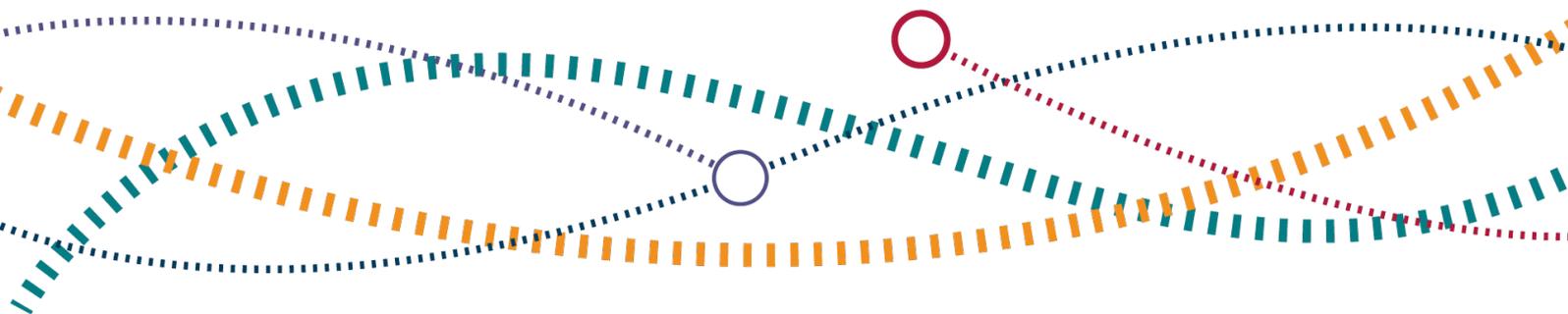




Biodiversity and Resilience of Ecosystems Duty – plan and report 2021

Report under Environment (Wales) Act 2016 Part 1 - Section 6

01 September 2021



Introduction

- 1 The Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty (the Section 6 duty) for public authorities in the exercise of functions in relation to Wales. The Section 6 duty requires that public authorities must “seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions”.
- 2 The Office of Rail and Road (ORR) falls within the definition of public authority under the terms of the Environment (Wales) Act and we are required to produce a report on our performance in relation to the biodiversity duty under Section 6. We meet this duty alongside our other statutory [duties](#), set out primarily in the Railways Act 1993. The report focuses on our approach to biodiversity and the exercise of the ORR’s statutory functions in relation to Wales in the period from 2016 – June 2021. Reflecting guidance from the Welsh Government that the reporting duty is not designed to be burdensome, our report is proportionate to the size and type of our organisation, with regard to the action for biodiversity we can carry out.

The railway in Wales

- 3 Network Rail’s Wales Route links the major towns and cities of Cardiff, Newport, Swansea, Wrexham and Shrewsbury, as well as providing connectivity in more rural areas. The route is part of the wider Wales and Western Region.
- 4 The Core Valley Lines network was transferred from Network Rail to Transport for Wales on 28 March 2020.
- 5 Most passenger rail services in Wales Route are operated by Transport for Wales and Great Western Railway. CrossCountry and Avanti West Coast also operate passenger services between Wales and the rest of Great Britain. Rail freight services are also very important, moving various commodities, particularly steel on the South Wales Main Line within Wales and beyond.

Our approach to regulating biodiversity

- 6 ORR is both an economic and safety regulator, our role varies across the United Kingdom and with the organisations that we regulate. We regulate the rail industry’s health and safety performance, we hold Network Rail and High Speed 1 to account, and we make sure that the rail industry is competitive and fair. We are also the monitor of National Highways (formerly known as Highways England) and we have economic regulatory functions in relation to railways in Northern Ireland and the UK section of the Channel Tunnel.

- 7 For the purposes of the Environment (Wales) Act 2016, under the reporting guidance set out by the Welsh Government, we consider ourselves to be a “Group 2” organisation. Although we do not own any land in Wales and do not have offices or carry out land management in Wales¹, our teams are active on the ground in Wales across all our regulatory activity. As such we are an organisation:
- whose functions are connected with biodiversity and/or land management, and
 - we can influence those who own or manage land.
- 8 ORR does not act as an environmental regulator for rail – in Wales this activity is undertaken by Natural Resources Wales. However, both our safety and economic regulatory roles in Wales provide us an opportunity to positively influence biodiversity. The primary way in which we can deliver against the requirements of the Environment (Wales) Act is through holding Network Rail to account for its management of the rail network and lineside in Wales. We provide further detail of the activity we undertake that may have an impact on biodiversity below.
- 9 ORR has a sustainable development policy which is currently being updated and will be publicly consulted on later in 2021. Our next report in 2022 will reflect any updates to this.

Rail reform

- 10 The [Williams-Shapps Plan for Rail](#) was published in May 2021, setting out a vision for the future shape of the rail industry. This included consideration of the environmental impact of rail, with ambitions for improvements in biodiversity being highlighted.
- 11 ORR is working with a range of stakeholders in the rail industry as a whole regarding implementation of the Plan for Rail. In doing so we will consider the impact of any structural changes to respective industry roles, including our role as regulator, and how this may enable us to better support biodiversity amongst other environmental impacts.

ORR activity in relation to biodiversity

- 12 The most relevant Nature Recovery Action Plan objectives for the purposes of this report are:

¹ We have six offices – in London (our head office), Birmingham, Bristol, Glasgow, Manchester and York

- objective 1: engage and support participation and understanding to embed biodiversity throughout decision making at all levels;
 - objective 4: tackle key pressures on species and habitats; and
 - objective 6: put in place a framework of governance and support for delivery
- 13 When undertaking our regulatory functions, we undertake a variety of activity on both a cyclical and targeted basis which encompasses or is linked to biodiversity issues as set out below:

Scrutinising Network Rail's management of the network

- 14 In Wales we have a safety role in relation to both the network (including lineside) and passenger and freight operating companies. We provide guidance, publish reports on performance, carry out inspections, investigate breaches of health and safety regulation on the railways and take informal and formal enforcement action including improvement notices and prosecutions. Our safety role is not focused on issues such as biodiversity except where an issue may also breach health and safety legislation. In dispensing our safety role we take account of the wider obligations of any duty holder, and work in partnership as needed with other relevant bodies such as Natural Resources Wales.
- 15 We also hold Network Rail to account for its broader management of the rail network in Wales, where it is a large landowner. This includes reviewing its performance across a range of areas such as financial efficiency, operational performance and asset management. It is through this latter activity in particular that we focus on environmental issues such as biodiversity, with a particular focus on the lineside.
- 16 We hold Network Rail to account for the plans and activities that it is funded to deliver within each five year rail funding period. We work closely with it to understand any additional plans and aspirations in this area, and ensure that Network Rail is appropriately managing any concerns of key parties such as Natural Resources Wales. We regulate Network Rail through our day-to-day engagement with its central and regional teams regarding their activity and plans for management of the network and biodiversity. We publish an annual assessment of Network Rail's activity [here](#); this includes a specific chapter on Wales.
- 17 We recognise that it is a balancing act for Network Rail to safely manage the network while also managing the impact on biodiversity. These factors have the potential to come into tension if not carefully managed, for example regarding the management of lineside vegetation. We support Network Rail in making the most efficient choices

which support the safe operation of the network, its other legal requirements, its operational imperatives and the reasonable requirements of its stakeholders.

- 18 Through our regular quarterly meetings with Network Rail's central lineside team we have been working to understand its plans and activity on biodiversity, including how biodiversity is being integrated into standards and processes in this discipline. Network Rail has been proactive in this area. It has published a [biodiversity report for Wales](#). It also has a [Biodiversity Action Plan](#) for its work across Great Britain, which commits it to the key goal of no net loss in biodiversity on our lineside estate by 2024, moving to biodiversity net gain by 2035. This is a core plank of its wider [Environmental Sustainability Strategy](#) and development of environmental KPIs. We are currently monitoring Network Rail's implementation of its biodiversity plan primarily through its central team.

Llangennech derailment

In August 2020 the Llangennech derailment resulted in contamination due to spilled fuel. As we highlighted in our Annual Assessment, working in partnership with Natural Resources Wales and specialist environmental contractors, Network Rail's frontline teams worked around the clock on one of the biggest environmental recovery projects Network Rail has ever been involved with, described by Natural Resources Wales as the most challenging since the Sea Empress disaster in 1996.

The derailment resulted in the temporary closure of the Swansea District Line and the southern section of the Heart of Wales Line for seven months, impacting on the Wales route's freight performance as freight and passenger services were diverted to other lines. The Wales route demonstrated strong engagement with stakeholders in the immediate aftermath of the derailment, during the environmental recovery, and through the restoration of the railway. The route provided regular and targeted updates to a diverse group of stakeholders, including local authorities, community councils, emergency services, other agencies and other rail organisations. This is commendable, particularly in light of the pandemic's challenges. The line was reopened to traffic in early March 2021.

ORR attended the site in our safety role. While our immediate priority was on the safety consequences of the incident, we worked in close cooperation with Network Rail and other authorities, including Natural Resources Wales on the environmental impacts; in carrying out this role we are always mindful of the other duties that infrastructure managers / rail operators have, even if we do not have a direct role in them meeting those duties.

- 19 We engage with both Network Rail and Natural Resources Wales to understand perspectives around key issues in Wales. This has raised live issues such as design of bridges (to protect against bridge scour, while also protecting biodiversity) and the need to protect coastal habitats from coastal squeeze, and how this is funded.
- 20 In addition to the above, we work with all rail parties to ensure that exposures to diesel engine exhaust emissions and noise are within limits set out in health and safety legislation, which may also have the potential to positively impact biodiversity.

Licensing activity

- 21 We require all licensees (infrastructure managers like Network Rail and Core Valley Lines, and passenger and freight train operators) to produce an Environment Policy and publish these on their websites.
- 22 We are currently updating our guidance on licensees environment policies and are reviewing our approach, with a consultation due later in 2021. Through this we will be seeking to take a more proactive role on reviewing and providing feedback to licensees on the policies they produce. We will keep this under review through the industry reform process.

Periodic review activity

- 23 Under the current industry arrangements, every five years we undertake a 'periodic review' of Network Rail's funding and the outputs that funding is to deliver. Our activity here includes assessing Network Rail's plans, setting outputs, making efficiency assessments and setting charges and incentives for operators accessing the rail network. This provides opportunities for us to encourage focus on biodiversity and wider environmental issues (e.g. ensuring that funding is sufficient to meet legislative requirements, and that plans for operating, maintaining and renewing the network take appropriate account of biodiversity issues).
- 24 We have just commenced our [periodic review 2023](#) (PR23) and which covers the five years from 2024-2029. As part of this review, we will review how Network Rail has factored biodiversity into its asset management plans in all regions, including Wales.

Authorisation of new infrastructure / rolling stock

- 25 We have a role in relation to authorisations of new infrastructure or rolling stock. Authorisation is in the main about compliance to technical specifications. The specifications include parameters associated with certain essential requirements and one of those is Environmental Protection. More information about authorisations can be found [here](#).

Wider industry engagement

26 In addition to the above we also engage with industry stakeholders in the delivery of our duties including on environment and sustainability. This includes with the [Railway Safety and Standards Board](#) (RSSB) activity on environmental issues, under the framework provided by their Rail Sustainable Development Principles. RSSB has an extensive programme of activity which seeks to improve environmental outcomes for rail. Similarly we engage as appropriate with Rail Delivery Group and Rail Freight Group on environmental issues.

Review of our approach to our s6 duty

27 Through production of this report we have reviewed our approach to our s6 duty. The key issues highlighted are:

- (a) Our forthcoming update of our sustainable development policy statement and our guidance to licensees on their environmental policies both provide an opportunity to improve our approach to biodiversity issues in Wales and the rest of Great Britain. We can use this opportunity to highlight and reinforce the requirements in Wales;
- (b) Our holding to account activity is already established in this area, but we will seek to supplement this at a regional level through our regular meetings with Network Rail's Wales and Western Region;
- (c) The forthcoming review of Network Rail's funding (periodic review 2023 or PR23) provides an opportunity for ORR to scrutinise Network Rail Wales and Western Region (and specifically, Wales Route) plans for biodiversity further to ensure that biodiversity is specifically highlighted in our review; and
- (d) Industry reform provides an opportunity to review and refresh industry roles including on environmental issues such as biodiversity requirements in Wales.



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