

Dear Stakeholder,

### **Consultation: ORR's 'Holding Network Rail to Account' policy for CP6**

1. Our final determination for Control Period 6 (CP6)<sup>1</sup> paves the way for a change in how we will hold Network Rail to account for delivery of the commitments in our determination, and the obligations in its network licence.
2. To enable this change, we are proposing a new policy from the start of CP6<sup>2</sup>. Once this is in force, it will supersede our existing economic enforcement policy for Network Rail.

#### **The changes we are making:**

3. Our policy will continue to reflect best practice regulatory principles, based on a simple three-stage process:
  - routine monitoring and assessment;
  - investigation and early resolution; and
  - enforcement.
4. Resolving issues with Network Rail's performance is an important part of our work; we will effectively target areas that have most serious impact and detriment to rail users. We will seek early resolution on those areas, but will take enforcement action where necessary.
5. We are proposing new approaches within these three stages (detailed in Figure 1). In summary, these comprise:
  - **Routine monitoring and assessment** – using a range of new data sources, we will now compare and contrast performance across routes, including highlighting good practice that can be shared and promoting healthy competition between routes. Our regulatory oversight and reporting will be more targeted than in CP5. We will routinely monitor the performance of individual route teams and the System Operator (SO), placing particular emphasis on Network Rail's own scorecards where it has agreed scorecard measures with its customers.
  - **Investigation and early resolution of concerns** – we will step in early where necessary to protect rail users, aiming to resolve issues before the need for any formal enforcement action. Where necessary we are proposing to make use of new regulatory tools, which could include holding an ORR Hearing (where we would call in the responsible parts of Network Rail to account for their performance), or requiring Network Rail to put in place a formal improvement plan.

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<sup>1</sup> CP6 will run from April 2019-2024.

<sup>2</sup> This policy is in relation to our role as Network Rail's economic regulator. The revised policy does not affect or prejudice the way we monitor, report or escalate safety concerns.

- **Taking enforcement action** – If we are unable to resolve issues at the investigation and early resolution phase, and we consider that we have found evidence that Network Rail is, or has been, in breach of its licence obligations then we will need to take remedial action. Our policy will provide ORR with the ability to impose route/SO financial sanctions which can affect the management bonuses of the responsible Network Rail teams (without diverting funding from the operational railway). Our policy also includes a new approach to financial penalties (i.e. fines) which will allow ORR to scale penalties to be capable of being funded by management bonuses (again, avoiding the diverting of funding from the railway).
6. Network Rail remains a single company with a single network licence, so we will continue to monitor what the company as a whole delivers to its customers, and will identify and address systemic issues.

#### **Rationale for making these changes:**

7. Our proposed policy matters: it aims to improve performance for rail users, and secures value for taxpayers. It reflects the significant changes to Network Rail's business in recent years, provides effective incentives and clear accountability and places a strong emphasis on the importance of stakeholder engagement and collaborative working.
8. The new policy also reflects the significant changes to Network Rail's business and the context in which it operates; in particular:
- **Network Rail's reclassification as a public sector body** means that it no longer has private capital at risk which reduces the likely effectiveness of financial penalties on the company. This is why our new policy introduces a range of incentives, including reputational incentives (including, for example comparing performance between units, over time and against expectations), with implications for both how we monitor and report on Network Rail's delivery to its customers, and how we hold it to account.
  - The **devolution of responsibilities** within Network Rail has led to the creation of more distinct route businesses and the development of a System Operator (SO). We will monitor Network Rail's delivery to its customers at route and SO level, as well as hold it to account as a single legal entity.
  - The need for Network Rail to **learn lessons from Control Period 5**, including: the need for the company to 'own' and deliver its plans; the importance of deliverable bottom-up plans; and the importance of holding it to account for stretching but realistic challenges on efficiency.

#### **Stakeholder engagement and collaborative working:**

9. As part of our three stage approach to holding Network Rail to account, we want to encourage continuous improvement through scrutiny of performance between Network Rail and its stakeholders at both route and SO level. The right structures and behaviours need to be in place at route and SO level for customers to assess, challenge and work with Network Rail to improve performance.

10. The new policy places particular emphasis on Network Rail's stakeholder engagement and collaborative working. This includes:

- **Monitoring and assessing the institutional and governance arrangements** that are essential to support Network Rail's stakeholders in scrutinising and challenging performance at route and SO level, including reaching agreed scorecards and providing high-quality reporting to customers.
- **Encouraging Network Rail to take responsibility** for providing appropriate performance information to its stakeholders. ORR's reporting will reflect the extent to which the information Network Rail publishes provides full transparency.
- **Taking account of the quality of the routes'/SO's stakeholder engagement** in deciding how rapidly to escalate performance concerns. We want to promote good stakeholder engagement by Network Rail, and encourage collaborative working with the wider industry. We have set out what we consider to be principles for good stakeholder engagement (see annex 1 of policy) that we expect Network Rail to follow. Our decision making when prioritising our monitoring/assessment and interventions in areas of poor performance will consider whether there are strong mechanisms for customers and other stakeholders to engage with the routes/SO to influence priorities and challenge performance.

11. Where we do need to intervene, we will aim to bring parties together to find remedies to emerging issues which meet the needs of customers and affected stakeholders.

12. Alongside this policy consultation, we are consulting on our proposed approach to carrying out more detailed annual assessments of elements of Network Rail's stakeholder engagement, this consultation is available [here](#).

### **Responding to this consultation:**

13. We invite all stakeholders to comment on our proposed policy **by 25 January 2019**. In particular, we welcome views on the consultation questions set out in annex 1. Guidance on how to respond to this consultation is included on page 1 of the policy.

14. We will host dedicated workshops to discuss our proposals in January 2019 and will circulate invites for those shortly, however if you have any questions about our proposed changes that you wish to discuss with us directly, please email our PR18 inbox ([pr18@orr.gsi.gov.uk](mailto:pr18@orr.gsi.gov.uk)).

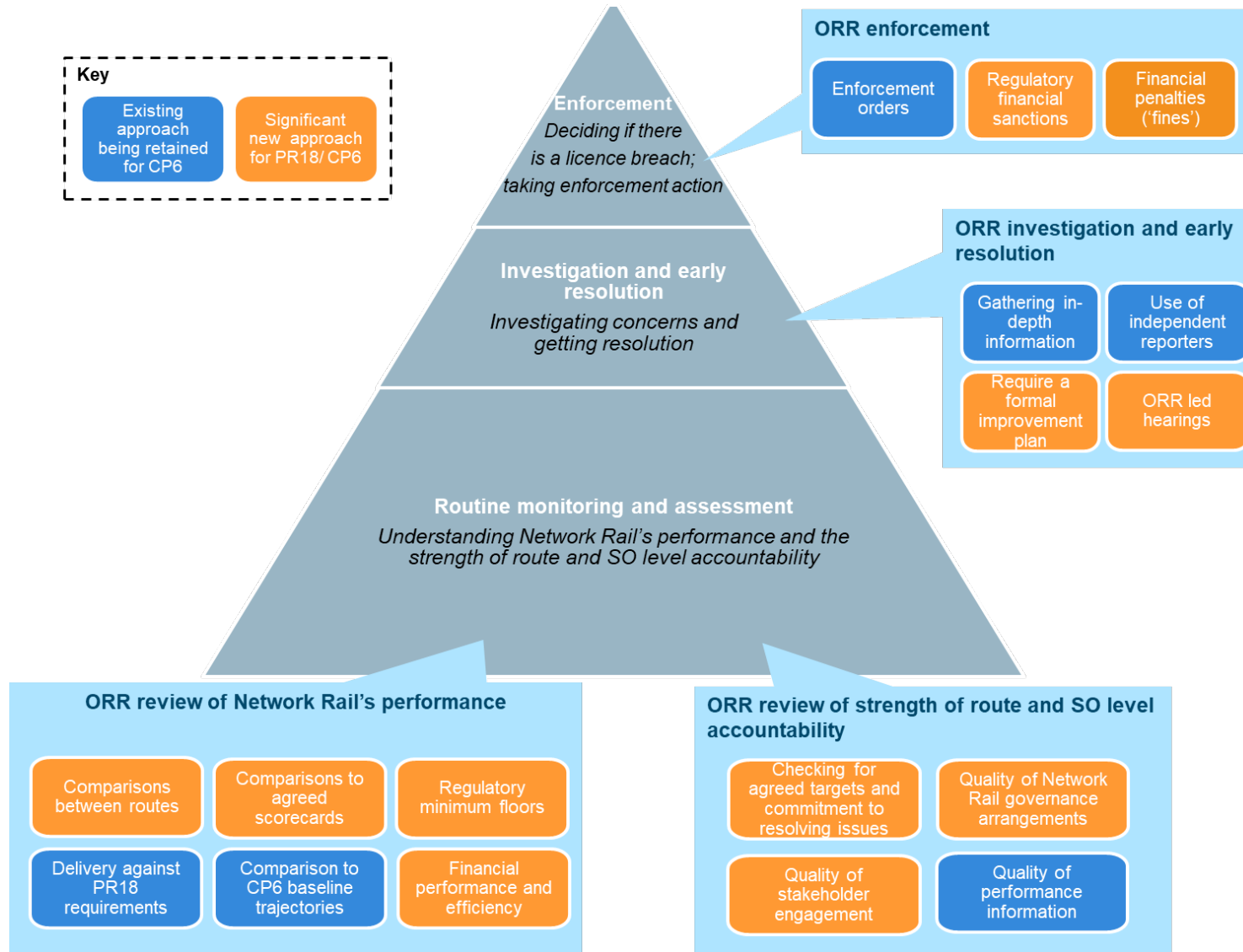
15. We will publish our revised policy after we have taken your feedback into account.

Yours faithfully



Graham Richards

**Figure 1: Holding Network Rail to account: what is new**



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

### **Consultation on ORR's Holding Network Rail to Account in CP6 policy**

#### **A standalone policy for Network Rail**

Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

#### **Policy objectives (chapter 2)**

Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

#### **Routine monitoring and assessment (chapter 3)**

What are your views on our proposals for routine monitoring and assessment, specifically:

- Monitoring and assessing Network Rail's performance;
- Monitoring and assessing the strength of route and System Operator-level accountability;
- our approach to risk-based and targeted monitoring; and
- the aims of our public reporting?

#### **Investigation and early resolution (chapter 4)**

What are your views on our proposed approach, specifically:

- the factors we will consider when assessing concerns;
- the actions we may take (such as using ORR hearings and requiring improvement plans); and
- communicating our investigations publicly?

#### **Enforcement (chapter 5)**

What are your views on our proposed approach to enforcement, specifically:

- the use of enforcement orders;
- the use of financial penalties; and
- the introduction of regulatory enforcement penalties?

#### **Penalties statement (Annex B)**

What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

### **Consultation on ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6**

**Question 1:** Do you agree with our proposal to focus our assessment in the first year of CP6 on the routes'/SO's engagement on annual business planning and on developing and agreeing scorecards? Are there other areas on which you think we should assess the quality of the routes'/SO's engagement? If so, what should we exclude from the scope of our assessment to accommodate this?

**Question 2:** Do you have any comments on our proposed approach to assessing the quality of Network Rail's stakeholder engagement in CP6?