

Dear Stakeholder,

## **Consultation on *Holding Highways England to account* – ORR’s monitoring framework and enforcement policy for Highways England**

We are consulting on an updated monitoring framework and enforcement policy for Highways England ahead of the start of the second road investment strategy (RIS2).

We last consulted on our [monitoring framework](#) and [enforcement policy](#) in 2015, when we first took on our role as Highways Monitor. Overall the framework and policy have worked as intended, but we are taking the opportunity to review and update both documents, drawing upon our experience of monitoring Highways England during the first road investment strategy (RIS1), and in preparation for the second road investment strategy, which is expected to start in April 2020.

ORR holds Highways England to account by monitoring its management of the strategic road network (SRN), and taking escalating or enforcing action where this falls short. We capture our monitoring, escalating and enforcing approach in our  *Holding Highways England to account*  policy.

### **The changes we are proposing:**

#### **Combining our monitoring framework and enforcement policy**

During RIS1 we have had a separate [monitoring framework](#) and [enforcement policy](#) for Highways England. These documents set out how we monitor Highways England, and how and when we might use our statutory enforcement powers.

We are proposing to bring our monitoring framework and enforcement policy together into a single document titled  ***Holding Highways England to account*** , which sets out how we monitor Highways England’s performance, and how we identify, escalate and resolve areas of concern. Our intent is to create a simpler, streamlined document which is more accessible to Highways England and our stakeholders. We are seeking views on whether you agree with this approach.

#### **Focusing on early resolution**

During RIS1 we have adopted a staged approach to the escalation of performance issues with Highways England. This allows us, working with Highways England, to agree actions

and implement plans to resolve issues early, without having to rely on statutory enforcement action. We intend to continue with this approach in RIS2 and have set out our activities and the tools available to us in a distinct stage in our policy titled “investigation and early resolution.” Our revised policy places greater emphasis on escalation to resolve issues early.

Some of the tools available to us within this stage, such as requiring Highways England to develop or engage with us on improvement plans, are tools that we have used in RIS1 and intend to retain. However we are proposing to introduce ORR hearings as a new tool in our policy. For example, we may choose to hold a hearing between ORR and Highways England as part of an investigation into an aspect of the company’s performance, and where this might assist us in gathering evidence or exploring issues further. We are seeking stakeholders’ views on the inclusion of hearings within our policy.

## **Fines**

Under the Infrastructure Act 2015, we have the power to fine Highways England if we find it is contravening or has contravened compliance with the RIS or with its Licence. Highways England is a government-owned company, which receives public funding to carry out its activities. This means that if we impose a fine, Highways England must use part of its funding to pay the fine to the Secretary of State, who will then return it to the consolidated fund, government’s central bank account.

Given Highways England’s public sector status, we must give careful consideration to the use of fines. We are proposing to make it clearer that we consider the use of fines should always be a last resort.

But fines can also play an important role in incentivising Highways England because of their reputational impact. Our current enforcement policy sets out indicative scales for fines as a percentage of Highways England’s average annual funding. In RIS1, this means that a fine for the most serious contravention could be as high as £25m. Highways England’s funding will increase in RIS2, meaning that if we retain this approach, the indicative scales for fines would increase further.

Wherever possible, we want to avoid a situation where a fine results in money being taken out of the business that would otherwise be spent on Highways England’s day job – operating the strategic road network. As a result, we are proposing to remove indicative scales for fines as a percentage of Highways England’s funding, and instead, consider setting fines at a level that enables Highways England to fund them from resources that would otherwise be used for management remuneration.

**Responding to this consultation:**

We invite all stakeholders to comment on our proposed policy by **5pm on Friday 14 February 2020**. The list of questions on which we are seeking stakeholders' views is set out below, along with guidance on how to respond to the consultation.

We will publish our revised policy after we have taken your feedback into account.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Richards', is positioned above the printed name.

Graham Richards

## **Annex 1: Summary of consultation questions**

We would welcome stakeholders' responses on the following questions relating to the content of our draft policy,  *Holding Highways England to account*. Where you do not agree, we would be grateful if your response can set out why.

### **Combining our monitoring framework and enforcement policy**

1. Do you agree with our approach in setting out a single document covering our monitoring framework and enforcement policy?

### **Focusing on early resolution**

2. Do you agree that we should focus on early resolution to resolve issues wherever possible?

3. Do you agree with our proposal to include hearings as a tool in our policy?

### **Our approach to fines**

4. Do you agree that a fine should always be a last resort?

5. Do you agree that we should seek to avoid taking money out of the business that would otherwise be spent on operating and maintaining the network and, where appropriate, consider setting fines at a level that enables Highways England to fund them from management remuneration?

### **Responding to this consultation**

We invite stakeholders to comment on our proposals by **5pm on Friday 14 February**.

Please submit your responses to [highways.monitor@orr.gov.uk](mailto:highways.monitor@orr.gov.uk)

We plan to publish all responses to this consultation on our website. This may include your personal data such as your name and job title.

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. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. 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.

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.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our **privacy notice** which sets out how we comply with the GDPR and DPA.

### Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation;
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above).

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our **privacy notice**.

### Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.