relation to carbon emissions, for example, through adopting Science Based Targets² for your own and your suppliers' activities.

Your Management Arrangements

17. Your management arrangements may usefully cover:

- which director is responsible for environmental issues and how they, and other staff, are made aware of their responsibilities and the governance arrangements for managing these commitments;
- how you ensure environmental issues are properly considered and integrated into all decision-making processes, e.g. investment, new projects and day-to-day activities;

² [Science-based targets](#) provide companies with a clearly-defined path to reduce emissions in line with the Paris Agreement goals.

- your liaison arrangements with environmental regulators, other industry bodies and other stakeholders (including environment agencies, ORR, the Department for Transport, Transport Scotland, local authorities, the Rail Safety and Standards Board, and other duty holders);
- how you handle environmental issues that impact on passengers or the public; and
- how you monitor and report your environmental performance and progress against your objectives.

What we will do

18. We may review the individual environmental arrangements we receive based on this guidance and may give general feedback to the licence holder on areas we think could be improved. It should be noted while we may review the environmental arrangements of licence holders, we do not formally approve them. We welcome early sight of these documents so that we can provide feedback before they are finalised.
19. We may make available the latest version of your environmental arrangements on our website at www.orr.gov.uk and we also expect all licence holders to publish their policy on their own websites
20. We may also review the environmental arrangements we have been sent either as a whole or grouped by, for example, particular types of operator or how specific environmental issues are addressed by operators. This will consider the environmental arrangements overall content, adherence to the guidance and areas for improvement between different licence holders. We will publish the conclusions of any review with the aim of promoting good practice across the industry and improved environmental performance.

Environmental Data

21. ORR wishes to see a step change in the availability of rail industry environmental data.
22. Good quality, readily available and appropriately disaggregated data are crucial in helping the industry and its stakeholders understand its performance and progress towards environmental objectives. Improved data will promote transparency, accountability and can inform any future policy or regulatory and industry activity.
23. Given the evolving nature of environmental measures and the fact that operators may have differing levels of data maturity and ability to supply data, we expect this to

be an ongoing process of development. As such we do not specify measures or frequency of reporting in this guidance but we do place an expectation on licence holders to provide data in a timely manner.

24. We will run an ongoing process with licence holders and industry partners to develop improved industry environmental data. Based on an annual cycle we will work with operators to develop and refine an environmental dataset which enables better whole-industry environmental performance to be reported. This will include identifying measures which over time may cover some, or all, of the following areas and others that may become appropriate:
 - (a) energy consumption, carbon emissions and progress towards net zero including data for traction and non-traction/operational, infrastructure and embodied emissions;
 - (b) air quality and diesel pollution reduction;
 - (c) water;
 - (d) waste and resource use;
 - (e) noise;
 - (f) adoption and accreditation of environmental and energy management systems; and
 - (g) understanding and improvement of biodiversity.
25. We expect that the majority of, if not all, data will be capable of being published on our website. However, where appropriate we will take into account legitimate concerns around commercial sensitivity and other relevant exemptions for disclosure, including those established through dialogue with affected operators.
26. We will keep this process, in particular the extent of industry engagement with it, under active review.

Annex B: Draft impact assessment

Date: September 2021

Stage: Draft for consultation

Section 1: The issue

1. The wider sustainable development and environment legislative and policy context has changed significantly over the last few years, e.g. targets in net zero legislation, new biodiversity legislation and government policy. ORR is updating its sustainable development policy statement and related guidance on environmental arrangements for railway licence holders. This is to bring these documents up to date and reflect the current context. We set this out in more detail in the covering letter to our consultation.
2. Licence holders are required under the “Environmental Matters” condition of their licence to have a policy designed to protect the environment from the effects of their licensed activities. These must also establish supporting objectives and management arrangements to give effect to their policy. Together these three elements of a policy, operational objectives and management arrangements are referred to as the “environmental arrangements” which the licence holder must send to ORR. Currently, we take a light-touch approach. We do not provide feedback on them or assess the quality of these documents or how they work to support environmental outcomes.
3. Through our guidance to licence holders we require provision of two KPIs from operators. From these KPIs ORR currently publishes GB level statistics for the industry on energy consumption and the resulting estimated carbon emissions (separately for passenger and freight). There are some further environmental data available in the industry (e.g. for public sector passenger operators) but this is not held in one place. We consider this level of data availability may impede the industry and its stakeholders in understanding the extent of the industry’s impact on the environment and the ways that this can be addressed and impact the ability to make decisions in future.

Section 2: The objectives

4. Our objectives are to:

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

Section 3: The options

Option 1: Do nothing

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

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

- 6. This option is to update our documents to reflect the environmental good practice and the current legislative and policy context, but also make small changes to our policy approach to give better effect to the outcomes that governments wish to see. The policy changes we propose are:
 - Policy change 2A: Update the requirements around provision of data to establish an industry process to gradually improve the quality, range and transparency of data in the industry;
 - Policy change 2B: Establish an expectation that ORR will provide feedback to licence holders on their environmental arrangements including potentially, at an appropriate juncture, through use of reputational incentives created through public reporting.

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

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

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

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

8. Rail reform legislation will result in changes to the industry structure and roles, and this includes that of ORR. Through this it is likely and appropriate that ORR's role, duties and powers in relation to sustainable development and resilience issues will be revised and refreshed. Under this option we would defer any changes in our policy until after rail reform has taken effect.

Section 4: Option assessment

Option 1: Do nothing

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

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

10. This is our preferred option. Policy changes 2A and 2B both contribute to meeting all four of our objectives. In particular it best reflects objective (a) because we will be using the powers that we currently have to greatest effect, rather than seeking to amend the licences at this time.

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

11. We consider this policy change meets objective (a) "support governments' environmental objectives" because the industry will need a clearer understanding of how it is delivering key government objectives, such as progress towards net zero in CP7 and beyond. This proposal supports gaining better information. We have identified that most carbon emissions estimates for rail traction are based on ORR's published statistics for the industry and as such it is important that we work to continuously improve the quality and scope of this data.

12. Objective (b) “clear and up-to-date guidance” is met because we will be updating the guidance to reflect current best practice and the current legislative and policy environment.
13. This policy change risks failing to meet objective (c) “not unduly burdensome” as it places additional requirements on the industry. However, we consider that it does meet this objective for the following reasons:
- Legislation is increasingly placing requirements on companies to report environmental data. For example, the [Streamlined Energy and Carbon Reporting](#) requirements means that all companies over a certain size must report on their emissions and energy use. We intend to take a proportionate approach and focus our efforts on what data is currently available and to prioritise areas where there is clear government direction and / or a clear and significant impact from rail.
 - We propose to work in dialogue with the industry to develop our approach in this area, starting initially with what we can learn from the data that is currently available and agreeing the areas of biggest impact with industry. An alternative approach would have been to independently develop a set of requirements. We recognise there will likely be a range of views and methodologies in the industry, and we expect to need to provide leadership in this area but wish to work through the issues in a prioritised way. We recognise the strong role that RSSB is playing in the industry on a range of sustainability matters. We hope to build on this complementing rather than duplicating their role and that we can work together with the industry to improve understanding of its environmental impacts.
 - We have highlighted that we will have appropriate regard to any commercial confidentiality issues when considering how we publish data.
14. Objective (d) “avoid perverse outcomes” is also at risk under this option, however again we consider that our approach means that our proposal has appropriately mitigated this risk.
- There is a risk of potential perverse outcomes in this area e.g. that if rail information is more transparent and disaggregated in comparison to information for other modes (e.g. road, aviation, maritime) then this could have the effect of unduly worsening the appearance of rail as a mode, which may or may not be the case – this will be difficult to establish if we are unable to compare appropriately with different modes. We will work across our rail and road functions, and also with Department for Transport, Transport Scotland, Transport for Wales and other regulators to improve

the comparability of information. We will also ensure that we take a proportionate approach to the data we collect and what we share.

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

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

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

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

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

21. This option does not meet objective (a) “support governments’ environmental objectives” or objective (b) “clear and up-to-date guidance” because it does not result in a timely regulatory response to the changing context and legislative and policy context. It also does not meet objective (c) “not unduly burdensome” because it does not reflect that there is considerable activity and impetus in the industry currently, and we consider that we can work constructively with the industry through the existing

licence condition. It also reflects that ORR can do more than it currently is under the existing licence condition. However, we will keep this under review and if necessary seek further powers in future if we do not see an appropriate response from the industry.

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

22. This option primarily fails to meet objective (c) “not unduly burdensome”. We understand that many licence holders already have sustainable development policies (e.g. as a consequence of their contractual arrangements or as good corporate governance). Similarly, climate and weather resilience issues are frequently core safety and operational imperatives and therefore it is unlikely that the industry requires any further push from ORR on these issues (although we are keen to see joint working on these where possible between Network Rail and its customers in particular). We will encourage licence holders to give consideration to these issues when producing their policies and wider management arrangements.

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

23. Again, this option does not appear viable under objective (a) and objective (b) given the rate of change in the context of sustainable development and environment policy. Rail reform may take some years to take effect, whereas we consider that ORR needs to take action now to support the industry in making a step change on environment.



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