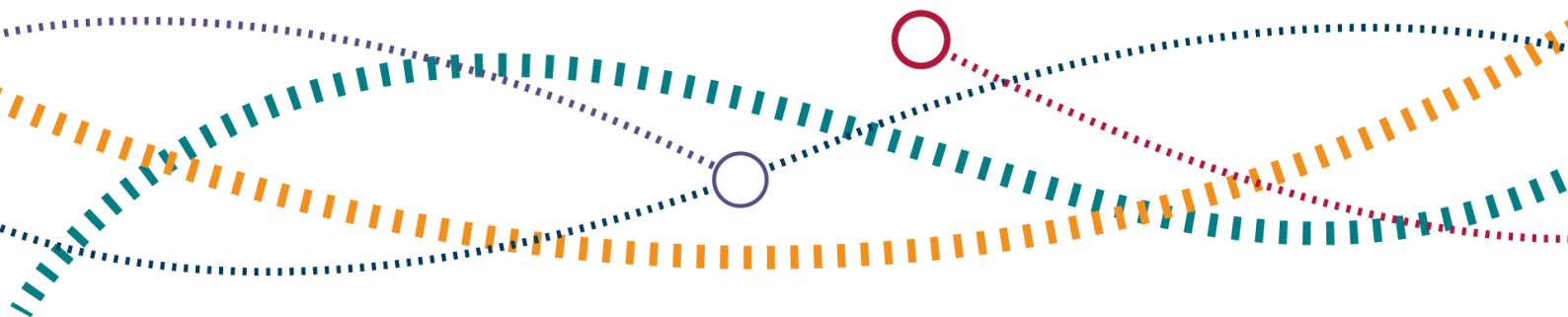




Holding National Highways to account policy

Consultation on ORR's approach to holding National Highways to account from 2025

01 August 2024



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Executive Summary

- 1.1 ORR is an independent, non-ministerial government department. We have regulatory and enforcement powers, set out in legislation, to hold National Highways to account to ensure that it manages, operates and improves the strategic road network (SRN) in England efficiently and effectively on behalf of road users and taxpayers.
- 1.2 The role was established under section 10 of the [Infrastructure Act 2015](#) ('the Act') as one of the key parts of Roads Reform, to drive performance, efficiency, accountability and transparency in National Highways.
- 1.3 We carry out our regulatory activities in line with our statutory duty to be transparent, accountable, proportionate, consistent, and to target our activities only at cases where action is needed (section 12(3) of the Act).
- 1.4 We have powers under the Act to investigate and report on National Highways' activities and to take enforcement action if we conclude that the company is not compliant with the [road investment strategy \(RIS\)](#) (section 3 of the Act) set by government or not compliant with (or not having regard to) any statutory directions and guidance issued to it by the Secretary of State (including those directions and guidance referred to as National Highways' [licence](#)) (section 6 of the Act). Enforcement action includes the power to issue notices and/or fines to the company (section 11 of the Act).
- 1.5 Our [holding to account policy](#) is a public facing document that sets out our approach to these matters.
- 1.6 We published the first version of our holding to account policy in 2015. It was updated and re-issued in [2020](#). Five years have passed since that refresh of our policy. This is an appropriate juncture to reflect on the effectiveness of that policy, seek stakeholder feedback and review it to ensure that it reflects regulatory good practice and is fit for the future.

Policy intent

- 1.7 Our approach to holding National Highways to account is outcomes-focused, and forward-looking. We seek to identify risks – or work with the company on risks it has identified and raised with us – and resolve issues in the early stages, rather than waiting until things go wrong to act. This approach is intended to protect and

minimise disruption to road users, ensure efficient spend of taxpayers' money and protect wider communities affected by the SRN.

- 1.8 Our holding to account policy is intended to encourage and support the right behaviours in National Highways. It is used to maintain positive and constructive engagement and to recognise where performance is good, as well as identifying and prioritising action on where targets are at risk and/or the company can improve.
- 1.9 Given this, we are not proposing to substantially revise our approach, in particular our investigations and enforcement processes. The core structure of the existing policy is robust and proportionate. However, we are almost ten years into our role, and we want to use this opportunity to engage with stakeholders on our approach. In particular to understand whether our role as set out in the document is clearly understood and if not, where clarity could be improved.
- 1.10 This consultation seeks views on three areas where we propose to clarify our role and improve transparency as to how we target our role to help drive performance and efficiency across National Highways' wider activities. These are:
- (1) ensuring that the existing document is appropriately structured to make sure that it is transparent to stakeholders how we apply the principles set out in the Act to hold National Highways to account to deliver the RIS and directions and guidance;
 - (2) being clearer on how we achieve an outcomes-based, forward-looking and strategic approach to delivering the intent of Roads Reform; and
 - (3) setting out why and when we gather information from stakeholders, including how we work with other government departments and regulatory bodies with overlapping enforcement powers.

Our proposals

- 1.11 To address the areas identified, we are proposing the following changes to our policy:
- (1) headlining how we use the better regulation principles in practice;
 - (2) ensuring our policy clearly reflects ORR's role in Roads Reform, the full scope of our powers and how we use those powers to deliver better outcomes for taxpayers and road users; and

- (3) providing clarity as to how we engage with National Highways, other regulatory bodies and stakeholders.

1.12 The policy document will also be refreshed to remove any outdated references.

How to respond

1.13 Responses to these proposals are invited by 26 September 2024. If possible, please submit your response via the [online response form](#).

1.14 If you would like to write to us:

- emails should be sent to: highways.consultations@orr.gov.uk .
- Or postal responses to:

ORR consultation: “Holding to National Highways to account policy”,
Office of Rail and Road,
25 Cabot Square,
London, E14 4QZ.

1.15 In addition to the consultation questions we have set out in this document, we also invite any general feedback on our proposals.

1.16 ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. The text is available in full on the ORR website and may be freely downloaded. Individuals and organisations can use Adobe Reader accessibility features or screen readers with this document.

1.17 If you need this document in a different format such as large print, easy read, audio recording or braille, please contact our Public Correspondence Team via:

- email: webteam@orr.gov.uk
- telephone: 020 7282 2000
- postal address: ORR consultation: “Holding to National Highways to account policy”, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ.

1.18 We intend to publish all responses to this consultation on our website. Should you wish for any information in your response 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.

1.19 If you are making response in confidence, please clearly mark this as such and annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

2. Introduction

- 2.1 ORR is an independent, non-ministerial government department. We have regulatory and enforcement powers, set out in legislation, to hold National Highways to account to ensure that it manages, operates and improves the strategic road network (SRN) in England efficiently and effectively on behalf of road users and taxpayers.
- 2.2 The Infrastructure Act 2015 sets out our role to:
- ensure that National Highways is delivering the road investment strategy (RIS) and the wider commitments made through directions and guidance, to publicly report our findings and to advise the Secretary of State;
 - seek improvements and potentially levy a fine (together, 'enforcement') where we have concerns about National Highways' ability to deliver its requirements; and
 - advise the Secretary of State on any other relevant issues.
- 2.3 While our role is defined at a high level through the Act and memorandum of understanding with DfT (the [MoU](#)), much of what we monitor is set out in the performance specification and investment plan sections of the RIS, and in Highways England's Licence. We also monitor delivery of National Highways' plans as set out in its strategic business plan (SBP) and delivery plan. We monitor compliance with the Licence partly through monitoring compliance with the RIS, and carry out investigations into other areas of Licence compliance as appropriate.
- 2.4 Our role was created as part of the package of policy and legal change known as 'Roads Reform'. Its key features were:
- established a new, long-term RIS, setting out a clear vision and a stable, long-term plan and funding for the network;
 - created the government-owned strategic highways company (now National Highways);
 - put in place a robust system of governance for National Highways. Ministers set the strategic direction for the SRN and the company has the autonomy to run the network on a day-to-day basis;

- created new roles for Transport Focus and ORR to represent the interests of road users, hold National Highways to account for its performance, ensure the company continues to run the network in the public interest and to drive the performance and efficiency of the company; and
- a single legal framework to provide a strong foundation and put highways investment on a stable footing similar to other sectors.

2.5 Our holding to account policy is our published statement on how we apply the principles in the Act to our approach to holding National Highways to account for its performance and delivery. This includes how we identify, escalate and resolve areas of concern. Section 12 of the Act requires us to have regard to:

(2)

(a) the interests of users of highways,

(b) the safety of users of highways,

(c) the economic impact of the way in which the strategic highways company achieves its objectives,

(d) the environmental impact of the way in which the strategic highways company achieves its objectives,

(e) the long-term maintenance and management of highways, and

(f) the principles in subsection (3).

(3) The principles are that —

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and

(b) regulatory activities should be targeted only at cases in which action is needed.

2.6 Our holding to account policy includes our approach to enforcement. The policy encompasses early intervention and resolution, investigations and hearings, and enforcement notices and fines.

DfT's role

2.7 DfT is responsible for setting the RIS. We provide advice to the Secretary of State mainly in the form of our efficiency review as to whether National Highways' proposed plans are challenging and deliverable. It is also responsible for varying

the RIS if required (supported by advice from ORR). Once the RIS is finalised we monitor the company's delivery of it.

2.8 The Secretary of State also issues statutory directions and guidance to National Highways as to the manner in which it is to exercise its functions. At present the only directions and guidance issued are in the form of the company's licence, setting out government's broader expectations and requirements of the company. We hold the company to account to comply with its licence and can use our holding to account powers to ensure that it does so (and also complies with any other directions and guidance issued by the Secretary of State) and require remedy for non-compliance if it does not.

2.9 DfT and Treasury can issue guidance to us on how we undertake our statutory activities (section 13 of the Act). It has issued one set of [guidance](#) to us. We also have the [MoU](#) with DfT.

Objectives for our refresh of holding to account.

2.10 Our current policy has been in effect since 2020. In line with good regulatory practice, we review our policies regularly to check their ongoing relevance, applicability and comprehensiveness.

2.11 We are almost ten years into our role, and we want to use this opportunity to engage with stakeholders on our approach. This consultation seeks views on three areas where we propose to clarify our role and improve transparency as to how we target our role to help drive performance and efficiency across National Highways' wider activities.

2.12 The objectives of this refresh are to:

- check clarity of detail on how we use the principles set out in legislation to guide our holding to account activities;
- improve transparency on what our role involves and what powers we use and how we work with National Highways to hold it to account;
- provide transparency in how we approach holding to account for matters that are issued as directions and guidance; and
- remove any outdated references or information that is no longer relevant to how we discharge our duties.

2.13 Our intention is to publish the revised holding to account policy in spring 2025.

3. Holding to account: reviewing our policy approach

Proposals

3.1 From our review of our existing holding to account policy and how it has functioned through the first two road periods, we have identified three areas where we propose to improve clarity, transparency and how we target our engagement with National Highways on its wider activities. These are:

- (1) how we apply the principles set out in the Act to deliver our approach to holding to account for National Highways performance;
- (2) clarity on the benefits delivered from ORR taking an outcomes-based, forward looking and strategic approach to our role; and
- (3) why and when we gather information from stakeholders, including working with regulators with overlapping enforcement powers.

3.2 To address the areas identified, we are proposing the following changes to our policy:

- (1) headlining how we use the better regulation principles in practice;
- (2) ensuring our policy clearly reflects ORR's role in Roads Reform, the full scope of our powers and how we use those powers to deliver better outcomes for taxpayers and road users; and
- (3) providing clarity as to how we engage with National Highways, other regulatory bodies and stakeholders.

3.3 The changes we are consulting on in this paper are incremental. We are not proposing wide-ranging revisions; but optimisation of existing approaches. We do not plan to make any changes to how we undertake investigations or take enforcement decisions.

3.4 To aid comparison, the existing policy document map and proposed policy document map can be found in section 4.

Providing transparency on how we use the better regulation principles in practice

- 3.5 Our principles for holding to account are designed to demonstrate how we assess National Highways' performance against the RIS, its licence obligations and any other statutory directions or guidance issued to it under the Act.
- 3.6 The Act sets out the principles for how we should approach holding National Highways to account against these requirements. How we use those principles is set out in our existing policy, and will remain a core part of the policy going forwards:

Requirements of the Act	Putting the principles into practice
Transparent	We clearly set out our analysis, our decisions and the reasons for them.
	We consult on and publish our key policies and keep them under review to ensure they remain fit for purpose.
	Being transparent means helping National Highways to understand what is expected of it and what it should expect from us. We are proactive in being open about the measures we are taking.
	We promote greater transparency on the part of National Highways in its operations and plans.
Proportionate	This means focusing on those aspects of National Highways' activities that are most important for stakeholders.
	As a general principle, we focus our resources and priorities on sustained failure to deliver outputs, or on individual events of material significance, rather than one-off minor failures. However, we will consider where one-off failures may form part of a wider systemic failure and consider action where appropriate.
	In other cases, examples may include the significance that we attach to National Highways missing a deadline or target may be influenced by the impact it has on road users, government and other relevant stakeholders. This list is not exhaustive.

Consistent	This means, as far as possible, taking a similar approach in similar circumstances to achieve similar ends.
	We do this through the application of published policies and agreed processes. In deciding on a course of action we have regard to any statutory guidance issued to us by the Secretary of State (on how we carry out our activities) and HM Treasury (on circumstances in which payment of a fine would be required). We also consider our duties and balance those factors that are set out for consideration in the Act.
Targeted	We target our activities at those areas where a risk or an issue, such as a potential non-compliance, has been identified and is material to National Highways' delivery of the RIS and/or licence requirements.
	Where enforcement is concerned, we target our activities at those areas where contravention has been identified and where action is needed.
Accountable	We are accountable to the public for our actions through Parliament and through the courts. We have an obligation to comply with the rules of administrative law and good public administration. Ultimately, our decisions are subject to judicial review and scrutiny by the courts.

1. Is there anything that our review of our holding to account policy should include beyond the application of principles, clarification of our approach and improving transparency on our relationship with National Highways?
2. How useful is the explanation in the current version of holding to account of how we apply the regulatory principles set out in the Infrastructure Act 2015 as a framework to hold to account? Is anything unclear and if so, what?

Using our holding to account policy to foster deeper understanding of our role

- 3.7 Through our holding to account policy, we set out how we use our powers to hold National Highways to account for its performance, delivery and efficiency – to deliver the RIS and comply with its licence.
- 3.8 We also use the holding to account principles to guide our work on other matters relating to National Highways’ stewardship of the SRN that are not specified in the RIS or licence. This would include any other directions and guidance issued by the Secretary of State (either to National Highways or to ORR).

Our approach	Benefits
Forward-looking	That means we look at trends in actual data and evidence to determine future performance against annual and road period targets. This provides the benefit of better risk oversight.
Engagement with National Highways and early resolution	<p>We continuously communicate with National Highways to understand what it is doing, provide regular feedback and uncover any barriers to delivery or compliance. This creates a culture of openness and leads to greater working level insight into progress.</p> <p>Early engagement identifies emerging risks and issues where intervention can change an outcome, tackle underperformance or prevent outputs and targets being missed. This can provide better outcomes for road users and taxpayers.</p>
Outward-looking	This means that we engage with a wide range of stakeholders in the roads industry, supply chain etc. and work with other regulatory bodies to share information when required. This is particularly relevant to aspects of National Highways’ delivery, where legal duties stem from other legislation and enforcement powers are not ORR’s. The benefit of this collaborative approach means information is shared in the right place at the right time and decisions/directions etc. to the company are aligned.

	<p>For transparency, we publish the findings of reviews that we commission from external consultants and use these to inform our work.</p>
<p>Strategic level monitoring</p>	<p>We monitor National Highways' maintenance and renewals work at a programme level. This means that we seek to understand whether the company is delivering a robust programme of maintenance and renewals work in a timely and efficient way</p> <p>We report on the company's performance and delivery in the round rather than committing excessive resources to scrutinising individual schemes. We focus on the quality and comprehensiveness of National Highways' strategies and plans and key measures of output to form our view of its performance. We report annually to Parliament on this and (since 2022) we publish an annual safety report.</p> <p>This ensures that we take a 'big picture' view of how National Highways is using its skills, experience and resources to achieve the requirements of the RIS, comply with its licence and any statutory directions and guidance issued to it.</p>

3. Is our policy sufficiently clear as to how we approach matters such as safety or environmental issues and how we work with other agencies, regulatory bodies and government departments?

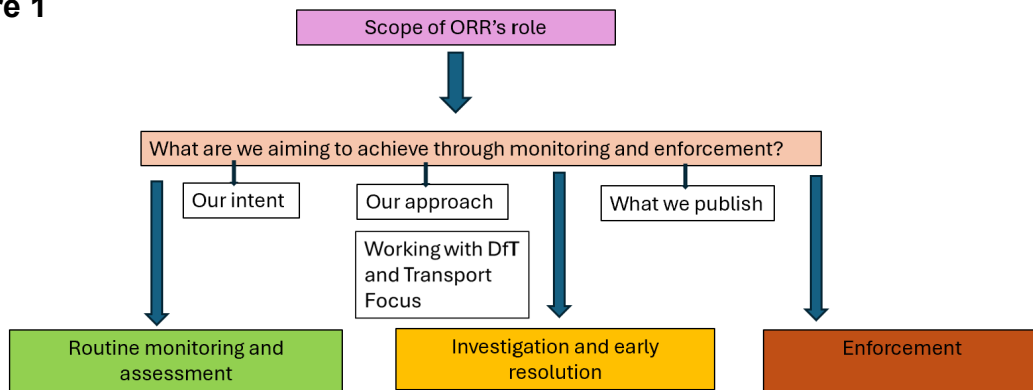
4. Do you have views on whether ORR's outcomes-based, forward-looking approach delivers the right level of sight for stakeholders of National Highways' performance and delivery? In your experience, do we provide sufficient opportunities for external engagement in this approach? How could we make our wider engagement more transparent?

5. Is our role, as set out in our holding to account policy, clear to stakeholders, including the extent and limits of our legal powers including the line between or overlap with that of the Department for Transport?

4. Document map

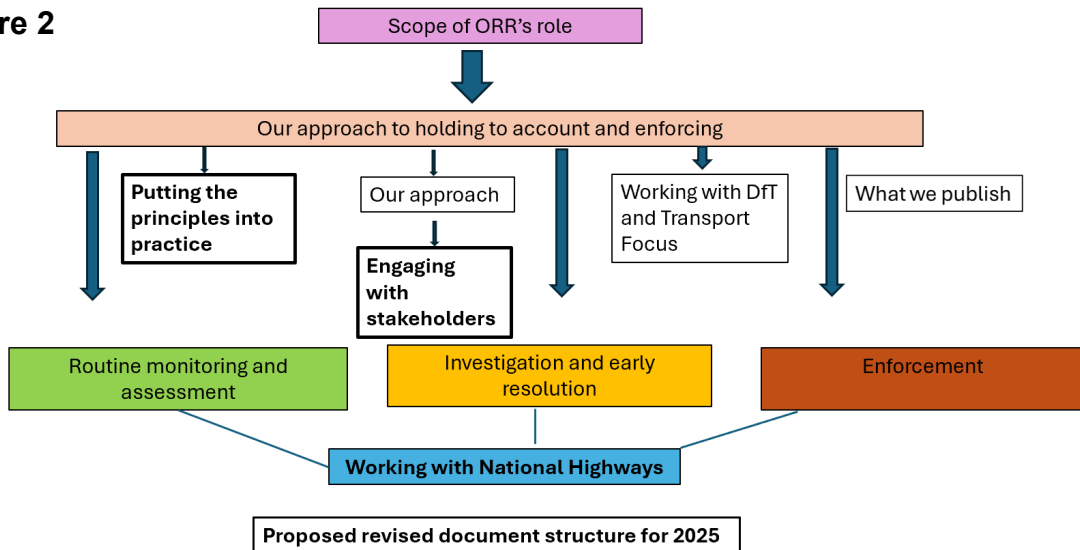
- 4.1 As described, we are not proposing extensive changes to our existing policy. The changes proposed build on the existing policy content to provide clarity and refine our approach to holding to account.
- 4.2 Figures 1 and 2 below show the existing and proposed document maps to aid comparison.

Figure 1



Document structure 2020 version

Figure 2



Proposed revised document structure for 2025

5. Consultation questions summary

1. Is there anything that our review of our holding to account policy should include beyond the application of principles, clarification of our approach and improving transparency on our relationship with National Highways?
2. How useful is the explanation in the current version of holding to account of how we apply the regulatory principles set out in the Infrastructure Act 2015 as a framework to hold to account? Is anything unclear and if so, what?
3. Is our policy sufficiently clear as to how we approach matters such as safety or environmental issues and how we work with other agencies, regulatory bodies and government departments?
4. Do you have views on whether ORR's outcomes-based, forward-looking approach delivers the right level of sight for stakeholders of National Highways' performance and delivery? In your experience, do we provide sufficient opportunities for external engagement in this approach? How could we make our wider engagement more transparent?
5. Is our role, as set out in our holding to account policy, clear to stakeholders, including the extent and limits of our legal powers including the line between or overlap with that of the Department for Transport?
6. Is there any other feedback you would like to provide on our holding to account policy proposals?

6. Next steps

- 6.1 We will review responses to the consultation and publish an outcome document later in 2024.
- 6.2 Our intention is to publish our revised policy in spring 2025.



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