



Department  
for Transport

# Consultation on transforming the Highways Agency into a government-owned company

October 2013

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# Executive summary

1. In summer 2013, the Government published *Investing in Britain's Future* and *Action for Roads* – two documents that together set out a new vision for England's strategic road network (SRN). In addition to unveiling the biggest-ever upgrade of our existing road network, they also announced that the Highways Agency, currently an executive agency of the Department for Transport, would be reformed to become a government-owned company.
2. The reforms set out in *Action for Roads* are intended to transform how we deliver roads, dramatically improve the efficiency and costs of operating the network and enhancing capacity. This will improve the day-to-day operations of the network and over time transform the quality of the service that is delivered to road users, the long-term condition of our strategic road infrastructure and its environmental impact.
3. This consultation outlines these proposals in more detail, particularly those elements on which we expect to bring forward legislation, and provides an opportunity to comment.

## **Governance and structure**

4. As a result of the proposed reforms, management of England's SRN would pass to a new government-owned body – a strategic highways company. This company would be responsible for managing the whole of the SRN.
5. Previous reviews of the Highways Agency have stressed the importance of giving its management a stable environment where it can focus on delivering long-term efficiencies and accelerating delivery. Transforming the Agency into a legally separate company would grant it a high degree of day-to-day freedom by removing central government from operational decisions. It would also allow the structure of the company to be set up to create clear incentives to drive efficiency.

6. The company will be fully accountable for its overall performance to the Secretary of State and to Parliament. Our intention is for the company to operate under a licence from the Secretary of State. The licence regime will impose on the company certain statutory duties in relation to the SRN and grant the necessary legal powers to enable the new company to carry out those duties, and to operate, maintain and improve the SRN. In addition, the ability of the Secretary of State to impose certain conditions in the licence will add a further layer of accountability.
7. A Roads Investment Strategy (RIS) would set out the performance standards the company is expected to achieve, the funding that it will receive in order to achieve it and the investment programme it is expected to deliver over the period. This will end the culture of strategic and financial uncertainty that has dogged the highways sector for decades, and will also provide a mechanism that challenges the company to improve its efficiency.
8. Taken together, this will ensure that the company acts in the public interest, achieves expected efficiencies and provides good value for money.

## **Staff**

9. As part of the creation of the new company, we expect all Highways Agency staff employed as civil servants at the point of transfer would move across to the new company. Staff transferring to the new company would be protected, in accordance with the law and good practice within the public sector.
10. We will continue to keep staff informed about changes as we move forward and follow due process for a transfer of this kind. We will work alongside unions to solve any issues that may arise.

## **Effective scrutiny**

11. We intend to make the new company more accountable and transparent to road users. The Secretary of State would be responsible for managing the performance of the company. However, it is important that the views of all road users are factored into the performance regime for the company and that the outputs and outcomes are publicly available. At the same time, we need independent, expert scrutiny and challenge of the new company's cost, efficiency and overall performance.

12. In order to ensure effective scrutiny and challenge of the new company as economically as possible, we propose to harness the skills and expertise of existing organisations. We believe that Passenger Focus, which already acts as an effective voice for users of public transport, is well-placed to represent the views of road users. Similarly, the Office for Rail Regulation holds the rail sector to account for its costs, and has the skills needed to do the same for the new roads company. Taken together, this would ensure the interests of road users are effectively represented, and central government is better able to assess and challenge the company's performance.

### **Powers and duties**

13. At present, the legal powers and duties to run the SRN all belong to the Secretary of State. We intend to bring forward legislation to reform the legal framework, so that the new company will have direct responsibility for the roads it operates. This way, it will be fully accountable for the operation, maintenance and enhancement of its own roads, in much the same way that a local council is responsible for its own network.
14. Our overall aim will be to ensure continuity of the existing role of the network operator under the new regime, in terms of both the role of the new company in managing the SRN and additional functions that the Highways Agency currently performs on behalf of the Secretary of State. As part of the proposed changes, we will consider opportunities to more clearly distinguish between planning and other issues which are of national significance, where responsibility should rest with the Secretary of State, and those which are of purely local and/or operational effect, which should be the responsibility of the new company.
15. There may also be an opportunity to deregulate or streamline the administration of highways law, notably the management of traffic regulation orders. We want the company to have freedom on day-to-day operational matters, without being tied up in bureaucracy.
16. The Secretary of State will continue to have an important role in highways law, with responsibility for determining the rules which the road operator must abide by. This includes all of the legal provisions around what is and is not permissible on roads.

## Consultation

17. This consultation is open until 20 December 2013. We expect to publish our response in early 2014.
18. As part of this consultation, we are also publishing an impact assessment with further information about the case for reform. This can be downloaded from:  
<https://www.gov.uk/government/consultations/transforming-the-highways-agency-into-a-government-owned-company>
19. We will also be consulting formally on the draft National Networks National Policy Statement in December. We will continue to engage closely with interested parties as we take forward our reform plans and develop the first Roads Investment Strategy in 2014.

# How to respond

The consultation period began on 29 October 2013 and will run until 20 December 2013. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at:

<https://www.gov.uk/government/consultations/transforming-the-highways-agency-into-a-government-owned-company>

or you can contact the Roads Reform Team at the address below if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you have any suggestions of others who may wish to be involved in this process please contact us.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.



If you want information that you provide to be treated as confidential, please be aware that, 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 it would be helpful if you could explain to us why you regard the information you have provided as confidential. 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 the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## The Highways Agency and the Strategic Road Network (SRN)

The SRN is an essential piece of our national infrastructure, and is the single biggest asset owned by government (see Figure 1). Although consisting of only 2% of roads in England, this network carries over one third of all traffic and two thirds of freight and is key in promoting economic growth. The network as a whole would cost an estimated £107.4 billion to replace.

The Highways Agency is currently an executive agency of the Department for Transport, responsible for operating, maintaining and improving England's strategic road network (SRN):

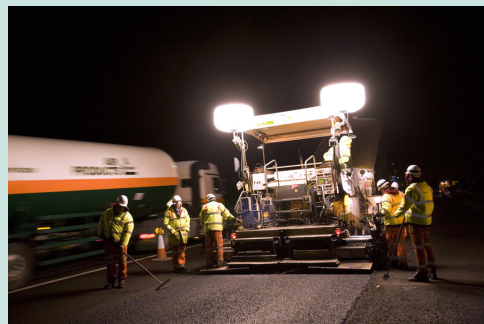
### Operates

The Agency manages traffic on the SRN to ensure the roads are safe, delays are minimised and journeys are reliable. It provides information to road users before and during their journeys, reduces and manages incidents efficiently to minimise delays, and keeps traffic moving.



### Maintains

It carries out routine maintenance and renewal of assets, including roads, structures and technology, to keep the network safe, serviceable and reliable. It works with contractors to ensure effective operational performance and the long term integrity of the asset.

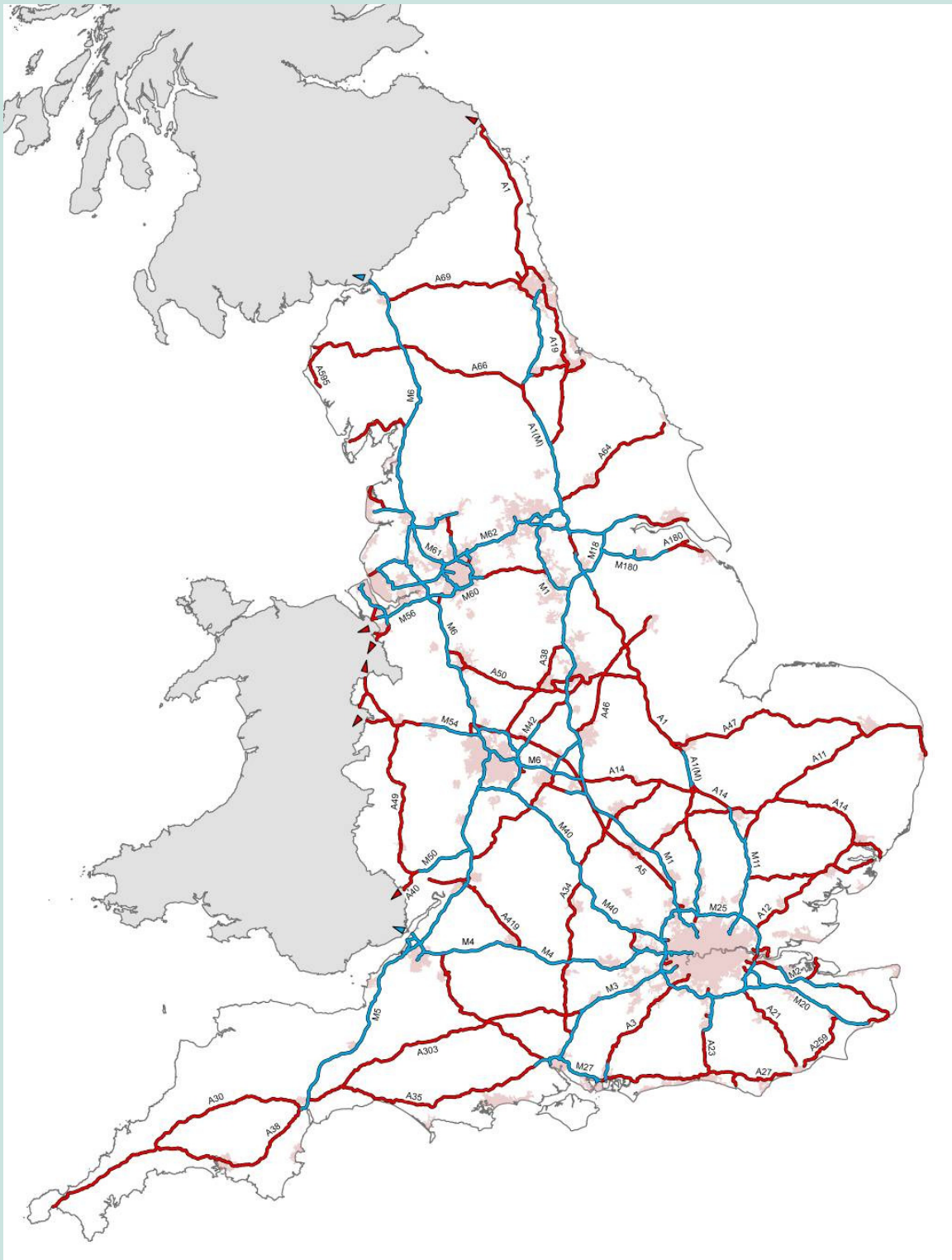


### Improves

It delivers large and small scale enhancements on the SRN to improve reliability, safety and asset integrity for the future, including smart motorways technology to increase road capacity at lower cost than conventional widening, and pinch point schemes to tackle congestion and improve safety at bottlenecks across the network.



**Figure 1 – The strategic road network**



# 1 Introduction

- 1.1 In June this year, the Chief Secretary to the Treasury announced *Investing in Britain's Future*, unveiling a transformational programme of investment in our roads worth up to £50 billion over the next generation. This included plans for the biggest-ever upgrade of our motorways and key A roads, tripling spending on major road enhancements and resurfacing 80% of the network by 2021.
- 1.2 This was followed in July by the launch of *Action for Roads: a network for the 21st century*,<sup>1</sup> in which we outlined our plans to transform the way in which we manage England's strategic road network (SRN). This plan built on Alan Cook's 2011 review: *A Fresh Start for the Strategic Road Network*,<sup>2</sup> which concluded that reform of the institutional relationship between the Agency and central government has the clear potential to drive more effective and efficient delivery.
- 1.3 Taken together, these two documents are the most ambitious plans for roads in over a generation. They represent both a substantial increase in the amount of money being invested in infrastructure and a fundamental change in the way in which the network will be managed.

## The need for a new approach

- 1.4 Our strategic road network needs to be well-funded, with the right investment in the right places. However, it also needs to be well run. In his review, Alan Cook argued strongly for changing the way the roads are run, with a clear change in the Highways Agency's governance and its relationship with government, allowing the company to operate more like a commercial organisation, separate from government.

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<sup>1</sup> <https://www.gov.uk/government/publications/action-for-roads-a-network-for-the-21st-century>

<sup>2</sup> Alan Cook, *A Fresh Start for the Strategic Road Network*, 2011

## The Cook Review

In November 2011, Alan Cook published his independent report *A Fresh Start for the Strategic Road Network*, setting out the challenges faced in managing the network and recommending a range of reforms to improve the current operating model.

The report estimated that reform of the Agency and its surrounding framework would be able to achieve efficiency savings of 15-20%, and highlighted the need for:

- Reform of the Highways Agency so that it can operate with more certainty, commercial flexibility and greater independence from government over day-to-day operations
- Clear, long-term strategic direction for the network, the network manager and the wider industry
- A robust and transparent 'performance contract' between the government and the network manager, modelled on similar mechanisms in the regulated sectors
- Certainty of funding, together with the ability to manage work flexibly, to allow the network manager to plan investment over the long term, deliver more efficiently and obtain better value for money

1.5 One of the reasons that Britain has fallen behind other nations in terms of the quality of its road network is because many other countries manage their strategic road networks better. As an executive agency, the Highways Agency forms a part of central government, with both ministers and officials regularly becoming involved in matters regarding the day-to-day running of the roads. As we explained in *Action for Roads*, most European countries, such as France, Austria and Sweden, run their strategic roads at much greater distance from central government.

1.6 Road operators in other countries often benefit from much greater certainty of funding, whereas funding for England's SRN can vary dramatically year by year. This stop-start funding constrains the ability of both the Highways Agency and the construction sector to plan ahead and secure efficiencies, for example by entering cheaper long-term contracts. This is especially detrimental for major projects, which can take ten years to plan and deliver, and limits the Agency's ability to manage across its entire portfolio of investment to realise greater efficiencies.



- 1.7 The proposals set out in this document will put in place a more contractual relationship between the road operator and central government, to secure significant efficiencies and deliver clearer outcomes. They will provide the supply chain with confidence to invest in the equipment and skills to create long-term capability and boost jobs in roads construction. Ultimately this new approach will better support economic growth, transforming the quality of both our road infrastructure and the service provided to road users.

## Creating a new regime

- 1.8 Through *Action for Roads* and *Investing in Britain's Future* we have committed to:
- Convert the Highways Agency into a strategic highways company, 100%-owned by government but able to approach network management in an efficient, more commercially-minded way. This will make it able to deliver results to match what other companies already achieve elsewhere in the infrastructure sector.
  - Introduce a Roads Investment Strategy (RIS), setting out a clear vision, performance requirements and delivery expectations for the strategic highways company to 2021 and beyond, with a long-term funding settlement.
- 1.9 These reforms, which will be underpinned by legislation, will help end decades of underinvestment and uncertainty in our road network. They will make sure money goes where it is needed most, and that schemes are firmly backed from design to completion. They will transform the way our roads feel and function, securing delivery and driving growth, and allow the new company to focus on delivering a better service for those who rely on and use our roads. The case for reform is set out in full in Chapter 4 of *Action for Roads*.
- 1.10 This document is an opportunity to comment on our proposals. In particular, this consultation seeks views on our plans to:
- Set up the Highways Agency as a corporate, arms length body with the necessary structure, governance and controls to ensure sufficient flexibility and operational independence, as well as effective, responsible delivery.

- Provide the new company with the necessary powers and duties to operate, manage, maintain and enhance the strategic road network (SRN) efficiently and effectively.
- Establish the RIS to provide the new company with a stable funding basis and a clear, robust framework for setting long term performance outcomes and investment needs.
- Ensure the new company has sufficient accountability for, and independent scrutiny of, its performance and that the needs and expectations of road users are clearly understood and reflected in the requirements set for the company to deliver. In particular, we want views on how a road user watchdog can best drive greater accountability.

1.11 The Impact Assessment published alongside this consultation explains the evidence we have reviewed in making these proposals. We would welcome any further submissions of evidence on the appropriate institutional structure for the management of the strategic road network to enable us to develop the Impact Assessment further.

1.12 The outcome of this consultation will inform the structure of the new company, including the governance framework and the methods used to hold the company to account. It will also shape the forthcoming legislation to empower the new company, which we plan to bring forward in 2014.

## 2 Company structure and governance

- 2.1 Transforming the Highways Agency into a government-owned strategic highways company will change the fundamental relationship between government and network operator. In doing so, we aim to enable faster delivery, raise efficiency, improve transparency and unlock growth.
- 2.2 In order to deliver these goals, we need to give the new company the flexibility and independence to operate like its global counterparts. We also need to establish a clear governance framework that ensures the company delivers responsibly and effectively, and has a clearly defined relationship with government.

### Company structure

- 2.3 As discussed in the previous chapter, the SRN needs to be run with a high degree of operational independence. Everyday questions need to be decided by the new company, so they can respond swiftly and flexibly to potential challenges and opportunities without unnecessary interference by central government.
- 2.4 Equally, it is vital that ministers are able to set strategic direction for England's SRN, set binding performance levels for the network and hold the new company to account. The company must be properly accountable for the public money that it spends, and must be made to demonstrate its effectiveness.
- 2.5 We also need to develop a structure that, coupled with funding certainty for the new company, supports robust long term plans and builds confidence for the supply chain. This is crucial to achieving efficiencies and cost savings as well as encouraging suppliers to feel sufficiently confident to take on more employees and boost investment and training, all helping to support economic growth.



- 2.6 Achieving these goals will be made possible through a clear legal separation between central government and the network operator. This would mean government will not interfere in the daily operations of the SRN, giving the operator greater independence over decision-making and stability over performance expectations. This would provide a more robust and credible framework for the new company.
- 2.7 For these reasons, it is important that the new company has a separate legal identity so that it can deliver through its own statutory powers, with an arms-length relationship with government. This will mean it can be held to account for the decisions that it makes and, equally, any government influence will be through clear and transparent processes.

### **Proposed company model**

We propose to set up the new body as a company limited by shares, subject to the provisions of company law, with the Secretary of State as the sole shareholder of the company.

This would mean the company would have a clear, legal identity within a robust and well-established framework, putting it at a clear distance from central government and allowing it to make operational decisions independent from Whitehall.

Government would still control the overall goals and performance of the company at a strategic level, making sure that the company was behaving efficiently and continued to act in the public interest.

This approach requires relatively simple legislation to implement, compared to alternative models that require setting the body up as a statutory authority (where the body's board structure and high-level governance would need to be defined in law). A company structure also offers significant flexibility after the company is set up in case there is any need to modify these elements in the future. The model is also more familiar to the commercial organisations with which the new company will need to work closely.

This is not privatisation. The company will remain within the public sector, and we will use forthcoming legislation to guarantee this.

The company will be publically funded with only small items of additional income (currently less than 5%) from external sources.<sup>3</sup> Where the company provides additional services to others, we expect these would generally continue to be on a cost recovery basis. We envisage that any additional efficiencies generated by the company beyond those included in the RIS would be available to be reinvested in the network over the period of the RIS.

Government remains firmly committed not to introduce tolls on existing road capacity. We will not be making any changes to existing law around tolls and road charging, and we are not giving the company any powers to introduce its own tolls or other charges on road users.

## Implications for staff

- 2.8 The Highways Agency has over 3,200 permanent staff working throughout England in a range of roles, all of whom are civil servants.
- 2.9 As part of the creation of the new company, we expect all Highways Agency staff employed as civil servants at the point that the new company is established would transfer across to the new company.
- 2.10 The only potential exceptions to this rule would be where specific functions currently being carried out by the Agency on behalf of the Secretary of State do not form part of the SRN management function, and will not be transferred to the new company. In these cases, if we cannot find ways of transferring the practical workload to the new company, we may consider retaining both the function and the attendant staff in the Department for Transport. At present we have not identified any parts of the Agency where this will be necessary, though we will continue to examine this question following the outcome of this consultation.
- 2.11 The terms and conditions of employment of any staff being transferred from the Agency to the new company are protected, along the lines of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE).<sup>4</sup> The Department for

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<sup>3</sup> Details of the types of additional income are in the Highways Agency's annual report for 2012/13, which can be found on their website: <http://www.highways.gov.uk/>

<sup>4</sup> Transfer of Undertaking (Protection of Employment) Regulations 2006  
<http://www.legislation.gov.uk/ukxi/2006/246/contents/made>

Transport and the Highways Agency intend to engage trade union representatives of staff affected in sufficient time before any transfer, provide them with the relevant information and work with them throughout the process to ensure a smooth transition.

- 2.12 Under the Public Service Pensions Act 2013,<sup>5</sup> public sector workers who are transferred out of the civil service will be able to remain members of the Civil Service Pension Scheme; most Highways Agency staff are in the Principal Civil Service Pension Scheme.

## Governance framework

- 2.13 The transformation of the Highways Agency into an arm's length, government-owned company will enable a more commercial and transparent relationship between the new company and government. It will also require new mechanisms for defining what the company must do, and to ensure accountability.
- 2.14 Overall, the governance framework must ensure that government retains sufficient power to protect the public interest and hold the company to account, without the need to intervene directly in the daily activities of the company.
- 2.15 Accountability to central government will be secured by a series of strategic levers. These are listed in Figure 2. Some elements, such as the memorandum and articles of association, are required by law; others help to guide the interaction between the new company and government.

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<sup>5</sup> Public Service Pensions Act 2013 <http://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>

**Figure 2 – Proposed governance framework**

	<p><b>Statute:</b> Sets out key powers and duties, which can be enforced in courts. Establishes overall framework for network management, investment and accountability, and defines company and government responsibilities.</p>
	<p><b>Licence:</b> Establishes further responsibilities of the company, and provides a necessary precondition for using statutory powers. Can specify enforcement procedures, and can be revoked if terms are breached.</p>
	<p><b>Roads Investment Strategy:</b> Sets out government funding for company, expected performance and key deliverables. Funding and expectations set to drive efficiency savings.</p>
	<p><b>Memorandum and Articles of Association:</b> Company constitution as required by company law, setting responsibilities of the directors, shareholder rights and other administrative matters.</p>
	<p><b>Framework Agreement:</b> Agreement between government and company setting out how the two will interact.</p>
	<p><b>Statutory Guidance &amp; Standards:</b> Covers key aspects of how the company should deal with specific issues or legal requirements, such as environmental standards and planning.</p>

**Q.1 Do you agree that the company model proposed in paragraphs 2.3 – 2.15 will provide the company with sufficient freedom and flexibility to operate on a more efficient basis, but also include necessary checks and balances?**

## Statute and licence

2.16 In most infrastructure sectors, such as water, gas and electricity, companies usually derive their powers through two systems:

- **Statutory powers**, set out in relevant legislation, giving certain rights and obligations to companies who hold a licence from the relevant Secretary of State.
- **A licence**, formally entitling the company to use statutory powers, and also including detailed conditions that they are required to observe and respect as part of their working practices.

While the proposed strategic highways company will remain firmly under public ownership, this is nevertheless a proven approach that we believe can be applied to the new roads regime.

2.17 As explained below in the *Powers and Duties* chapter, we plan to recognise the new company as a highways authority. This will set the company within a clear, tested legal framework that will provide it with the legal powers it needs to operate and manage the SRN, and place it under a legal obligation to manage and maintain the network. The company will be liable for the state of their roads, and can be challenged in court over specific failings.

2.18 The company will only be able to hold these powers if it has been granted a licence from the Secretary of State, which would set conditions around more practical issues to do with operational matters. In the electricity sector, for example, a licence condition requires companies to follow common rules about connecting people to the network, and requires the licence holder to make certain types of data available to the regulator. Provided the licence conditions are met, the licence holder is free to exercise the statutory functions covered by the licence.

2.19 The licence would include a requirement to deliver the Roads Investment Strategy (RIS), in accordance with the framework agreement. For the SRN, we would also expect the licence to set out (or refer to) key safety and construction standards – matters where compliance is essential, but for which it is important to have the flexibility to make changes from time to time, and which can be better expressed in non-legislative language. The licence could also set other important duties, for example around protecting the environment, or high-level operational requirements for the company – for example, to consider the needs of local authorities

and other key stakeholders, or to provide a given standard of protection to personal data. Managing and enforcing the licensing regime will be the responsibility of the Secretary of State.

2.20 Failure to comply with the terms of the licence could have serious consequences for the company's Board (as described in paragraph 2.32), and could ultimately lead to the licence being revoked. Without a licence, the company would be unable to exercise the functions of a highway authority.

## Roads Investment Strategy

2.21 In *Action for Roads*, we announced plans to create a clear, stable, legally protected foundation for investment in the SRN, similar to the regime in use for the railways. This means giving the new company the certainty that will allow it to plan effectively for the future, deliver value for money and avoid short-term disruptions.

2.22 This will consist of three key elements, collectively referred to as a Roads Investment Strategy (RIS):

- A performance specification for the SRN and the company, articulating the Government's ambition for the strategic road network and setting out specific expectations for future delivery, including metrics and key performance indicators. In addition to covering issues around network performance, this will also need to set clear requirements around crucial considerations such as safety and the environment.
- A statement of available funds, setting out how much can be spent on strategic roads during the lifetime of the RIS.
- A funding and investment plan, setting out how this funding is allocated to deliver the Government's expectations. Amongst other things, this will cover maintenance and enhancement works, as well as identifying any specific major schemes.

2.23 The strategic elements of the RIS will set a longer-term vision for the network, stretching thirty years into the future. However, the elements around funding and anticipated delivery will be clearly focused on a period of around five years.

2.24 The legislation will create an obligation on government to provide a clear statement on what it wants the new company to deliver, in terms of performance outcomes and outputs. It will also require

government to commit the resources needed to deliver this. In return, the RIS will be the standard against which the company's delivery performance will be measured.

**2.25** This means the RIS will play a critical role in driving the company's performance. By allocating a budget for the whole of the company's activities for a five-year term, we will create an incentive for the company to search for efficiencies in all aspects of its business. Any extra spending in one area will need to be matched by savings elsewhere. We also intend to set the RIS so that it drives continuous improvement and efficiency.

### **How the Roads Investment Strategy will be developed**

The RIS is intended to give long-term strategic and financial stability for highways investment. This means the process under which the RIS is settled must be able to produce well-informed and robust conclusions that can stand for a period of five years or longer.

In the long term, we expect the RIS to be prepared and tested in a similar manner to the existing Rail Investment Strategy, but with differences reflecting the strategic highways company's government-owned status. We envisage the RIS process having four key stages:

**1. Setting the vision:** The Department for Transport will start the process of setting the RIS by articulating what Government wants to achieve with the network. This will bring together detailed analysis of the long-term requirements of the SRN, including route based strategies, taking account of interaction with the rest of the road network (for which the new company is not the highway authority), as well as other modes of transport. The analysis will aim to identify and prioritise the places and the issues where improvements in performance are necessary, including the likely extent of maintenance needs.

The Government, in considering the outputs of this analysis and the funding available, will develop a statement of available funds and a draft performance specification, in which it will set out its vision for the network and define what it wants the company to deliver over the next five years, particularly in terms of network performance, as well as its expectations of the level of efficiency the company must achieve. The draft specification will also set out requirements and expectations with regard to road safety and environmental outcomes.



As part of this work, the Department will engage widely to gather the views of those with key interests in roads, including other parts of government, the road user watchdog (see below), local enterprise partnerships, local authorities, environmental interests and other interested groups.

- 2. Developing the funding and investment plan:** The Government will publish its draft performance specification and statement of available funding, for the company to develop proposals for how best these requirements can be delivered. This would cover the full range of asset categories and delivery interventions, and identify the likely level of efficiency that can be achieved. We would expect the company to involve the full range of national and local stakeholders in this work, and the proposed road user watchdog would be able to contribute to this process.

We envisage the company would then produce a draft funding and investment plan, following which the Department for Transport would publish a draft RIS – incorporating the performance specification, statement of available funding and the funding and investment plan – for formal consultation, allowing other interested parties to comment.

- 3. Determining the RIS:** Following this consultation, the Government will determine and publish:

- A final performance specification for the period of the RIS
- An overall financial settlement within which the company is expected to operate, with an in-built assumption on efficiency
- A programme of major schemes to start work during the RIS, together with projected dates of opening
- The amounts of investment on maintenance, programmes of smaller-scale enhancements, operation of the network and other areas where it would not be appropriate to specify individual schemes when the RIS is set
- Areas where further development work will be carried out to support decision-making at the next RIS

- 4. Implementing the RIS:** Once the final RIS is published, the company will then have a period of time to prepare its business plan, translate the RIS into operational plans and commence delivery.



**Q.2 Do you have any comments on the proposed process for setting the Roads Investment Strategy?**

2.26 We expect the RIS to be set on a five-yearly cycle in line with the funding timescale for rail. This timeframe will mean that the process of analysis and negotiation can accommodate the delivery of schemes with long lead-in times, and enable Government to consider infrastructure funding in an integrated way.

2.27 For the first RIS, which we intend to publish in 2014, a large part of the contents have already been agreed as part of the 2013 Spending Review. Given the certainty already provided by *Investing in Britain's Future*, as well as the wider importance of maintaining momentum in delivering the Government's infrastructure policy, we intend to develop the first RIS through an accelerated process.

2.28 Key elements of the first RIS that have already been decided and announced by Government include:

- Funding available for capital investment in the strategic road network up to the 2021/22 financial year;
- Plans to resurface 80% of the SRN;
- 52 major schemes due to start work or finish construction during the next parliament.

2.29 These elements will be used as the basis for the first RIS, supported by a new performance specification. The first RIS will take account of the ongoing work on the feasibility studies on key congested routes and the Highways Agency's route based strategies. We expect to revisit the first RIS before the end of the five year cycle in order to take full account of this analysis and to align with rail investment decisions in 2017.

**Q.3 Do you agree that the proposals described in paragraphs 2.16 – 2.29 will enable a strategic highways company and the UK highways supply chain to plan ahead and deliver more efficiently?**

## Internal governance




- 2.30 The new company will be governed by a Board of Directors, who will be entirely responsible for all aspects of management. The Board itself will be constituted in line with best practice in corporate governance. It will be presided over by a non-executive Chair and will include the Chief Executive Officer (equivalent to the Highways Agency's Chief Executive), directors from within the company, and non-executives who bring a suitable range of skills and experience. The Secretary of State will appoint the Chair; we will consider the process for making other appointments to the Board as this work progresses.
- 2.31 The Companies Act places duties on all company directors, requiring them to act in the interests of the company and to ensure the company maintains full and accurate accounting records. The directors are also legally required to abide by the company's articles of association. This ensures that the directors remain accountable to shareholders – which in this case will be the Secretary of State.
- 2.32 The rules around remuneration of the Board will be set out in the company's articles of association. Further detail will be set out in the framework agreement with government to ensure that suitable controls are in place, including the most appropriate role for ministers in agreeing remuneration.
- 2.33 If the company fails to comply with the terms of the licence or deliver the requirements set out through the RIS, it will have real consequences for the company's Board, just as it would in the private sector. This could affect performance incentives, and particularly poor delivery could result in the removal of senior management, or revocation of the company's licence.

## Relationship with government

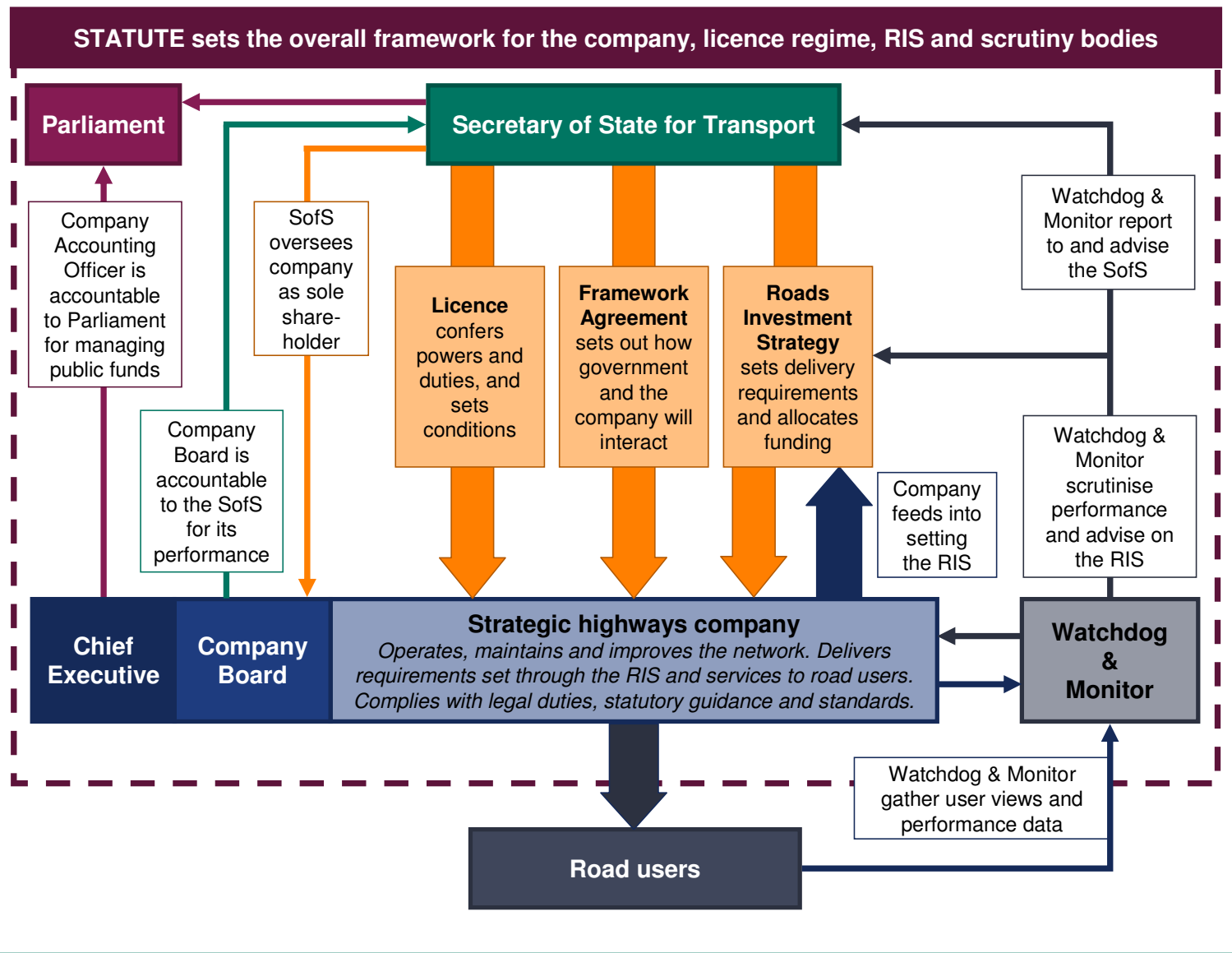
- 2.34 The Department for Transport will be the sponsor within government for managing policy affecting the company, handling issues where the company and government need to work together to deliver a positive outcome. The Department will also need to hold the company to account for performance and the use of resources.

- 2.35 The formal processes underpinning the relationship between the Department and the new company will be set out in a framework agreement. The company will formally remain a part of government and the Board will be accountable for the performance of the company in delivering the requirements set through the RIS. The company's Accounting Officer will be accountable to Parliament for the stewardship of public funds. This will be the Chief Executive. The Department's Accounting Officer will be accountable for ensuring that oversight is appropriate to safeguard public funds and deliver value for money.
- 2.36 Our aim is to give the new company as much freedom to operate as possible, subject to the constraints and controls required to provide sufficient assurance on overarching priorities and objectives, while ensuring efficiency and value for money. This will mean that the company will operate more like a commercial company, and less like an arm of government.
- 2.37 However, as the company will be publicly funded, it will still be subject to spending controls managed centrally within government. We are currently reviewing within government how spending controls should be applied to the new company. We will be careful to ensure that any incentive regime is linked to clear, objective measures, and that rewards are given for exceptional achievement rather than business as usual. The introduction of a clear, limited funding settlement in the RIS will also create incentives that help drive efficiency.

**Figure 3 – How we will ensure the company works...**

	<p><b>Independently:</b> we will set up a new limited company to run the SRN. This will have freedom to set its own day-to-day policies, so it can pursue greater efficiency. The RIS will provide strategic and financial certainty for the long term.</p>
	<p><b>Efficiently:</b> we will give the company the independence and certainty that the Cook Review said is critical to greater efficiency, so they can plan for the long term. A challenging RIS will force greater efficiency within the company.</p>
	<p><b>In the public interest:</b> the Secretary of State will be the sole shareholder of the company, and the company board will be accountable to him. The licence and framework agreement will require the company to behave responsibly.</p>
	<p><b>Cooperatively:</b> the licence will require the company to work with local authorities, emergency services and other groups. The performance specification will target measures that require close cooperation with others. Greater cooperation will help to achieve the RIS.</p>

**Figure 4 – Governance, accountability and key relationships**



2.38 The Highways Agency currently carries out some activities on behalf of the Secretary of State, which have implications that go beyond the management of the SRN – for example, some matters relating to planning policy. Further details on how the areas of work currently carried out by the Agency for the Secretary of State would be dealt with under the Government’s proposals can be found in the *Powers and Duties* section.

**Q.4 Do you agree that the proposals set out in paragraphs 2.30 – 2.37 strike the right balance between autonomy and accountability of the new company?**

## Wider responsibilities and relationships

2.39 These measures should ensure that the new company is properly accountable to government and will still work in the public interest. However, the effective operation and management of the SRN, as well as the successful delivery of requirements set out through the RIS, will depend on more than this.

2.40 The government will seek to set clear requirements and expectations around environmental outcomes, including environmental metrics and key performance indicators, in the performance specification set through the RIS process. The current performance specification already contains requirements on carbon, noise and air quality. We will engage widely with interested groups to consider how best to reflect environmental goals in the performance specification. We expect the watchdog described in chapter 3 to reflect the environmental concerns of road users.

2.41 It is vital that, in transforming the Highways Agency, we ensure that the current duties and protections for the environment are maintained, and that the new model supports better environmental outcomes. We believe that our proposed approach for governing the new company, alongside the additional investment in the network announced by Government in June, should lead to stronger, more positive environmental outcomes across the network.

- 2.42 Many of the current responsibilities on the Highways Agency are legal duties that the Agency currently discharges as part of its responsibilities for managing its roads (as discussed in chapter 4). Legal obligations in the day-to-day management of the network, such as preventing water pollution or protecting cultural heritage, will continue to apply. Requirements around the construction of new schemes, such as preserving species habitats and supporting biodiversity, will remain as strong as they are at present and will be reinforced by the provisions of the RIS and the supporting governance framework.
- 2.43 Other strategic environmental goals, such as reducing carbon emissions from road transport, will remain the responsibility of central government. However, we will require the company to continue taking steps to reduce the emissions from its network operations, and to publicly share data on their progress.

**Q.5 Do you agree that environmental protections will be appropriately integrated into the governance regime for the new company, as described in paragraphs 2.39 – 2.42?**

- 2.44 Important relationships between the Highways Agency and groups outside of central government must be promoted and reinforced under the proposed new arrangements.
- 2.45 We propose to achieve this partly by conditions set through the licence, requiring the company to cooperate and engage with other organisations where necessary and appropriate. This will be further supported by other parts of the governance framework, such as the RIS. In particular, the company will need to maintain open, robust relationships and cooperate closely with:
- **Local authorities** – Cooperation between the new company and local authorities responsible for other parts of the road network and land use planning is of vital importance, for example for the purposes of highways management. Local roads frequently interact with the strategic road network, especially where the SRN travels through urban areas.
  - **Operational partners** – The company will need to work closely with the emergency services, especially the police. At the Highways Agency's control centres, the police and other

services often sit alongside Agency staff. Continued cooperation will be necessary to manage the network, for example in managing incidents and coordinating the response to emergency situations.

- **Other transport operators** – The Agency has played an important part in delivering a joined up transport network, helping to increase connections between different modes where necessary. This role will continue into the future, for example helping to link the SRN to many of the stations on the HS2 route and aligning the RIS with long term rail plans.
- **Relevant interest groups** – The company will need to continue to deepen and grow the Agency’s good relations with a number of different groups with a stake in the performance and future development of the road network. The voices of business, safety and environmental bodies and campaigning interests of all kinds need to be heard in making decisions about future operation and development of the SRN. Effective relationships can lead to better outcomes. For example, cooperation with Natural England and a number of other environmental bodies has allowed the Agency to substantially reduce the footprint of their road schemes and provide better environmental assurance at planning inquiries, speeding up delivery.

2.46 The proposed duty on the company will be an important safeguard, but only part of the story. Cooperation and engagement will need to be built around inclusive and effective working relationships, for example through work on Route Based Strategies in identifying future network needs.

2.47 As this work progresses, we will consider how best make sure that key partners and interest groups have clear routes through which to engage with the new company. We will also seek to ensure that the Chair and non-executive directors have a clear role in engaging representative bodies that have a stake in the running of the road network.



## **Working with local authorities**

Few road users make a distinction between the strategic road network and other, locally-managed roads. Effective management of the road network as a whole relies on communication and cooperation between highways authorities across network boundaries.

At present, the Agency works with local authorities in a number of different ways to think about and manage the connections with, and impacts upon, road networks and other transport modes. We expect the new company to continue engaging with councils as a key partner.

There may on occasion be legitimate differences of opinion between the company and its local counterparts, but the overall relationship must be open and productive. We must ensure we have laid the foundations for regular cooperation between local authorities and the new company, and that we have created the right safeguards to ensure accountability.

We would expect disagreements between local authorities and the new company to be resolved through open dialogue. As the company has day-to-day independence, it should be normal practice for any issues to be resolved without central government becoming involved.

The company's licence will include a requirement to consult with, and take into account the views of, local authorities in the management of the SRN. This will be the first time that a formal obligation of this kind has been set for the operator, and will mean the company can be held to account for its behaviour by the government.

**Q.6 Do you agree that the proposals set out in paragraphs 2.43 – 2.46 will lead to the necessary cooperation with and accountability to local authorities, operational partners, road users and interest groups?**

## 3 External scrutiny and challenge

- 3.1 It is important that a strategic highways company can demonstrate both to government and to road users that it is delivering a good service. It is also important to make sure that this performance reflects the interests of users as well as Government.
- 3.2 Our proposals for governing the relationship between the new company and government are described in the previous section. The Secretary of State would continue to hold the company to account for its overall performance, supported by a comprehensive system of governance. The company will also remain subject to a wide range of existing legal requirements, ranging from health and safety to environmental protections, which cover the operation of the network and any new improvements that are made.
- 3.3 We also recognise the importance of making the relationship between the new company and government more transparent, and finding better ways of representing the views of a range of road users in decision-making – including businesses, coach operators, individual motorists and non-motorised users, such as cyclists. This would mean that the Secretary of State would hold the company to account with greater knowledge and a surer understanding of the needs of road users.
- 3.4 In other sectors, such as for railways or utilities, independent regulators are responsible for controlling prices, holding companies to account and representing the interests of customers. In the absence of any charges on users or price regulation, creating a fully-fledged economic regulator for roads would be unnecessarily costly, and would not generate sufficient benefits to justify the additional bureaucracy.
- 3.5 However, we still want the company to be publicly held to account, for there to be independent, expert-led scrutiny of costs, efficiency and performance, and above all for the views of road users to be factored in to decision-making.

## Possible scrutiny functions

- 3.6 At a minimum, the Government believes there are two core scrutiny functions required if the new company is to be effectively monitored and held to account:
- A **user watchdog**: This would provide a single credible and independent focal point for gathering and balancing the views of all users of the strategic road network, and using targeted national surveys to say how effectively the company is performing. A watchdog would report to the Secretary of State, providing advice to government on the aims and outcomes of the performance specification, to make sure these are realistic and reflect the priorities and needs of users.
  - An **efficiency monitor**: This would provide a third party assessment of how the company is performing in delivering against the RIS, to form the basis of independent advice to the Secretary of State. A monitor would benchmark delivery performance, particularly on cost and efficiency, including against domestic and international comparators where available, using this to provide advice on efficiency targets
- 3.7 We need to consider whether scrutiny should go beyond core questions of performance to provide independent advice and guidance on the wider economic, social, environmental impacts and responsibilities of the company. These issues are of vital importance to the work of the company, but if scrutiny extends too widely there is a risk of losing focus.
- 3.8 We also need to consider whether there is a role for an arbiter who can be called on to assist in resolving any disputes, in the event of disagreements between the Department and the new company in the setting of the RIS.
- 3.9 Lastly, there is a question as to whether scrutiny should extend beyond the strategic road network to also cover the performance of local roads. Many of the issues facing national and local roads are similar, and there could be benefits in strengthening the voice of users in dealings with local councils. However, local authorities are directly accountable to their voters and this would entail a very substantial extension to the scale and diversity of the scrutiny remit.

## Possible models

3.10 These functions are relatively diverse, and while there are natural synergies between some areas of work there is no clear unity across them all. Even in sectors with a highly developed economic regulator, customer representation is often carried out by a different body.

3.11 We believe that the necessary core functions of a user watchdog and an efficiency monitor can be discharged effectively without the need to create a single large agency – in keeping with the Government’s policy of increasing accountability and transparency while limiting the number and cost of public bodies. Instead, there are ways of carrying out these functions through developing and empowering existing bodies. For example, this might include:

- **An existing DfT sponsored panel** – This can draw on existing experience, knowledge and skills of those in the roads sector, including direct links with existing user and expert groups. One example is the Motorists Forum – a group set up by the Department where the heads of groups like the RAC, AA and FTA regularly meet to discuss government roads policy.
- **An existing regulator** – This will have access to a range of expert skills, as well as a large amount of formal independence. The Office of Rail Regulation currently benchmarks cost performance at Network Rail, and other regulators carry out similar work for their respective sectors.
- **An existing user body** – This would provide both independence and experience of representing passenger interests with infrastructure companies. For example, Passenger Focus currently represents the interests of rail, bus, tram and coach passengers, and regularly deals with train operators and bus companies.

## Our preferred option

The models set out above are not mutually exclusive. We believe that effective scrutiny and challenge of a strategic highways company will be carried out most effectively by different bodies performing distinct but complementary functions, applying their skills to the parts of the problem that they know best.

The Government's view is that the primary purpose of scrutiny should be to examine network performance and efficiency of delivery. We are also committed to ensuring that the watchdog – and the views of road users – have a real influence over the operation of the new company.

Following discussion with stakeholders, we consider that a potential model for delivering this is as follows:

- **A user watchdog function:** We believe that this role could be carried out by Passenger Focus, which performs a similar role for the rail and bus sectors. Expanding the remit of Passenger Focus to incorporate the SRN would enable a more holistic view of the issues facing the travelling public. This would involve regularly surveying the full range of users of the SRN for their views on the performance of the network, their priorities for investment and action and their general satisfaction with the roads and how the network operator is delivering for users. Some branding and organisational changes would be required to ensure the interest of road users are clearly and specifically addressed within the context of the wider remit.
- **An efficiency monitor function:** We believe that this role could be carried out by the Office of Rail Regulation (ORR), which already holds the rail sector to account for its costs and has the skills needed to do the same for the new roads company. This would include assessing the performance, outputs, outcomes and efficiency of the company. This would include benchmarking performance against comparators in related sectors or other countries and the ability to challenge on costs and delivery. This approach would require the ORR to strengthen its knowledge of the motoring and roads sector and undergo some organisational change to address the specific new role of monitoring a strategic highways company.

Both bodies would provide independent advice to the Secretary of State based on their own particular expertise. This will serve road users better than any one single organisation could, and if based around existing

organisations this approach should also cost less. We also envisage a formal role for user representative bodies, such as the AA, RAC and freight representatives, in guiding the activities of the user watchdog.

We would ensure that, should Passenger Focus and ORR perform these roles, both are able to continue providing their existing services to the rail and passenger transport sectors.

Separate from the above, in the event of any substantive disagreement on the requirements of the RIS and the available funding, either the company or the Department could request a review by an independent expert, such as the ORR.

Subject to the outcome of this consultation, we will seek to define and agree the specific scope and nature of the user watchdog and efficiency monitor roles in more detail with any body or bodies that adopt these functions, including the ways in which they report to the Secretary of State. As part of this, we will examine whether any amendments to the existing powers or statutory functions of relevant bodies are required, so that it can have a formal role in processes such as the setting of the RIS and to ensure that the company makes available key management data (including performance data and company finances).

We propose keeping scrutiny arrangements focused on the strategic roads, rather than the whole road network, at least initially, but intend to keep this position under review.

**Q.7 Do you agree with the nature and scope of our proposed approach for ensuring effective, independent scrutiny and challenge of the company, as described in chapter 3?**

## 4 Transfer of powers, duties and functions

- 4.1 The Highways Agency currently manages the strategic road network by exercising powers on behalf of the Secretary of State. This option will not be available to a strategic highways company, which will have a separate legal identity, part of the public sector, but not the civil service. We therefore need to revise the legal regime to ensure that powers and duties apply to those responsible for discharging them.
- 4.2 The relationship we are setting out to achieve is one where the new company has the powers to manage the SRN with freedom on day-to-day operational matters, without having to refer to the Secretary of State. This means making sure that the company has the necessary legal powers to maintain, renew and enhance the roads for which it is responsible.
- 4.3 Where possible, we will also look to simplify this relationship to ensure the new company is not tied up in bureaucracy but free to act within clear legal parameters just like any other company.
- 4.4 The overall aim will be to ensure continuity of the existing role of the network operator under the new regime through transferring the necessary powers, duties and functions to the new company to allow for the effective operation, maintenance and improvement of the SRN.
- 4.5 We will aim to build sufficient flexibility into the regime to allow for a range of future circumstances, for example to ensure continuity of service for road users if the company's licence was ever revoked.



## **Our approach to transferring powers**

The daily management of the strategic road network relies in part on a range of different statutory powers, currently exercised in the name of the Secretary of State. In order to ensure that the network continues to operate effectively, we intend to pass these legal powers over to the new company.

Much of this will be covered by setting up the company as a highways authority. However where further powers are required for issues of day-to-day management or where a quick decision is important to users of the system, we will also look to empower the company. In some cases, we may look to divide powers between the company and the Secretary of State, so that locally relevant decisions can be dealt with by the company but issues of national importance are resolved by government.

In all of these cases, the exercise of these powers will depend on the company holding a valid licence, which will set clear conditions on how these powers should be exercised. In the event of the licence being revoked, the company will lose all of its statutory powers.

## **Operating and managing the network**

- 4.6 At present, highways law is built around the concept of a ‘highways authority’ – the body that is responsible for the maintenance and management of a road. This can be a local council, a devolved administration, a transport body such as Transport for London or the Secretary of State himself. In each case, the highways authority is under a legal duty to maintain its roads and keep them open to traffic. At the same time, the highways authority gains a range of legal powers allowing them to modify and manage the roads under their control.
- 4.7 This regime is robust and well-established, and we therefore intend to amend the Highways Act 1980 to recognise the company model as a new kind of highways authority. This will mean that the new company will be directly responsible in law for the state of its roads, and will be legally accountable for breaches of its duty of care.
- 4.8 The licence will make the new company the highways authority for the SRN, except for certain specified strategic roads for which the Secretary of State will remain the highways authority. We do not



intend to make any changes to the powers of existing local highways authorities.

4.9 Establishing the company as a highways authority will feed through into other relevant parts of highways law, including:

- Road Traffic Regulation Act 1984 – the company will become the ‘traffic authority’ for its roads, meaning it can set speed limits, close roads for maintenance and place other restrictions on traffic in line with national legislation.
- New Roads and Street Works Act 1991 – the company will become the ‘streetworks authority’ for its roads, meaning that it will be able to manage any works by utilities companies requiring access to their own assets beneath strategic roads.
- Traffic Management Act 2004 – the ‘traffic authority’ powers of the company will be subject to a ‘network management duty’ created under this Act for all highways authorities.

4.10 There will also be other, smaller amendments to existing law to ensure the existing system can continue to operate. For example, legislation will need to be updated to make sure that the traffic officer service can continue to operate on the SRN.

4.11 In implementing these changes, we will also explore opportunities to deregulate or streamline current arrangements, to reduce the overall administrative burden on the company. For example, we intend to simplify the process through which the company would implement decisions. At present, where a highways authority wants to make changes to traffic regulations, these are brought into effect by a legal document known as a ‘traffic regulation order’. These cover a wide range of situations from new speed limits to overnight road closures for maintenance. Every order must currently be signed off by the Secretary of State, no matter how minor. We will investigate whether to allow undisputed traffic regulation orders, where there have been no objections lodged by members of the public, to be issued directly by the company.

4.12 We also intend for the new company to continue to perform certain non-statutory functions that the Highways Agency currently carries out on behalf of the Secretary of State, but which do not form part of the core highways authority function of management of the SRN. For example, the Agency is currently responsible for maintaining and updating the Design Manual for Bridges and

Roads (DMRB). This sets out the engineering standards recommended when building and maintaining roads. We will ensure that DMRB continues to exist under the authority of the Secretary of State, although it will continue to be maintained and managed using the specialist expertise of staff in the new company.

## Planning powers

- 4.13** The Secretary of State has many other powers and duties relating to roads that extend beyond those relating to being the highways authority for the SRN, which in practice are currently exercised through the Highways Agency. In general, we expect these functions (which include regulatory and enforcement powers) to remain with the Secretary of State, except in a small number of cases where they clearly and exclusively relate to his role in the daily running of the strategic road network. However, the Secretary of State may continue to rely on assistance from the new company in relation to this work.
- 4.14** As an example, there are already situations where the Secretary of State must be consulted on planning proposals which may affect strategic roads, which in practice are currently handled by the Highways Agency on behalf of the Secretary of State. As part of that role, the Secretary of State may issue directions to a local planning authority restricting the grant of planning permission because serious effects on the strategic road network are anticipated.<sup>6</sup> This power is seldom used to refuse planning permission outright, but it is an important mechanism which helps to ensure that impacts of development on the SRN are properly assessed and managed.
- 4.15** The existing system is based on the Secretary of State and the Highways Agency being the same legal entity for these purposes. Under the new regime, which will establish a strategic highways company as a separate body, this cannot continue unchanged.
- 4.16** The vast majority of planning proposals currently dealt with by the Highways Agency are non-contentious, and of only local impact or significance. We consider that these cases, which because of their nature and scale often have no adverse impact on the SRN, would

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<sup>6</sup> Article 25 of the Town and Country Planning (Development Management Procedure) (England) Order 2010

be most quickly resolved by those with the greatest expertise of the road network, and would only be delayed by imposing additional bureaucracy. However, there are also cases of national importance, with wide-ranging impacts on transport and the local economy, which we believe should remain the responsibility of the Secretary of State.

- 4.17 It is essential that the planning system, including planning consultations and non-planning consents, works quickly and effectively, to provide definite decisions that support growth. This year, we have already taken clear steps to speed up the treatment of planning proposals that affect the SRN, by tightening the guidance on how planning cases are handled by the Highways Agency<sup>7</sup>. We intend for any new system to match this standard of efficiency, and improve on it where possible. At a minimum, we will ensure that the new approach retains the current requirement to respond to all cases within 21 days.
- 4.18 We intend to develop a regime that can combine the expertise currently deployed by the Agency with an appropriate and efficient decision-making framework. We wish to retain an appropriate level of oversight, while continuing to ensure that responses on affected planning consultations and non-planning consents are made quickly to support development and economic growth.
- 4.19 We are therefore examining how best to divide responsibility between the company and central government. This might involve giving the company the powers to respond in its own right on local planning proposals. The process through which the company deals with these cases would be specified by government and set down in the framework agreement and licence. Cases of national importance would continue to be decided by the Secretary of State. Alternatively, the new regime could be based around the company providing advice to the Secretary of State when a decision is needed.
- 4.20 The Highways Agency also has a role taking road improvements through the planning system, acting as scheme promoter on behalf of the Secretary of State<sup>8</sup>. In the future, the new company will be promoting such schemes in its own right, though relevant decision-making functions will remain with the Secretary of State. This will

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<sup>7</sup> <https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development>

<sup>8</sup> Under the Planning Act 2008, the Highways Act 1980 and the Acquisition of Land Act 1981

more clearly demarcate promoter and decision-maker. We do not anticipate any other changes of substance to the existing law, so the planning system will continue to provide the same protection to those affected by road schemes.

## Assets and contracts

- 4.21 The Highways Agency is responsible for a large range of assets and contracts. At present, because the Agency has no independent legal identity, these are all signed or held in the name of the Secretary of State.
- 4.22 Under the Highways Act 1980, ownership of the highways that form the SRN is granted to the highways authority, currently the Secretary of State. Under the proposals in this document, the new company will become the highways authority by virtue of the licence issued by the Secretary of State. Therefore in the future, ownership of the highways will rest with the new company, allowing it to fulfil its duty to operate, maintain and enhance the SRN.
- 4.23 Any other relevant land or property which does not automatically transfer to the new company when it becomes the highway authority for the SRN will remain under the ownership of the Secretary of State, who in some cases may request that this is managed on their behalf by the company. Some land or property is necessary for operational purposes, including control centres and maintenance compounds, and in these cases we would expect to transfer the relevant land or property to the new company through a statutory transfer scheme. Other assets, such as vehicles and equipment, may also be transferred in the same way.
- 4.24 The SRN is one of the most significant assets in the country, with a depreciated replacement value of £107.4 billion. We expect the assets, including the highway, to be on the company's balance sheet, in accordance with standard accounting rules. We also expect that the company will be consolidated in turn into the Department for Transport's balance sheet, as the Secretary of State is the sole shareholder.
- 4.25 The licence does not give the company further rights over the highways beyond their role as the highways authority – so, for example, the company would not be able to transfer or sell any part of the highway. If the company's licence is ever revoked, it

would lose its status as the highways authority and ownership of the highways would revert to the Secretary of State. As set out in chapter 2, we will be carrying out further work to consider any commercial freedoms that may apply to other assets.

- 4.26 All future contracts will be signed by the new company, rather than on behalf of the Secretary of State. Where possible, we will look to transfer any existing contracts to the new company as part of the transition, through the statutory transfer scheme. Where a transfer is not practical we will seek to allow the new company to manage any relevant contract on behalf of the Secretary of State until it expires.

## Powers to intervene

- 4.27 One of the issues we have considered is whether it would be appropriate to include some mechanism in legislation to manage circumstances in which a strategic highways company runs into difficulties that affect its ability to continue to operate the SRN. As with other vital national infrastructure, it is essential that the roads continue to run, and there are comparable provisions in legislation for rail and other utilities.
- 4.28 In the unlikely event of operational difficulty there will be at least two potential channels for intervention:
- The Traffic Management Act 2004 creates a 'network management duty' for highways authorities. This allows the Secretary of State to direct a highway authority that has failed to run its network effectively. This power is only intended for use in extreme situations, but would allow the Secretary of State to step in if the need arises.
  - We also intend that the licence will include provisions to cover any exceptional situations where the Secretary of State might need to issue direct instructions, and for winding up the company without disruption, should the need arise.
- 4.29 There are already existing powers for the Secretary of State to provide financial assistance to the company, which we consider sufficient in the event of to deal with any short term difficulties. As the new company will be wholly owned by government and will hold no debt, we do not believe there is a need for any further powers to intervene.

**Q.8 Do you agree with the amendment and division of statutory responsibilities as set out in chapter 4?**

# Consultation questions

- Q.1** Do you agree that the company model proposed in paragraphs 2.3 – 2.15 will provide the company with sufficient freedom and flexibility to operate on a more efficient basis, but also include necessary checks and balances?
- Q.2** Do you have any comments on the proposed process for setting the Roads Investment Strategy?
- Q.3** Do you agree that the proposals described in paragraphs 2.16 – 2.29 will enable a strategic highways company and the UK highways supply chain to plan ahead and deliver more efficiently?
- Q.4** Do you agree that the proposals set out in paragraphs 2.30 – 2.37 strike the right balance between autonomy and accountability of the new company?
- Q.5** Do you agree that environmental protections will be appropriately integrated into the governance regime for the new company, as described in paragraphs 2.39 – 2.42?
- Q.6** Do you agree that the proposals set out in paragraphs 2.43 – 2.46 will lead to the necessary cooperation with and accountability to local authorities, operational partners, road users and interest groups?
- Q.7** Do you agree with the nature and scope of our proposed approach for ensuring effective, independent scrutiny and challenge of the company, as described in chapter 3?
- Q.8** Do you agree with the amendment and division of statutory responsibilities as set out in chapter 4?

# What will happen next

1. This consultation closes on 20 December 2013. A summary of responses, including the next steps, will be published on gov.uk in early 2014. Paper copies will be available on request.
2. Subject to the results of this consultation, we expect to move forward with the process of creating the new strategic highways company over the course of 2014, with the new organisation formally coming into operation in 2015. We plan to bring forward the necessary legislation to support this change in parallel.



# Annex A: Consultation principles

The consultation is being conducted in line with the government's key consultation principles which are listed below. Further information is available on the gov.uk website at <https://www.gov.uk/government/publications/consultation-principles-guidance>

This consultation will last for eight weeks because it is focused on relatively technical issues and there has been extensive engagement with stakeholders throughout the policy development process.

If you have any comments about the consultation process please contact:

Consultation Coordinator  
Department for Transport  
Zone 1/14 Great Minster House  
London SW1P 4DR  
Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

## Consultation principles

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected.