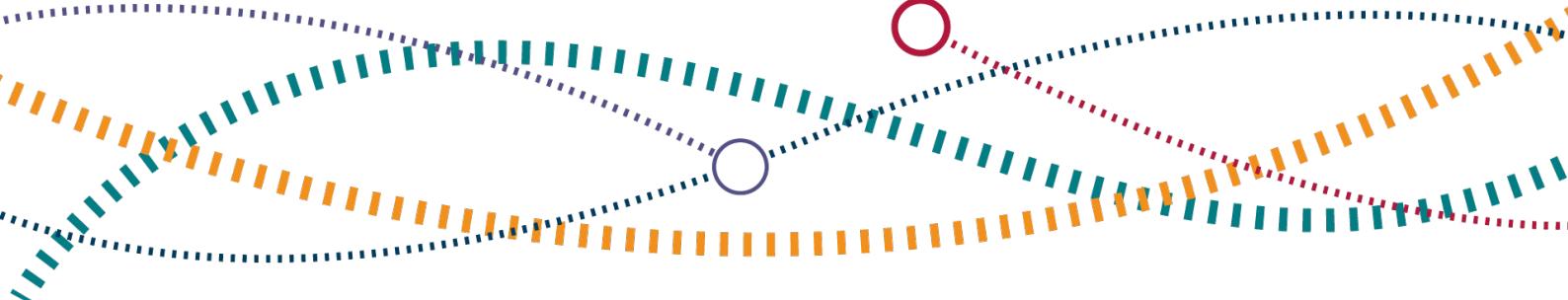




Consultation on a Revised ORR Sustainable Development Policy Statement

15 September 2021



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1. Updating ORR's Sustainable Development Policy Statement

Introduction and background

- 1.1 Our Sustainable Development Policy Statement is intended to provide transparency on our approach to the delivery of our duties on sustainable development. It states our policy, its aims and how we will put it into practice.
- 1.2 We are updating our Sustainable Development Policy. In this consultation document we summarise the context and background to our policy, including the statutory duties we have in this area and the changes we are proposing to the policy. The proposed revised *ORR Sustainable Development Policy Statement* is given in Annex A.
- 1.3 ORR has different roles, functions, duties and powers across the rail and road sectors and these vary across the nations of the UK. This means that there is no 'one size fits all' approach that we can take as an organisation. The policy is intended to signpost the activity that we undertake rather than to explain detailed policy which may change over time.
- 1.4 Given our functions, duties and powers, the primary impact that we can have is in the way that we regulate and monitor in roads in England and rail in the United Kingdom¹. Our sustainable development policy also covers our corporate activity.
- 1.5 As a regulator we undertake activity that addresses all three dimensions of sustainable development: economic, social and environmental. These reflect our various functions, powers and duties under the Railways Act 1993 (as amended), the Infrastructure Act 2015 for roads and other relevant social and environmental legislation, such as the Equality Act 2010. Our overall rail and road duties are given on our [website](#) and we summarise our broad areas of sustainable development activity in the box below:

¹ ORR has a rail function across the UK, In Northern Ireland we act as the appeal body, control the network statement and monitor the competitive situation of rail services. In Great Britain our rail role is broader. We are the economic regulator for railway infrastructure and the health and safety regulator for the rail industry as a whole and the industry's consumer and competition authority.

Our sustainable development activity

Economic activity

- In rail, we consider economic efficiency and incentives across rail, including holding Network Rail to account for what it delivers for the funding it receives and assessments of its financial spending and delivery of efficiency targets. We also set economic incentives for the rail industry such as access charges.
- In roads, we monitor National Highways' (formerly known as Highways England) delivery against the funding it receives across a range of KPIs and other deliverables.

Social activity

- In rail, we have specific roles in relation to consumer protection and accessible travel. We oversee obligations which sit in the licences that we grant to Network Rail and train companies, and in general consumer law, we publish an [annual rail consumer report](#) setting out all of our work in this area and have created an [Accessible Travel Stakeholder Forum](#).
- In roads we monitor National Highways against its performance outcome areas of 'Improving safety for all' and 'Meeting the needs of all users'.
- As a public body, ORR [has duties under the Equality Act 2010](#). We're committed to the principles of diversity and equality: both as an employer, and as a safety and economic regulator. In accordance with the Equality Act 2010, we have specific and measurable targets that we work towards and report on.

Environmental activity

- In rail, we require all licensees to produce an environment policy; we work with organisations that we regulate to understand their environmental plans and their progress against them, with particular focus on Network Rail reflecting the specific requirements in England, Wales and Scotland. We hold Network Rail to account for its sustainable development and environment plans and activity by holding quarterly liaison meetings with them. Our regulated contractual framework includes clauses covering environmental protection. We have also established liaison meetings with relevant environmental authorities to promote better understanding of environmental issues in rail. We publish a set of [official statistics relating to rail emissions](#) from passenger and freight train operators.

- In roads, we monitor National Highways against the specific requirements for environment in the Road Investment Strategy 2 (RIS2) including reducing the impact of noise on households in noise important areas, achieving no net loss of biodiversity by the end of road period 2 (RP2 April 2020 to March 2025), bringing air quality levels into compliance in the shortest possible time, and reducing corporate carbon emissions.

The external policy context

- 1.6 The UK is committed to the delivery of the [Sustainable Development Goals](#) and has embedded them in the planned activity of each government department. For transport, actions contributing to the Goals given in [DfT Outcome Delivery Plan: 2021 to 2022](#) include:
 - Improving connectivity across the UK and growing the economy by enhancing the transport network, on time and on budget.
 - Building confidence in the transport network as the country recovers from COVID-19 and improving transport users' experience, ensuring that the network is safe, reliable, and inclusive.
 - Tackling climate change and improving air quality by decarbonising transport.
- 1.7 The [Rail Sustainable Development Principles](#) were published in 2016. Developed by the industry with stakeholder input, they set out a strategic vision for sustainable development. They are being built on in development of the Sustainable Rail Strategy being led by RSSB, as part of the 30-year whole industry strategy called for in the [Williams-Shapps Plan for Rail](#).
- 1.8 As set out in our covering letter to this consultation, the area of sustainable development is a continually evolving space with new legislation and policy being developed both for the UK as a whole, and for England, Wales, Scotland and Northern Ireland.
- 1.9 This is particularly true of environmental policy and legislation. Environment is a largely devolved responsibility, which means that each nation in the UK has its own legislation and policy approach that reflects the particular priorities and local conditions for that nation. Legislative and policy developments include:

- (a) The Climate Change Act 2008, which was amended in 2019 to introduce a UK 2050 target for net zero. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 sets a net zero target for Scotland of 2045;
 - (b) The Environment Bill (UK Government) 2020 applying to England, Wales (limited) and Northern Ireland is intended to: set up an Office of Environmental Protection to provide scrutiny and advice to public bodies on environment, and place requirements on government to set legally binding targets on environment for air quality, water, biodiversity and resource efficiency and waste reduction; and
 - (c) In Scotland, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 establishes a new regime of environmental governance in Scotland, including Environmental Standards Scotland to ensure the effectiveness of environmental law, and prevent enforcement gaps arising from the UK leaving the European Union.
- 1.10 In delivering our existing duties we will have to consider these developments and any new the duties they may place on us.

Our role in roads

- 1.11 In roads our role is in England. National Highways (formerly known as Highways England) was formed in 2015 along with the Highways Monitor role which ORR undertakes. As well as a focus on the performance and efficiency of National Highways, our duties include having regard to the environmental impact of the way in which HE achieves its objectives. [Highways England's Licence](#) makes reference to sustainable development including that the 'The Licence holder must develop and implement strategic plans that demonstrate how, in meeting its legal duties and other obligations, it aims to support and promote sustainable development...'
- 1.12 We deliver this duty through our monitoring of National Highways' performance outcome area of 'Delivering better environmental outcomes' of the Road Investment Strategy 2 (RIS2) which includes KPIs for noise, biodiversity, air quality and National Highways' corporate carbon emissions. We report on this through our [annual assessment](#).

Our role in rail

- 1.13 ORR is both an economic and safety regulator in rail, and our role varies across the United Kingdom and with the organisations that we regulate. Our rail roles

include enforcing safety legislation, licensing activity and other economic regulation. We primarily regulate Network Rail, but also have a role in licensing operators (passenger, freight, stations and depots, as well as the network licence for Network Rail and other infrastructure managers such as Core Valley Lines and others). We also regulate HS1 Ltd against the requirements set out in a 30-year concession agreement. In rail we have a duty to contribute to the achievement of sustainable development and to have regard to environment in exercising our functions.

- 1.14 There is already strong activity in the rail industry in response to the changes in the wider context. Network Rail has recently produced a strong set of strategy documents and is working to implement these with its regions; RSSB is coordinating production of the Sustainable Rail Strategy on behalf of the industry and is supporting this with a number of technical workstreams aimed at moving the industry forward; operators in both the passenger and freight industries and Network Rail are working with the supply chain on commercial and technical solutions to environmental challenges; all of this is being supported and steered by national governments.
- 1.15 On environment and sustainability we hold Network Rail to account for its environmental commitments and delivery, require train operators to have environmental arrangements in place to address their environmental impacts which we provide guidance on, collect and publish environmental data and can include environmental issues in our periodic reviews.
- 1.16 On social sustainability we have specific roles on consumer protection and accessible transport. We publish an [annual rail consumer report](#) that focuses on how the rail industry supports accessible travel, as well as other services such as complaints handling, passenger information, ticket retailing and passenger rights. ORR has been proactive in developing new Accessible Travel Policy (ATP) Guidance for train and station operators for ensuring policies include commitments for helping older and disabled passengers. We have also created an [Accessible Travel Stakeholder Forum](#) to provide advice on accessibility issues and explore opportunities to further support accessible travel.

Our criteria for our rail regulatory role

- 1.17 We will need to place increasing prominence on environment and sustainable development issues across all our functions. We also want to support the rail and road industries to address current and future sustainable development challenges. However, we need to discharge our powers in the right way, at the right time, to

support (and not frustrate) action by Governments, and industry. This applies particularly in rail where our role is more extensive than in roads. We have therefore developed the following criteria to guide prioritising new activity in this area:

- (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 issueand 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).

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

Our corporate activity

- 1.18 ORR consists of approximately 325 employees, spread across our six offices in London (head office), Birmingham, Bristol, Glasgow, Manchester and York. Our main corporate environmental impacts are through use of our offices and travel to meetings or site visits by our employees.
- 1.19 We report on our sustainability and environmental performance in our [Annual Report and Accounts](#) and cover greenhouse gas emissions, energy consumption, waste and resource use. As a public body we are subject to the UK Government's Greening Government Commitments which are currently being updated for 2021

to 2025; we will report as part of Department for Transport Group and continue to include data in our Annual Report and Accounts.

- 1.20 We do not own our own buildings and land; we currently rent space in existing offices and therefore have limited control over how those buildings are managed. However, we do work closely with our landlords on measures such as waste, water and energy management.

What changes are we proposing to our policy?

- 1.21 Our proposed revised *ORR Sustainable Development Policy Statement* is given in Annex A. In summary, we are proposing updating the policy so that it:
- (a) Covers all of ORR's activities as an organisation (which has changed over time) bringing us in line with the expectations we have of the organisations we regulate. This includes our regulation and monitoring of rail and road respectively (not just Network Rail) as well as our internal corporate activity – we have highlighted that we therefore cannot have a detailed 'one size fits all' policy;
 - (b) It states ORR's commitment to supporting delivery of the UK and devolved governments' sustainable development policy objectives;
 - (c) It indicates a stronger ambition of 'achieving a step change in sustainable development outcomes'; and commitment to 'continual improvement in sustainability and environmental performance' for ORR and the industries we regulate;
 - (d) Commits to a stronger embedding and integration of ORR sustainable development policy in all ORR's policies and processes including regular policy review and senior level accountability for delivery of the policy;
 - (e) Includes the criteria set out above for prioritising new rail activity on Sustainable Development and Environment;
 - (f) Indicates staff will receive appropriate briefing to understand how our internal processes and regulatory activities incorporate sustainable development and environmental objectives and their role in delivery of these;
 - (g) Highlights that our corporate risk register and biannual horizon scanning processes will be used to identify and initiate action on emerging sustainable development issues, threats and opportunities;

- (h) Indicates that 'The board will ensure that it has access to appropriate expertise to provide scrutiny and challenge across the breadth on sustainability issues'.
- 1.22 As our new policy is intended as a signposting document we consider that the direct impact on stakeholders is minimal. Where detailed policy decisions are made that impact on stakeholders we will carry out a regulatory or equality impact assessment for that policy.

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

Responding to this consultation

- 1.23 We are [consulting publicly](#) on the proposed revised ORR Sustainable Development Policy Statement for eight weeks between 15 September and 9 November 2021. Our related [*Consultation on ORR's Guidance on Environmental Arrangements for Railway Licence Holders*](#) is running in the same period.
- 1.24 We invite views from stakeholders on the revised document, consultation questions and issues raised in the consultation covering letter. Please respond in electronic form to sustdev.consultation@orr.gov.uk or by proforma at <https://www.orr.gov.uk/media/22737>.
- 1.25 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.
- 1.26 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.
- 1.27 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.

1.28 Following the consultation, we will publish:

- (i) our consultation conclusions; and
- (ii) a final version of the *ORR Sustainability Development Policy Statement*.

Annex A: Proposed Revised ORR Policy Statement on Sustainable Development

The text below is our proposed revised ORR Policy Statement on Sustainable Development.

ORR Policy Statement on Sustainable Development

Introduction

1. This policy statement applies to how we incorporate sustainable development principles in delivering our regulatory functions and external monitoring for rail and road respectively, as well as our internal corporate activities and processes. It sets out our approach to fulfilling our specific duties on sustainable development. We have a number of duties in this area and these are increasing over time with new legislation.
2. For rail, our statutory duties under section 4 of the Railways Act 1993 (as amended) include:
 - to ‘contribute to the achievement of sustainable development’; and
 - in exercising our core functions to ‘have regard to the effect on the environment of activities connected with the provision of railway services’.
3. In rail, we also have a duty to have regard to any general guidance given to ORR by the Secretary of State and Scottish Ministers. This general guidance can place specific sustainable development requirements on ORR.
4. For roads, our duties are from the Infrastructure Act 2015 which gives us functions in relation to monitoring and enforcing as Monitor for National Highways (formerly Highways England) and a duty to have regard to:
 - the environmental impact of the way in which National Highways achieves its objectives.
5. We are subject to other duties as a public authority; the coverage of these varies across the UK, Great Britain and the devolved nations, for example, the Public Sector

Equality Duty applying across Great Britain and specific biodiversity requirements in Wales.

6. Our different powers and duties in relation to rail and road affects the degree to which we can shape sustainable development outcomes in our regulated sectors. This will be reflected in our implementation of the policy and allocation of resources across our internal and external activities.
7. This ORR policy statement is intended to provide a framework to allow us to respond to this agenda as it develops and, in a manner, appropriate to our functions, duties, powers and resources and wider policy and industry developments.

Our policy on sustainable development

8. We are committed to supporting the delivery of the UK and devolved governments' sustainable development policy objectives.
9. Our ambition is to support a step change in sustainable development outcomes through the exercise of our regulatory functions, to support the industries we regulate and to behave consistently with these policies as an organisation.
10. We will contribute to these objectives through:
 - (a) Use of our regulatory powers and influence to work to develop a more sustainable rail and road network as part of a sustainable transport system;
 - (b) ORR's internal corporate action on sustainable development, including supporting delivery of our [Greening Government Commitments](#).
11. We will seek to exercise our regulatory powers to be consistent with, and supportive of, governments' sustainable development policies and objectives. In particular, we will focus our efforts on areas where there are clear legislative requirements and policy direction and funding from governments. We will reflect the requirements of legislation and policy in the different nations of the UK.
12. We will seek to use our regulatory powers to achieve continual improvement in sustainability and environmental performance to the extent it is appropriate to do so. We will work to ensure compliance with legal obligations as a minimum in our regulated sectors but beyond this where it is proportionate and in line with governments' policy to do so. We will consider how to deliver the best sustainable development and environment outcomes in our decision making across the range of our regulatory toolkit, including:

- statistical publications on our data portal;
 - our broader monitoring and reporting with bodies we regulate and any action we take to secure improvements;
 - our licensing activity;
 - our approach to setting economic incentives; and
 - our approach to consumer protection, including inclusive, accessible travel.
13. Similarly in carrying out our duties to regulate health and safety on Great Britain's railways, we will continue to have regard to sustainable development and environment issues in how we carry out these activities.
 14. We will also apply this principle of continual improvement to our internal policies and our own sustainability and environmental performance.
 15. 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.
 16. We will continue to report publicly in our Annual Report and Accounts which we submit to Parliament, and on our website, including data on our performance against our Greening Government Commitments and industry performance.
 17. This policy, its objectives, and management arrangements used to put it into operation will be kept under review and amended as we consider appropriate.
 18. ORR's Chief Executive Officer is accountable for the delivery of the policy.

Putting our policy into practice

In how we work with the rail and road industries

19. We will implement our policy on sustainable development according to regulatory best practice. This will involve:
 - (a) reflecting and integrating our sustainable development policy into our policies and processes across ORR;
 - (b) working across our rail and road functions within the context of our differing duties, functions and powers in these industries;

- (c) working in partnership with funders and industry stakeholders;
 - (d) taking into account the varying legislative and policy requirements across governments in Great Britain; and
 - (e) contributing to the work of the UK Regulators' Network (UKRN) to share best regulatory practice, including on net zero and climate change.
20. In rail, ORR considers its role is to build on and complement work being done by the industry and government on sustainable development and environment in line with the following criteria:
- (a) **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**: 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 issueand to ORR's priorities and resources in delivering its broader functions.
 - (c) **effective**: to enable us to help governments achieve their goals;
 - (d) **additional**: to other bodies (DfT, Transport Scotland, Network Rail, RSSB, environment agencies, local authorities), and not duplicating effort; and
 - (e) **aligned**: to ORR's strengths as an organisation (e.g. monitoring, efficiency, design of economic incentives).

In our corporate operations

- 21. We will continue to develop our processes and activities to deliver our Greening Government Commitments and report on progress against them.
- 22. In making formal decisions about ORR's corporate actions we will consider the impact of them on our Greening Government Commitments (and wider sustainability issues as appropriate) and aim to maximising the sustainability benefits we can deliver.
- 23. We will raise awareness with ORR staff about how our internal processes and regulatory activities incorporate sustainable development and environmental

objectives, and the important role all our staff play in delivering the objectives of this policy.

24. We will continue to use our corporate risk register and biannual horizon scanning processes to identify and initiate our response to emerging sustainable development issues, threats and opportunities relevant to ORR and/or the industry.
25. The ORR Board will ensure that it has access to appropriate expertise to provide scrutiny and challenge of our activities across the breadth of sustainability issues.

Signed by [CEO name]
Chief Executive Officer, Office of Rail and Road



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