



Department  
for Transport

# Government Response to consultation on transforming the Highways Agency into a government-owned company

April 2014



# Government Response to consultation on transforming the Highways Agency into a government-owned company

Presented to Parliament  
by the Secretary of State for Transport  
by Command of Her Majesty

April 2014



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# Purpose

The Government launched a public consultation in October 2013 seeking views on policy proposals for transforming the Highways Agency into a government-owned company, particularly on issues that would have implications for legislation that the Government plans to bring forward in 2014.

The purpose of this document is to summarise the responses received to the consultation, highlight the main issues raised in the views expressed by respondents and explain the Government's final decisions made as a result of the views provided.

# Executive summary

## Introduction

1. Our aim is to create a national road infrastructure fit for the 21<sup>st</sup> century that supports economic growth, through maintaining and improving the asset, improving reliability and resilience, reducing congestion and supporting broader environmental and safety goals.
2. Delivering this vision requires a world-leading public delivery and operations company that emulates best practice from comparable private sector bodies, delivers faster and more efficiently, and provides a better service to customers and value for money for taxpayers.
3. In June 2013, the Chief Secretary to the Treasury announced the Government's intention to transform the Highways Agency into a government-owned company, with further details set out the following month in the command paper *Action for Roads*. This included plans to improve certainty, independence and accountability for the Agency, introduce a Road Investment Strategy and establish a road user watchdog and cost monitor.
4. In October 2013, we launched a public consultation to seek views on our proposals for establishing the new company and holding it to account, particularly those elements requiring legislation.
5. This included plans to set up the Agency as a wholly publicly-owned but legally separate company – underpinned by legislation and appointed as a highway authority under licence to transfer the powers and duties needed to operate, manage and enhance the network.
6. We provided details of our proposals that would allow the new company to improve delivery and manage the business, with a smarter and more strategic role for government, supported by a robust governance and accountability framework.
7. Together, these changes will transform how our strategic roads are run. This will ensure more efficient operation and faster delivery, saving the taxpayer at least £2.6 billion over ten years. It also means clearer accountability and greater transparency, providing assurance on the spending of public money and ensuring that the network continues to be run in the public interest.

## Response to the consultation

8. We received 106 responses to the consultation by the set deadline, from a mix of road user groups, business and supply chain organisations, local bodies, environmental bodies, campaign groups and members of the public.

69 responses were received from organisations, with 37 submitted by members of the public.

9. The majority of organisations were largely supportive of proposals, with very few opposed – though there was a strong desire for more detail about how proposals would be implemented. Members of the public were generally more sceptical about the proposals.
10. Most respondents were broadly supportive of turning the Highways Agency into a government-owned company and actively welcomed the introduction of long-term funding certainty for strategic roads. Many agreed that the intended model, together with the Road Investment Strategy process, will help to address historic problems of stop-start investment, ensure greater operational independence, and enable better planning and more efficient delivery.
11. There was considerable support for the proposed governance and accountability arrangements for the new company, particularly from organisations. Many believed that this would provide for an appropriate balance between autonomy and accountability, though several noted that much would depend on the detail of how this is implemented.
12. It was broadly acknowledged that essential environmental protections would be sufficiently covered by existing legislation and the proposed governance regime, though a few argued for stronger protections. Similarly, many welcomed the intention to build in clear requirements for the company to cooperate with others, while some called for proposals to be strengthened.
13. The exception to this broadly supportive response was proposals for delivering independent, external scrutiny functions. Most respondents – while supportive of these functions in principle – disagreed with the government’s preferred option for delivering these functions, though the reasons for this varied widely, with no clear consensus on the best approach.

## Conclusions and next steps

14. The consultation has shown broad support for the Government’s proposals for turning the Highways Agency into a government-owned company. We therefore intend to continue with the proposed reforms outlined in the original consultation, confirming our intention to:
  - Set up the Highways Agency as a government-owned strategic highways company – with the legal powers and duties to manage and run the roads, appointed by licence from the Secretary of State for Transport which sets clear conditions about how the company must act.
  - Put in place a robust system of governance for this company – giving the road operator the flexibility needed to operate, manage and enhance the strategic road network effectively, while ensuring clear accountability to the Secretary of State, Parliament and road users.
  - Establish – for the first time – a ‘Road Investment Strategy’, setting out a stable, long-term investment plan for strategic roads and providing a clear vision, performance requirements and delivery expectations to be met by the new company.

- Set up new, discrete units – ‘Road User Focus’ within Passenger Focus and a ‘Strategic Road Network Monitor’ within the Office of Rail Regulation – to represent the interests of all those who use and rely upon the strategic road network, and to monitor the efficiency and performance of the company.
    - Introduce legislation to underpin these reforms.
- 15.** There are, though, some areas where consultation has suggested the need for greater clarity, or where respondents have made alternative proposals. In a number of places, we have sought to provide more detail about how the new system will operate in practice. This feedback has also prompted us to re-examine some elements of the reform proposals, and in some cases to make changes.
- 16.** Chapter 4 of this document provides more information around these points, in particular:
- The governance and accountability arrangements for the new company – balancing freedom and flexibility for the new company to operate more efficiently and effectively with the strategic controls necessary to safeguard value for money and the public interest.
  - The flexibility and parliamentary accountability of the Road Investment Strategy – ensuring that roads investment benefits from a stable, long-term approach similar to other infrastructure sectors, while ensuring that each and every Parliament has its opportunity to shape the RIS and the Secretary of State can vary the RIS if needed, subject to due process.
  - The system of external scrutiny and challenge – ensuring a strong voice for all road users and effective monitoring of costs, through independent and transparent expert advice that is highly influential in driving efficiency improvements.
  - The role and powers of the new company in the planning process – with a new regime that provides robust protection for the network, while ensuring an efficient system that supports economic growth.
- 17.** Many respondents provided views on issues of further detail regarding the implementation of the proposed reforms. While many of these went beyond the scope of the consultation, we will be taking account of these views as we move forward with delivery.
- 18.** We intend to make further details about the governance framework documentation and the Road Investment Strategy available over the summer to support the legislative process.
- 19.** We will publish the first Road Investment Strategy later in 2014, and aim to bring the new company into operation in spring 2015.



# Summary of decisions

Following the process of public consultation, the Government –

- Confirms its intention to set up the Highways Agency as a legally separate government-owned company, limited by shares, with the Secretary of State for Transport as the sole shareholder.
- Confirms its intention to set up the new company as a highway authority for the strategic road network and to confer the necessary powers and duties to operate, manage, maintain and enhance the network.
- Confirms its intention to establish a governance framework for the new company comprising Legislation, a Licence, a Framework Agreement, a Road Investment Strategy and Articles of Association, supported by relevant guidance and standards.
- Confirms its intention to establish a Road Investment Strategy with a long-term funding guarantee, a performance specification and a defined funding and investment plan, and will publish the first Road Investment Strategy later in 2014.
- Confirms that the company will have clear environmental responsibilities and that the performance regime will support and incentivise an improvement in the environmental performance of the strategic road network.
- Confirms its intention to put in place specific requirements on the company to cooperate with local authorities, emergency services and other stakeholders.
- Will create a 'Road User Focus' unit within Passenger Focus to represent the interests of users of the strategic road network.
- Will create a 'Strategic Road Network Monitor' unit within the Office of Rail Regulation, to ensure that the company delivers its commitments efficiently and effectively.
- Will seek to amend planning powers to make the new company a statutory consultee for relevant planning applications, but will not transfer to the company the wider powers of direction currently exercised by the Highways Agency on behalf of the Secretary of State. The Secretary of State will retain his existing powers of direction, and may intervene under existing legislation to support the company where there is a disproportionate negative effect on the network.

In light of feedback received in consultation responses, the Government –

- Intends to make drafts of the Licence, the Framework Agreement and the Articles of Association available over the summer to support the legislative process.
- Will continue to consider how best to reflect important responsibilities – such as protection of the environment, support for sustainable development, cooperation

with others and regard for government policy – across the different parts of the company's governance framework.

- Intends that the Secretary of State will appoint the company's Chair, and approve the Chair's nominations for appointment of the Chief Executive and the majority of the Board. The Secretary of State will also have the option to directly appoint a non-executive director to the company's Board.
- Intends to make further details about the RIS available over the summer, prior to publication, to support the legislative process.
- Confirms that both Road User Focus and the Strategic Road Network Monitor will make their findings public, and that data on the company's performance will be publicly available.
- Will continue to examine the precise balance between the advisory and regulatory elements of the monitor's role, and any specific measures available for enforcement, so that the company is held to account effectively by the monitor and takes action to fix any concerns that they raise.
- Intends that Road User Focus will be able to investigate issues affecting local roads, where this is requested and paid for by local authorities.

# 1. The policy context

- 1.1 Good quality, modern infrastructure is a vital component of a strong, competitive economy and a fairer society. The Government is already investing £5 billion in improving infrastructure to the end of this Parliament, including projects to improve our transport networks, supporting job creation and economic growth.
- 1.2 In June 2013, the Chief Secretary to the Treasury announced, in *Investing in Britain's Future*,<sup>1</sup> over £100 billion of investment in infrastructure to 2020/21, and set out the Government's strategic plans to tackle historic problems of short-term decision making and uncertainty in funding, and plans to strengthen public sector delivery of major projects and programmes.
- 1.3 This included unveiling a transformational investment of £24 billion in our national roads, trebling investment by 2020. We recognise the scale of this challenge. That is why the announcement of investment was accompanied with a commitment to radical changes to the way our motorways and major 'A' roads are managed, to make delivery secure and efficient.
- 1.4 The following month, the Government published *Action for Roads: a network for the 21st century*,<sup>2</sup> in which we outlined these changes in more detail. This built on the recommendations made by Alan Cook in his 2011 review: *A Fresh Start for the Strategic Road Network*.<sup>3</sup>
- 1.5 The plans set out in *Action for Roads* centred around:
  - Setting up the Highways Agency as an arm's-length government-owned company, able to approach network management in a sufficiently flexible and efficient way, comparable with other infrastructure companies, while acting transparently, in the public interest and with an appropriate level of accountability to government, road users and taxpayers.
  - Establishing a Road Investment Strategy (RIS), setting out a stable, long-term investment plan for strategic roads and providing a clear vision, performance requirements and delivery expectations to be met by the new company.
  - Providing long-term funding certainty – set out in a statement of funds available (SoFA) to be published alongside the RIS – giving the roads operator and its supply chain security over investment plans and allowing them to gear up – investing in staff and plant equipment – and plan work over the longer term.

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<sup>1</sup> <https://www.gov.uk/government/publications/investing-in-britains-future>

<sup>2</sup> <https://www.gov.uk/government/publications/action-for-roads-a-network-for-the-21st-century>

<sup>3</sup> <https://www.gov.uk/government/publications/a-fresh-start-for-the-strategic-road-network>

- Giving the company the necessary powers and duties to operate, manage, maintain and enhance the strategic road network (SRN) efficiently and effectively.
- Setting up two external and discrete functions to scrutinise the company and advise ministers. One of these will promote the interests of road users, the other will monitor and advise on costs and efficiency.
- Introducing legislation to underpin these reforms.

**1.6** These reforms, on which we have now consulted, are necessary if we are to secure the delivery of the investment announced in 2013, with the benefits to the economy that come with it. Together, these changes will provide:

- **Efficiency:** funding certainty and a smarter, more strategic relationship with government will change the way the network operator and its suppliers approach investment, enabling lower-cost, longer-term approaches that will secure savings for taxpayers.
- **Acceleration:** the provision to the company of clear strategic plans set out over five years, with more independence over delivery, will enable better prioritisation and faster delivery, providing a more timely boost to jobs and growth.
- **Accountability:** the company will operate the network under a robust and transparent 'performance contract' with the government, modelled on similar mechanisms in the regulated sectors, and can be sanctioned for failing to deliver any part of it in budget.
- **Transparency:** Road users will be represented independently for the first time. Both taxpayers and road users will be able to view strategic plans and expectations for the network and hold the company to account for its performance on delivery and operation.

## 2. Consultation – introduction and methodology

### Introduction

- 2.1** In October 2013, the Government launched a public consultation to seek views on the more detailed policy proposals for transforming the Highways Agency into a government-owned company. The consultation ran from 29 October to 20 December 2013.
- 2.2** The eight questions that formed the basis of the consultation particularly focused on those elements relevant to the legislation needed to implement the Government’s planned reform of the Highways Agency, notably for ensuring:
- The company model for the reformed Agency can form the basis of a more independent organisation at arm’s-length from government.
  - The company’s governance framework is clear and robust, with an appropriate balance of autonomy and accountability.
  - The process for setting the Road Investment Strategy is clear, with sufficient engagement with all interested parties, and will enable better long-term planning and more efficient delivery.
  - Effective and proportionate environmental protections, cooperation and independent external scrutiny of the new company.
  - The company has the necessary powers to perform its duties effectively, with a clear and sensible division of responsibilities between the company and the Secretary of State.
- 2.3** The consultation was open to anyone to respond, with a wide range of stakeholders encouraged to engage including road user groups, supply chain and wider business organisations, local bodies and environmental groups.
- 2.4** This consultation was run in accordance with the Government’s key consultation principles.<sup>4</sup>

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<sup>4</sup> <https://www.gov.uk/government/publications/consultation-principlesguidance>

## Handling of responses

- 2.5** The consultation document was available to view online at gov.uk, where respondents were given the option to respond using an online response form, or a printable response form that could be submitted to a postal address.
- 2.6** Respondents could also respond to the consultation with their own free text responses (for example, in the form of letters, emails and reports).
- 2.7** Any responses to the consultation received on or before 20 December 2013 were counted and included in the formal analysis, as were postal responses dated on or before 20 December that may have been received later. Any late responses were not formally counted as consultation responses.

## Approach to analysing responses

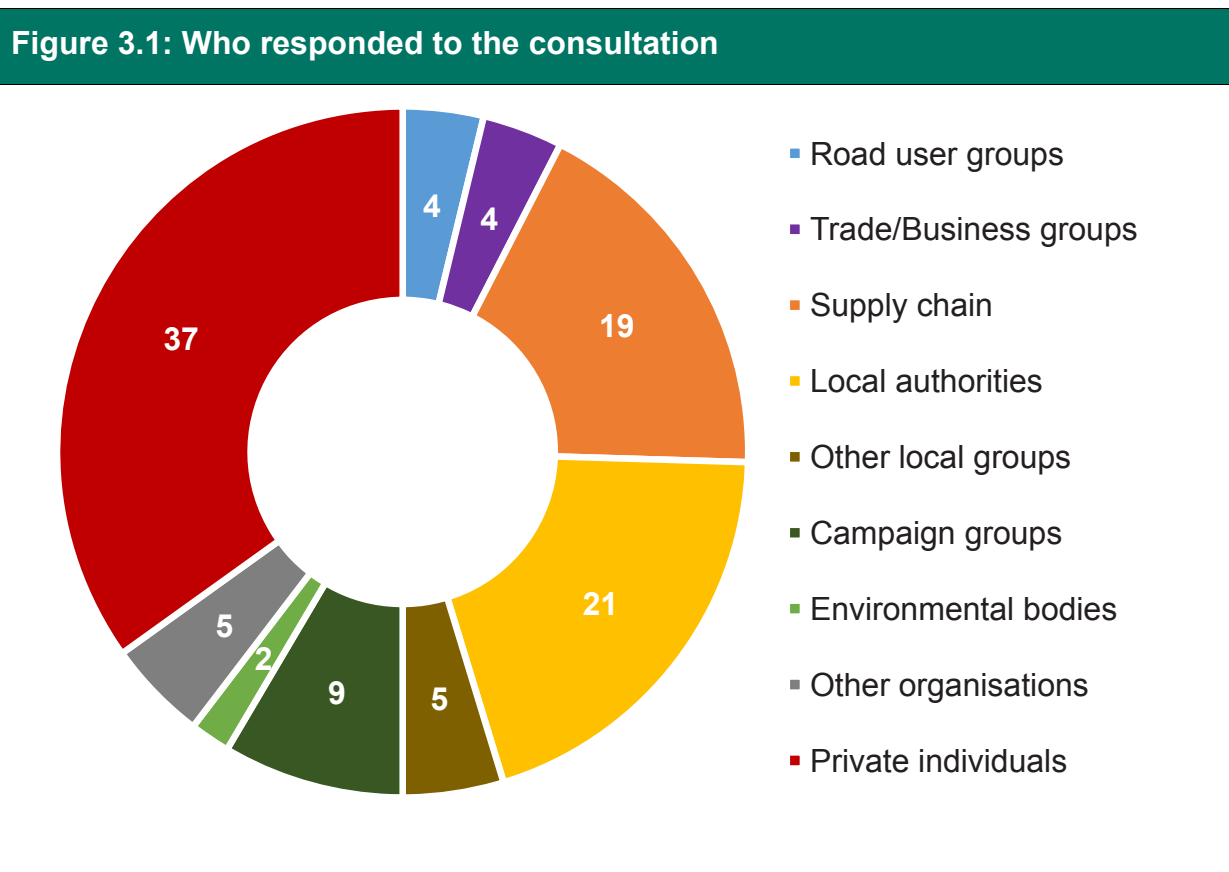
- 2.8** Responses received were recorded and categorised into one of the following 'respondent groups':
- Road user groups
  - Trade or business organisations
  - Supply chain organisations
  - Local authorities
  - Other local bodies (including Local Enterprise Partnerships and Local Transport Bodies)
  - Campaign groups
  - Environmental bodies
  - Other organisations
  - Private individuals
- 2.9** The analysis of consultation responses was divided into assessing the overarching views of respondents on each of the consultation questions, and assessing the more detailed comments and issues raised on the proposals.
- 2.10** The first process sought to establish whether, on balance, each respondent 'agreed', 'disagreed' or 'neither agreed or disagreed' with the proposals highlighted by each of the consultation questions.
- 2.11** Online response forms asked respondents to explicitly indicate whether they 'agree', 'disagree' or 'neither agree not disagree' with proposals, as well as inviting more detailed comments. Therefore capturing these views from online responses was straightforward.
- 2.12** Assessing the overall balance of views from free text responses was more complicated. These responses varied widely in length and format – coming in the form of emails, letters or reports. In many cases respondents did not offer an explicit view; some gave only general or partial responses, while others provided views on a range of more detailed issues. These were assessed to inform a judgement about the overall balance of views expressed.

- 2.13** Once this analysis was complete, the views offered in free text responses were added to the views from online responses to allow all the responses to be considered together. This provided an overall analysis of the balance of respondents' views on proposals. The results of this analysis can be seen in Chapter 6, below, in the section on 'Responses to consultation questions'.
- 2.14** The second part of the analysis involved identifying and assessing the more detailed comments or issues raised, to inform decisions and be fed back into plans for implementation going forward. These issues were captured in detail for each respondent, and for the purposes of analysis these were separated into key 'themes', which were linked to the consultation questions as follows:
- **Company model** – covering the proposed institutional model for reform of the Highways Agency.
  - **Governance and accountability** – covering the proposed governance and accountability framework for the new company, and the balance of autonomy and accountability that this would provide.
  - **Road Investment Strategy** – covering issues around the structure, process and content of the RIS, including long-term funding certainty and implications for better forward planning and more efficient delivery.
  - **Environmental protections and opportunities** – covering the need for relevant environmental protections, responsibilities and requirements of the new company set through the governance framework.
  - **Cooperation** – covering the need for effective cooperation between the company and others, and the proposals for securing this in the governance framework.
  - **External scrutiny and challenge** – covering arrangements for ensuring effective user representation and scrutiny of the company's performance.
  - **Powers and functions** – covering arrangements for ensuring the company has the necessary powers to operate, manage and enhance the strategic road network, and that appropriate arrangements are put in place to ensure continuity of important functions.
- 2.15** Many of the comments addressed issues of detail that related to further implementation of proposals. We have sought to highlight the most significant and relevant of these issues in Chapter 6, and in more detail in Annex A. In doing so, we have taken care to ensure that arguments are presented fairly and appropriately, taking account of the number of respondents voicing a similar opinion, and of the wider membership and representation of many of the responding organisations.
- 2.16** There were a number of other issues raised by single respondents, or that related to specific points of detail that did not directly address the consultation questions. This document does not seek to summarise these, though they will be considered as we develop the next stage of this work.
- 2.17** Some issues raised were not directly related to the scope of the consultation proposals, but concerned wider policy issues. We have sought to highlight the most significant of these in the section in Annex A on 'Other issues'.

# 3. Consultation – response volumes

**3.1** A total of 106 responses were received by the set deadline through the consultation process. Table 3.1 and Figure 3.1 provide further details about who responded and how.

Table 3.1: Summary of consultation responses	
Type	Number
Responses from organisations	69
Responses from individual members of the public	37
Online responses	30
Free text responses	76
(Late responses)	(2)





## 4. Consultation – proposals and responses

- 4.1** This chapter sets out the views expressed in response to the consultation proposals, and our proposed next steps based on these.
- 4.2** The approach taken below is to:
- Summarise overall responses to each of the consultation questions, by identifying how many respondents were judged to agree, disagree or respond neutrally to each of the proposals.
  - Summarise the main issues raised on each of the key consultation themes, and set out Government's intended way forward.
  - Identify and explain the main decisions made following the consultation process.
- 4.3** A more detailed summary of the issues raised by respondents on each of the key consultation themes is provided at Annex A.

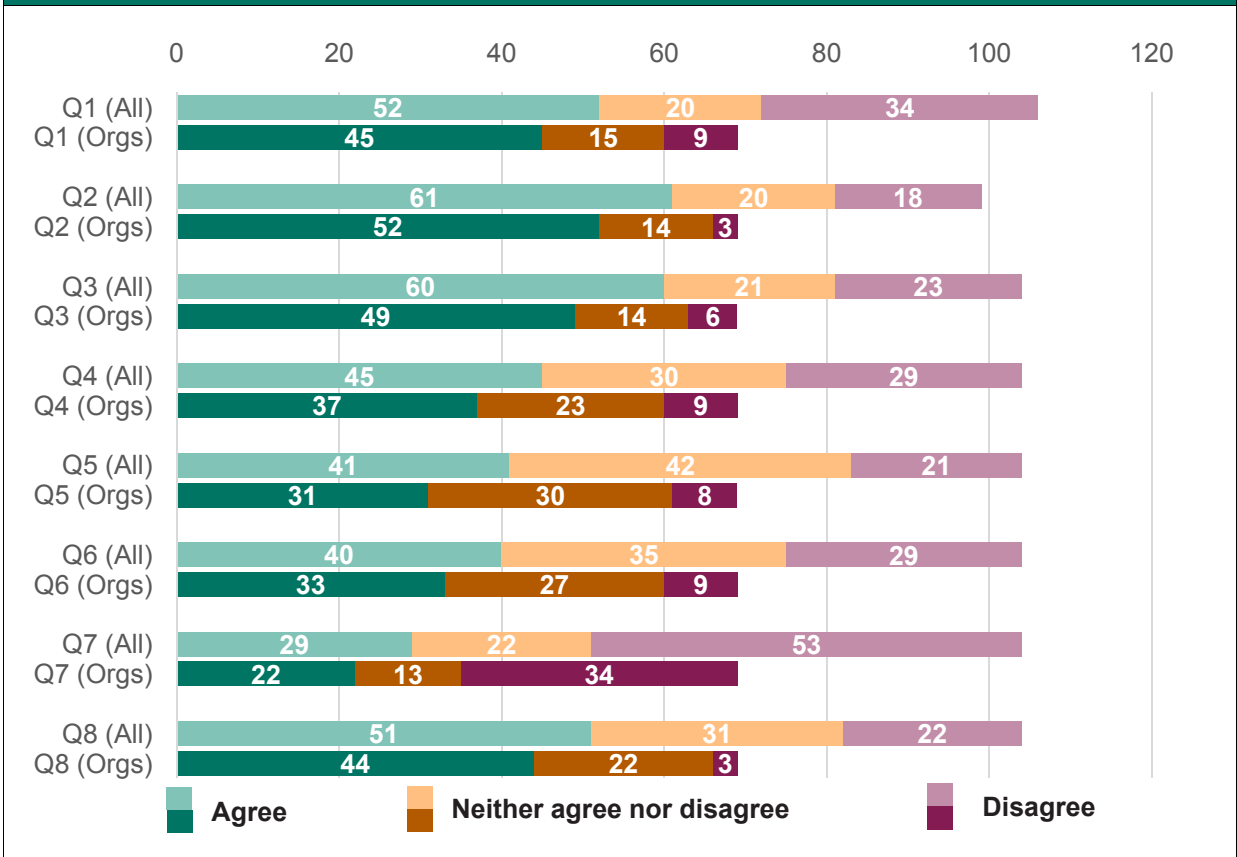
### Responses to consultation questions<sup>5</sup>

- 4.4** Looking across the responses to all of the consultation questions, it is apparent that the majority of responding organisations were largely supportive of (or were, on balance, neutral towards) the proposals, with very limited outright opposition, whereas individual members of the public were generally more opposed to proposals. This is illustrated in Figure 4.1.
- 4.5** The exception to this is question 7, on proposals for independent, external scrutiny and challenge of the company, which is discussed in more detail later in this chapter.
- 4.6** Figures 4.2a – 4.2h, below, provide an overview of responses to each of the eight consultation questions. These are followed by a summary of the more detailed issues raised on the key themes, and how the Government intends to proceed.

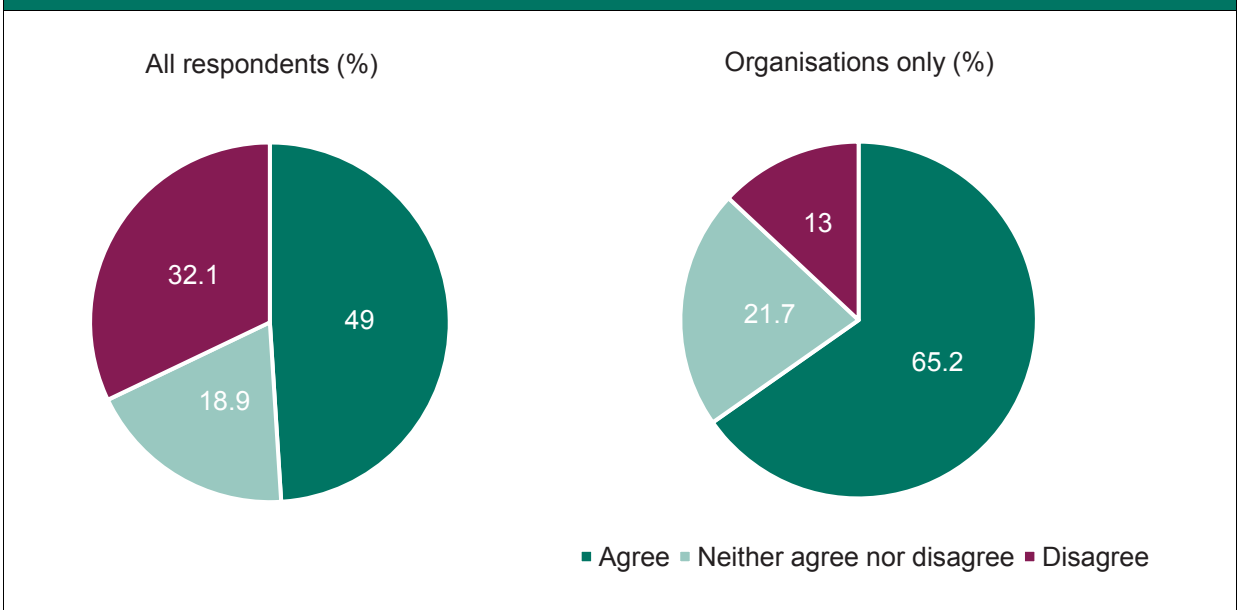
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<sup>5</sup> Consultation proposals referenced in the consultation questions are available to view in the original consultation document here: <https://www.gov.uk/government/consultations/transforming-the-highways-agency-into-a-government-owned-company>

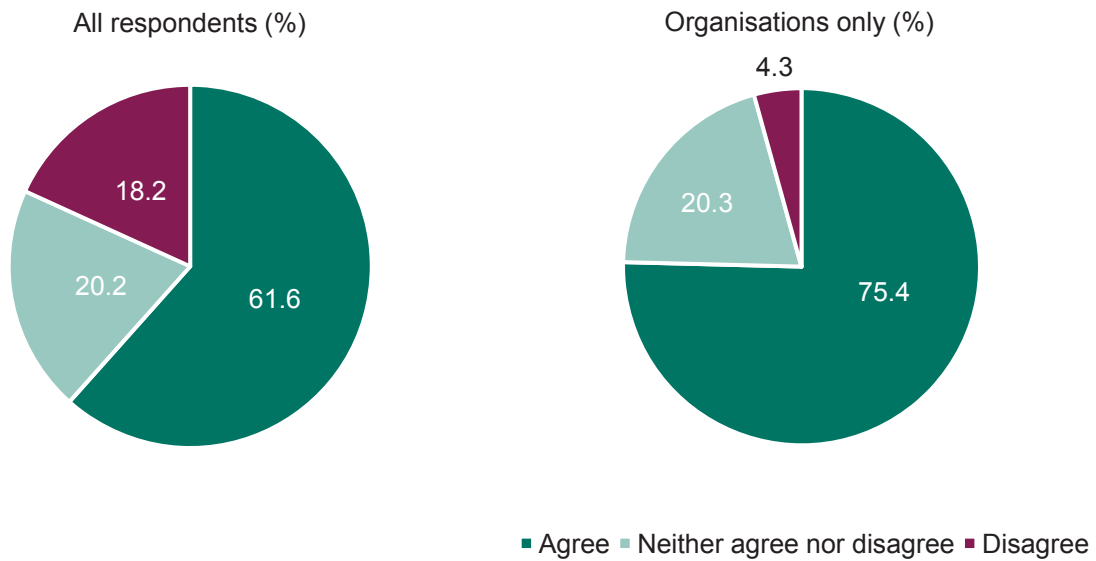
**Figure 4.1: Comparison of views of all respondents and views of organisations only**



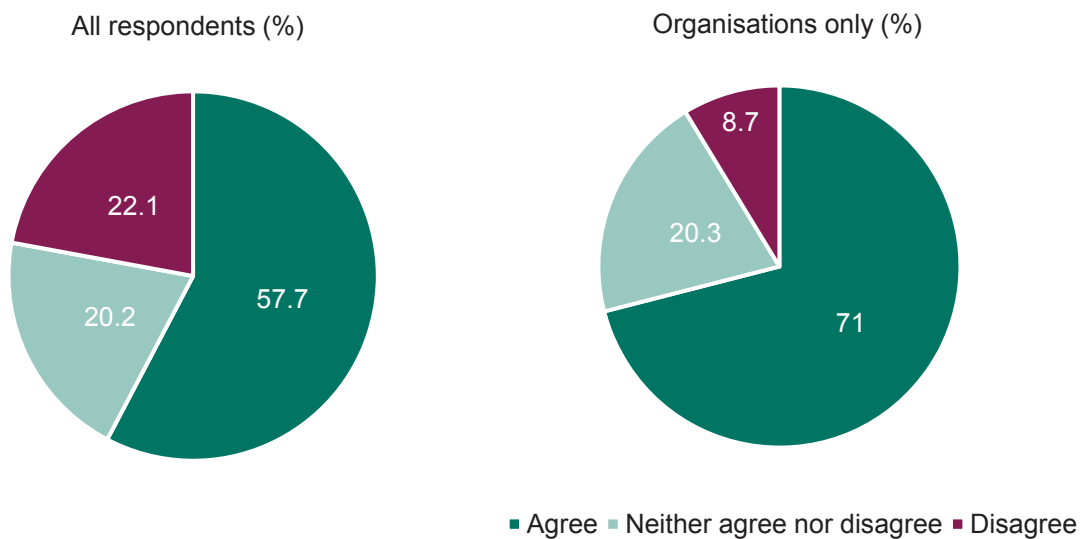
**Figure 4.2a: Responses to Q.1 Do you agree that the company model proposed in paragraphs 2.3 – 2.15 will provide the company with sufficient freedom and flexibility to operate on a more efficient basis, but also include necessary checks and balances?**



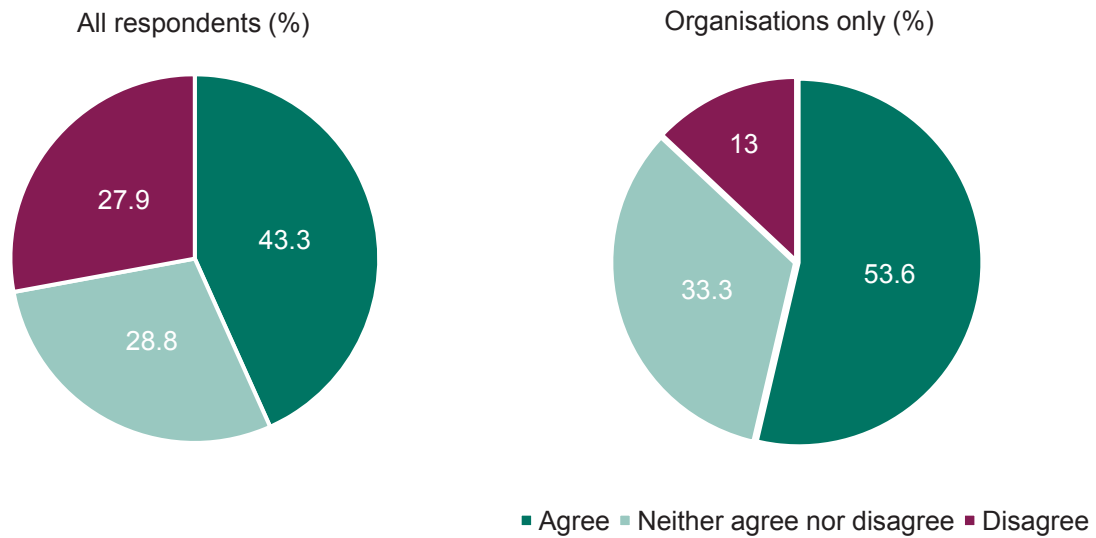
**Figure 4.2b: Responses to Q.2 Do you have any comments on the proposed process for setting the Road Investment Strategy?**



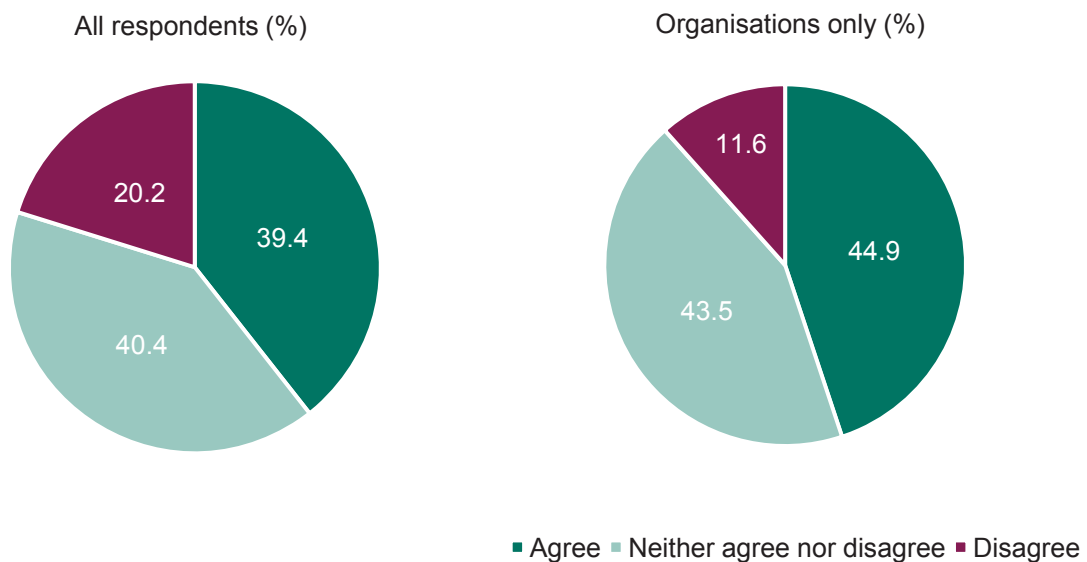
**Figure 4.2c: Responses to Q.3 Do you agree that the proposals described in paragraphs 2.16 – 2.29 will enable a strategic highways company and the UK highways supply chain to plan ahead and deliver more efficiently?**



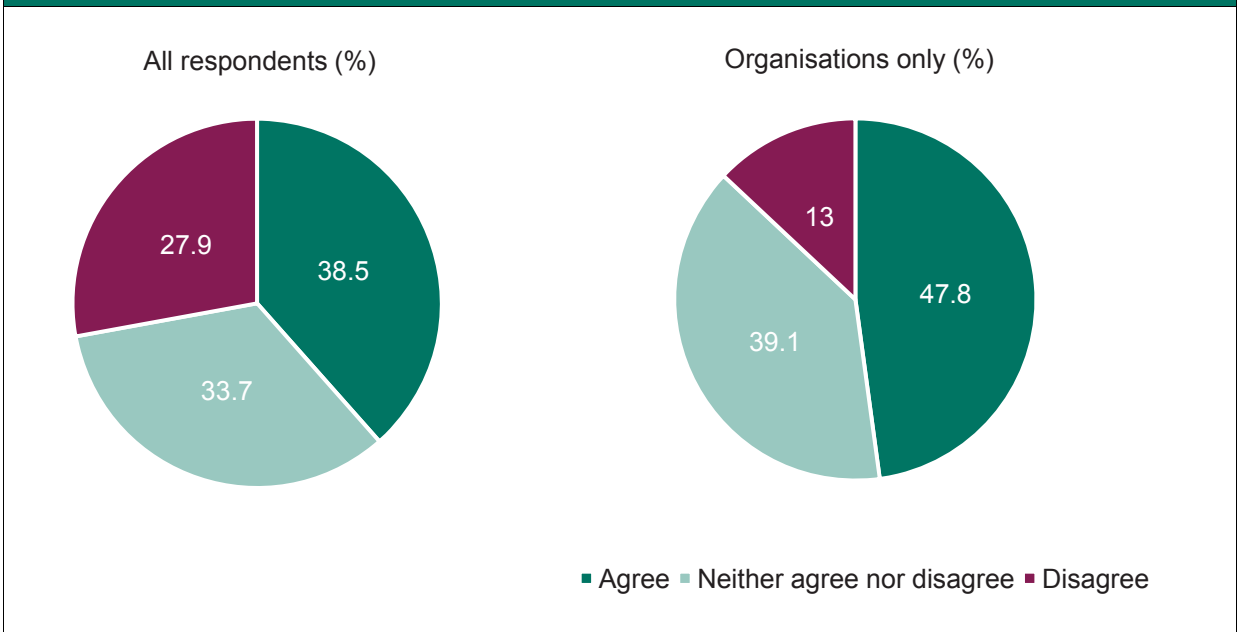
**Figure 4.2d: Responses to Q.4 Do you agree that the proposals set out in paragraphs 2.30 – 2.37 strike the right balance between autonomy and accountability of the new company?**



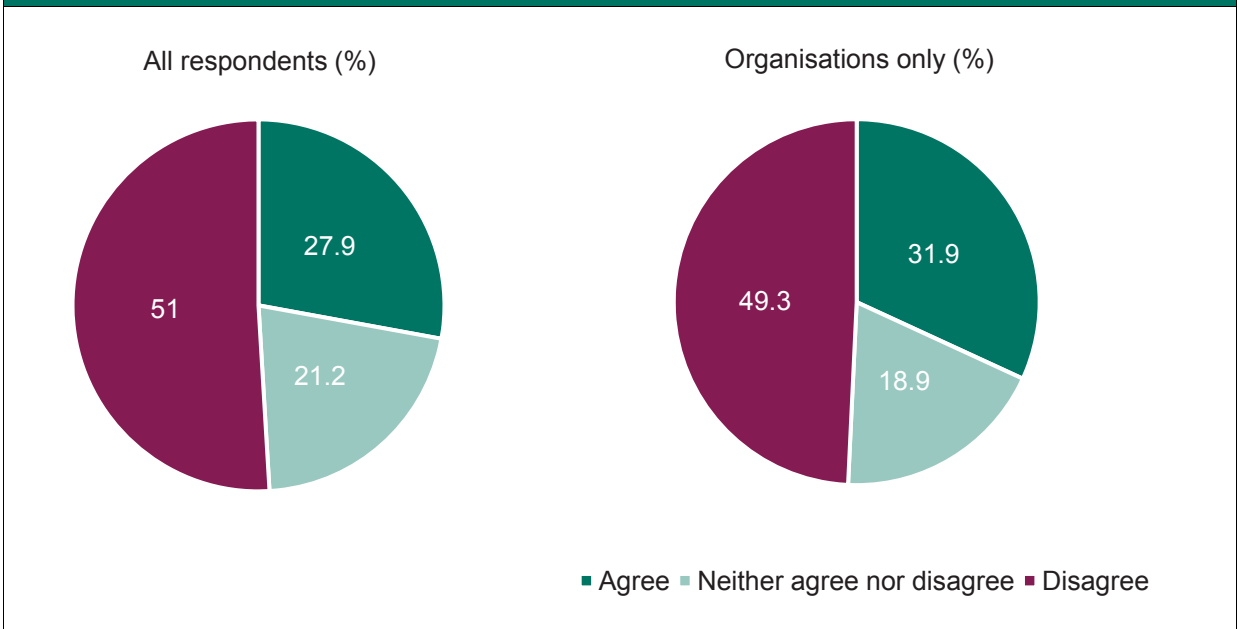
**Figure 4.2e: Responses to Q.5 Do you agree that environmental protections will be appropriately integrated into the governance regime for the new company, as described in paragraphs 2.39 – 2.42?**



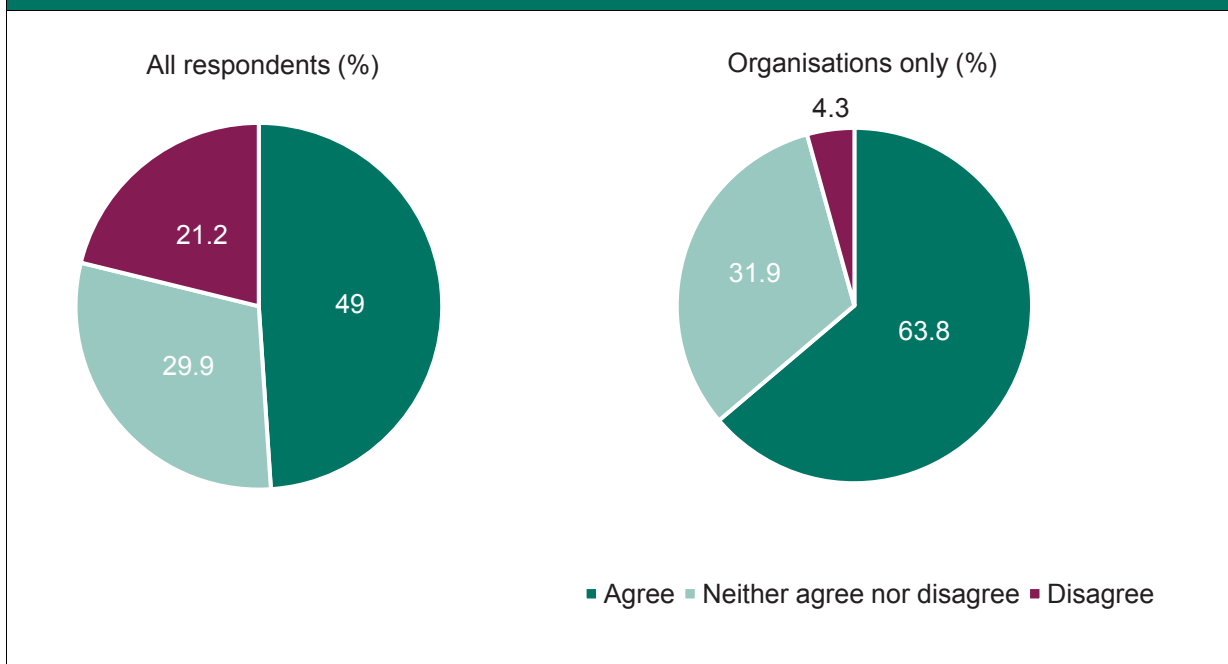
**Figure 4.2f: Q.6 Do you agree that the proposals set out in paragraphs 2.43 – 2.46 will lead to the necessary cooperation with and accountability to local authorities, operational partners, road users and interest groups?**



**Figure 4.2g: Responses to 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?**



**Figure 4.2h: Responses to Q.8 Do you agree with the amendment and division of statutory responsibilities as set out in Chapter 4?**



## Main issues raised and the way forward on the key themes

### Company model

- 4.7** Overall, most respondents were broadly supportive of, or neutral towards, the proposals to turn the Highways Agency into a government-owned company, limited by shares, with the Secretary of State as the sole shareholder.
- 4.8** The majority of responding organisations agreed that the intended model will enable greater operational independence, a more commercially-minded approach and more efficient delivery. A few others indicated a need for further detail in order to judge the suitability of the proposed model, while most individual members of the public disagreed with the proposals.
- 4.9** Those who opposed the change did so for a variety of reasons. Particular concerns included the potential complexity of the new model, and subsequent doubts about the ability to achieve the desired benefits, or a belief that the change either involved privatisation of the Highways Agency or signalled an intent to privatise in the future.
- 4.10** Other respondents, meanwhile, expressed support for more radical reforms to the way roads are managed and/or funded, for example advocating the need to explore alternative revenue streams or institutional models, including options involving private finance.
- 4.11** The Government welcomes the overall support offered for our proposed approach, and in light of responses received to the consultation we are confident that this represents the best model for creating a more arm's-length, independent and efficient public body with the right skills, culture and flexibility to deliver for the economy, for road users and for the taxpayer.

- 4.12** Changing the status of the Highways Agency aims to address a fundamental problem at the heart of our management of the strategic road network. We do not think that this can be addressed by managerial change alone.
- 4.13** Institutional change is an essential component of reform, in order to create the clarity and certainty of long-term investment plans and performance expectations needed to ‘lock in’ these arrangements in a secure, published agreement. Through the creation of a separate entity outside of the civil service framework, able to enter into a formal, long-term funding relationship with central government, underpinned by a legal process, greater certainty over the stated funding can be assured.
- 4.14** While some elements of this could be delivered under the existing regime, many parts would not. Overall, a stable, credible investment plan cannot be created without strategic reform. We note that this position was explicitly supported by a number of respondents to the consultation, including engineers’ professional organisations and the wider supply chain.
- 4.15** There are also wider benefits of moving to a company model. The ability to create a clearer system of accountability, drive closer attention to budgets and engender a more commercial culture will all support efficiency in the longer term.
- 4.16** In *Action for Roads* we noted that alternative options were considered in developing our reform proposals, including those involving private finance. We have made clear both in *Action for Roads* and in our consultation that the Government has no plans to privatise the Highways Agency. The proposed new company would remain 100% publically-owned, and we will be seeking to guarantee this in the legislation required to set up the framework for the new company. We believe the proposals set out in our consultation are the right ones to deliver certainty, efficiency and a better service to road users.

**The Government confirms its intention to set up the Highways Agency as a legally separate government-owned company, limited by shares, with the Secretary of State for Transport as the sole shareholder.**

### **Governance and accountability**

- 4.17** There was considerable support expressed for the Government’s proposed approach for setting the governance and accountability arrangements for the new company. Many believed that this would provide for an appropriate balance between autonomy and accountability – with the clearest support coming from organisations.
- 4.18** Several respondents highlighted particular points of principle that they felt should be reflected in the new arrangements, most notably that:
- The company should have as much flexibility as possible to deliver efficiently and to innovate, while safeguarding the public interest and value for money.
  - The Board should have the right structure, independence, skills, experience and incentives to deliver their responsibilities.

- Dealings between government and the company should be transparent, with clear roles for both parties and a strong understanding of accountability on both sides.

**4.19** Others responded more neutrally to proposals. While most believed that the proposed approach was sound in principle, they questioned how this would work in practice, in particular:

- Whether arrangements would provide an appropriate balance between autonomy and accountability.
- Whether proposals would be unnecessarily complex, more bureaucratic and/or place too many constraints on the company.
- Whether the number of roles held by the Secretary of State under the arrangements would limit accountability, undermine independence and legal separation, or create potential conflicts of interest.
- Whether sufficient, effective sanctions would be available to penalise poor performance or a failure to deliver by the company.
- Whether proposals would allow for wider accountability of the company to road users and local communities.

**4.20** We believe that these concerns are addressed by the combined effect of the different parts of the governance framework, which together will replace the existing model and system of governance with a better one that:

- Focuses government on exercising **strategic control**, while ensuring an appropriate balance of autonomy and accountability.
- Establishes a system of **corporate governance**, with clear roles and responsibilities, to ensure the company is run responsibly.
- Enables use of appropriate **incentives and sanctions** to drive the best performance from the company, maximising efficiency and value for road users and taxpayers.
- Provides a sufficient degree of **wider accountability** to road users, communities and others with a stake in the running of the roads.

These are covered in more detailed below.

#### *Strategic control*

**4.21** As we set out in the consultation, our aim is to give the new company the necessary freedom and flexibility to operate more efficiently and effectively. This is subject to the overarching constraints and strategic controls necessary to safeguard value for money and ensure that wider policy remains joined up.

**4.22** Legislation will establish the strategic levers that will define and govern the relationship between government and the company, in a way that affords government sufficient control to protect the public interest without the need to intervene directly in the daily activities of the company, but still allow the company to be properly held to account. This includes powers for the Secretary of State to:



- Appoint a company to be the highway authority for the strategic road network.
- Confer the necessary legal powers and duties on the company to enable it to carry out its operations.
- Set out the conditions of the appointment through a licence regime.
- Transfer assets to the company, where needed, through a statutory transfer scheme.
- Set out the need and process for producing a Road Investment Strategy, with an associated funding settlement.

**4.23** Designating the company as highway authority for its network will give it a clear legal duty to maintain its roads in a safe and serviceable condition. This is the same responsibility that the Secretary of State holds at present, and which local authorities exercise on the local road network. Should the company neglect its duty, it could be held accountable in the courts – just like any other highway authority.

**4.24** As a consequence of this, a number of other duties will also apply. The network management duty requires all highway authorities (other than the Secretary of State) to cooperate with other highway authorities to expedite the movement of traffic. This will apply to the new company, as will provisions that allow the Secretary of State to intervene if the authority is judged to be failing in this duty. The company will also be the streetworks authority for its network, affecting the process for statutory undertakers who are looking to dig up the road.

**The Government confirms its intention to set up the new company as a highway authority for the strategic road network and to confer the necessary powers and duties to operate, manage, maintain and enhance the network.**

**4.25** Statutory duties will work together with licence conditions to set clear expectations on how the company must act, particularly as regards its wider role as a highway authority. In light of consultation responses, we are considering how best to reflect other important requirements that fall outside of the legal responsibilities of a highway authority – such as promoting better environmental and safety outcomes, enhancing the network, cooperating with key partners and stakeholders, and complying with government policy – across the different parts of the governance framework.

**4.26** In considering how to best achieve this, we must balance the need to set clear, robust expectations with the need to avoid unnecessarily stringent or burdensome requirements, which may create perverse incentives or unhelpful constraints on the company.

**4.27** There is a clear need to ensure that the company delivers in a responsible way and is held to account for its performance and stewardship of public funds. As well as the legislative elements described above, the Licence, the Framework Agreement and the Road Investment Strategy (RIS) will be the most crucial parts of the governance framework for exercising additional

strategic control, creating a new accountability structure and defining the relationship between government and the company.

- 4.28** In other infrastructure sectors operators are issued with licences that permit them to operate, and contain conditions as to how they must act. In keeping with this, we envisage a formal licence document under which the company will be appointed to discharge statutory highway functions in relation to strategic roads.
- 4.29** When a company is appointed by the Licence, the Secretary of State will be able to impose binding conditions, making clear any obligations which the company must meet. These might include requirements to provide data on performance or to comply with certain standards.
- 4.30** Following normal practice for public bodies, the Framework Agreement defines government's relationship with the company. This includes issues such as how government will interact with the company, roles and responsibilities of specific individuals, corporate governance arrangements, and procedural or policy issues (for example around the degree of financial flexibility that the company can exercise, or expectations around information, reporting, monitoring, engagement and audit).
- 4.31** Together, these form a more robust and strategic approach to governance that will operate in a much more efficient, transparent and accountable way than the current system. This governance structure will direct, steer and empower the company, protect accountability and ultimately ensure that:
- Government remains focused on developing policy and exercising strategic control over the company.
  - The company has clear duties and conditions, ensuring that it behaves responsibly and delivers effectively.
  - Roles, responsibilities and lines of accountability are clear, and the process for setting performance requirements is transparent.
  - Performance is managed and kept on track through a combination of clear expectations, governance levers and incentives.
  - Road users, local communities and others have clearer routes to influence plans for the strategic road network and can hold the company to account.
- 4.32** Aligning the governance documents with the roles of the Secretary of State allows the accountabilities between the company and government to be clearly defined, monitored and managed by both parties. It allows the Secretary of State to be clear of the context in which decisions are being taken and the company to be clear of the exact nature of the relationship with the Secretary of State with regard to any issue. The disciplines of these arrangements reflect those in other sectors, while taking into account the realities of direct funding from government and therefore the lack of need for independent economic regulation. The separate legal identity of a limited company and arrangements for appointing the board, alongside the long-term Road Investment Strategy, will give the company the distance from government it needs to operate with sufficient independence.

- 4.33** While we recognise that the detailed form and content of the various elements of the governance framework will ultimately determine the exact nature and balance of autonomy and accountability, following the consultation process we are confident that the broad approach outlined above is the right one.
- 4.34** We will continue to develop the detail of the governance framework documentation in light of responses, and in parallel with preparatory work on legislation. We intend to make drafts of the Licence, the Framework Agreement and the Articles of Association available to support the scrutiny and passage of legislation through Parliament.

**The Government confirms its intention to establish a governance framework for the new company comprising Legislation, a Licence, a Framework Agreement, a Road Investment Strategy and Articles of Association, supported by relevant guidance and standards.**

**The Government intends to make drafts of the Licence, the Framework Agreement and the Articles of Association available over the summer to support the legislative process.**

**The Government will continue to consider how best to reflect important responsibilities – such as protection of the environment, support for sustainable development, cooperation with others and regard for government policy – across the different parts of the company’s governance framework.**

#### *Corporate governance*

- 4.35** Central to ensuring a collaborative relationship, built on transparency and mutual respect, will be clear accountability and expectations of the relationship between government and the company, defined at a strategic level in the governance framework. It is vital that this is reflected in robust and business-like internal governance arrangements in the company, which provide the company with greater independence and allow the Chair to exercise his role with a clear focus on the interests of the company, whilst retaining government oversight.
- 4.36** Matters such as Board composition, appointment of directors and the conduct of meetings will be conducted in accordance with the principles of normal company law, supplemented by the UK Corporate Governance Code. The Articles of Association will set out the constitution of the company, setting out internal management affairs and liability: the company’s internal rule book.
- 4.37** The Board will be legally bound to act in the best interests of the company. The Board members will be collectively responsible for ensuring the company delivers the RIS and the Strategic Business Plan and operates in accordance with the company’s statutory duties as a highway authority, alongside other requirements set through the company’s Licence. The non-executive directors’ roles on the Board will be to provide expert support and advice to the Chair, and to hold the company executive to account.

**4.38** The Secretary of State, as the shareholder, will appoint the company's Chair to lead the board and the company. The Chair (with a nominations committee) will then nominate for appointment a Chief Executive Officer (CEO), as well as the majority of the Board. The Secretary of State, as the shareholder, will approve these appointments, and will also have the option to directly appoint a non-executive director.

**The Government intends that the Secretary of State will appoint the company's Chair, and approve the Chair's nominations for appointment of the Chief Executive and the majority of the Board. The Secretary of State will also have the option to directly appoint a non-executive director to the company's Board.**

**4.39** The company will have an Accounting Officer (AO) who is accountable to Parliament for the public money under his or her control. The responsibilities and duties of Accounting Officers are set out in *Managing Public Money*.<sup>6</sup> Appointment of the AO will be a decision for the Department for Transport's Principal Accounting Officer. It is our intention that the CEO would be appointed for this role, as the person with overall control and responsibility for day-to-day operation of the company.

**4.40** Some respondents queried the extent to which central government controls would apply. We continue to consider the most appropriate application of central controls whilst seeking to optimise flexibility for the company in delivering the needs of customers more effectively and efficiently.

#### *Incentives and sanctions*

**4.41** As explained above, our institutional framework is designed to correct the shortcomings of the existing system and to make it easier for the company to deliver success. However, incentives and sanctions need to be available to encourage the company to fulfil expectations and deal with poor performance.

**4.42** With the collaborative relationship that we want to develop between government and the company, potential problems will be discussed early enough for them to be resolved without resorting to formal processes. However, there may be times where elements of the governance framework may be breached or performance levels are not met and provision needs to be made for this. There will need to be clearly defined parameters with sanctions that are proportionate and appropriate and which take account of circumstances beyond the control of the company.

**4.43** As a wholly government-owned company, the Secretary of State will have the normal sanctions available to a shareholder, including the ability to call an Extraordinary General Meeting and to dismiss some or all of the Board. A hierarchy of other measures would also be available to the Secretary of State. Examples of how these might apply include:

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<sup>6</sup> HM Treasury, *Managing Public Money*, May 2012, <https://www.gov.uk/government/publications/managing-public-money>

- Failures to deliver requirements or breaches of the licence conditions may affect incentives for executive directors, senior management, and/or staff, as well as the company's reputation.
- Failures to deliver requirements or breaches of the conditions of appointment may result in a financial penalty for the company. Given that the company will be publically funded, there may be a particular case to consider small fines that have a reputational rather than a financial impact, sending a signal to the Board that attention needs to be given to certain areas of operation.
- Failure to control costs or manage delivery may require the Secretary of State to reduce or suspend some of the company's autonomy in order to oversee remediation.
- Serious failures or breaches – for example that results in a loss of confidence in the company to deliver – may result in removal of one or more members of the Board.
- If the company fails to comply with one or more of its legal duties, then it can be held accountable before the courts.





**4.44** The Secretary of State is also expected to retain a number of powers. As shareholder he may reserve certain decisions to himself rather than to the company Board, such as approval of the company's Business Plan or changes in incentives for senior management. The Secretary of State will be able to use licence conditions to ensure that the company remains focused on its allocated roles and responsibilities, and does not stray beyond its remit.

**4.45** We will be giving further consideration to the appropriate mix of sanctions and incentives to ensure that the company performs effectively, fulfils its duties and meets its obligations.

#### *Wider accountability*

**4.46** One of the principal aims of roads reform has been that the new company should be publicly accountable – not only to the Secretary of State but to the wider community of road users, local communities and other groups who have a stake in how the strategic road network is run. We believe that the intended approach will achieve this wider accountability. The planned system of scrutiny and user representation, discussed later in the document, will be crucial to this, but the overall strategic control framework will ensure this in a variety of ways, as set out in Table 4.1.

**Table 4.1 Accountability of the company**

	<p>Accountability to government and the Secretary of State</p>	<ul style="list-style-type: none"> <li>• Legislation provides the mechanism for conferring highways functions and duties on a company appointed by Secretary of State</li> <li>• Secretary of State sets conditions through the Licence, and sets wider expectations on behaviour through the Framework Agreement</li> <li>• Secretary of State exercises pressure on efficiency and value for money through setting a challenging RIS</li> <li>• Cost monitor scrutinises costs, efficiency and performance and advises Secretary of State</li> <li>• The Board is directly accountable to the Secretary of State for performance. Secretary of State appoints the Chair, and approves Board appointments and the company's Business Plan</li> </ul>
	<p>Accountability to Parliament</p>	<ul style="list-style-type: none"> <li>• Secretary of State is accountable to Parliament both as owner of the company and as minister responsible for the road network</li> <li>• Chief Executive (as Accounting Officer) is directly accountable to Parliament for spending of public funds</li> <li>• DfT Permanent Secretary (as Principal Accounting Officer) is responsible for oversight of the company in managing public money</li> <li>• Transparent reporting ensures continuous external pressures on costs and performance</li> </ul>
	<p>Accountability to road users</p>	<ul style="list-style-type: none"> <li>• Existing statutory duties to manage, maintain and enhance the roads will transfer to the new company</li> <li>• Road Investment Strategy sets clear requirements</li> <li>• Independent advisory body represents the interests of all road users and scrutinises company performance</li> <li>• Transparent reporting ensures continuous external pressures on costs and performance</li> <li>• Individual complaints handled by Complaints Commissioner and/or Parliamentary Ombudsman</li> </ul>
	<p>Accountability to operational partners, local communities and stakeholders</p>	<ul style="list-style-type: none"> <li>• Legislation, Licence and Framework Agreement ensure the company behaves responsibly and cooperates with operational partners, developers and local authorities – including through the planning system</li> <li>• Road Investment Strategy process allows partners, local communities and stakeholders to influence requirements</li> <li>• Transparent reporting ensures continuous external pressures on costs and performance</li> </ul>

## Road Investment Strategy

**4.47** The overwhelming majority of respondents supported the Government's proposals for establishing a Road Investment Strategy (RIS). Many actively welcomed the introduction of long-term funding certainty for strategic roads and agreed that the RIS process will help to address historic problems of stop-start investment, allow better planning and enable more efficient delivery.

- 4.48** Several respondents noted that much depends on the detail of the process for setting the RIS, with many offering further views on this (as well as offering views on their priorities for the content), particularly the need for:
- A transparent process for setting the RIS with sufficient engagement with the full range of relevant stakeholders – including all categories of road users, local bodies, supply chain and interests groups.
  - RIS cycles to be set in a way that is mindful of the wider infrastructure market, avoids peaks and troughs for the supply chain and manages the risk of uncertainty at the end of RIS periods (for example by setting the RIS on a rolling basis or to a longer timescale).
  - Sufficient time for the company, and the supply chain, to develop plans to deliver RIS requirements, with full consideration of the options.
  - Ensuring that the funding and requirements of the RIS are stable and secure – with several noting the importance of legislation to underpin the RIS – but also that the RIS provides sufficient flexibility to the company to determine the best way to deliver, and allow for small-scale changes within the cycle (for example to programmes or funding).
  - An evidence-based investment decision-making process, with some particular references to the route based strategy process and efforts to take account of customer needs and align the RIS with local plans.
  - Effective integration with wider government and transport goals in developing the strategy and specific requirements for the RIS.
- 4.49** We welcome the widespread support for our commitments to long-term funding certainty and plans to establish the RIS. We are also grateful for all the views offered around the more detailed content of the first RIS.
- 4.50** The ongoing Route Based Strategy (RBS) and Feasibility Study processes will provide vital evidence about future investment options to meet outcomes set through the RIS. These processes will continue to involve extensive engagement with stakeholders, including local authorities and Local Enterprise Partnerships (LEPs). The input received from respondents as part of this consultation process will help to inform the early shaping and development of the future RIS process.
- 4.51** It remains our intention to publish the first RIS in late 2014. Further work is needed before the first RIS can be published, partly to ensure that the views of stakeholders are fully accounted for. However, we also aim to make further details about the RIS available earlier to support the legislative process.
- 4.52** This will begin to address the development process for future Road Investment Strategies, including the interaction with RBSs and the role of stakeholders, as well as help to mitigate the valid concerns stakeholders expressed around the potential creation of peaks and troughs within the infrastructure market at the end of RIS periods. We intend to engage with interested parties on this document following its release.
- 4.53** Our commitment to producing the first RIS by the end of 2014 represents a challenging timescale, but we fully recognise the importance of providing the company and the supply chain with enough time to respond. We are therefore

working closely with the Highways Agency throughout this process in order to allow them the maximum time to develop and refine their Business Plan, which will be published prior to the new company going live in 2015. Together we will also be engaging closely with the supply chain to seek their input and reflect the likely changes in their forward planning.

- 4.54** The RIS is being developed to be robust and resilient to change. It will benefit from both a stable legislative foundation, in the form of a long-term funding settlement, as well as the operational flexibilities that the company will be able to exercise to generate additional efficiencies. This allows the company to deliver in the most efficient and effective way while providing certainty for the new company, the supply chain and government stakeholders.
- 4.55** Several respondents offered a view on aligning strategic road and rail investment plans, but views were divided between those opposed and those in favour. We recognise that aligning road and rail investment has advantages and disadvantages, and will give further consideration to this.

**The Government confirms its intention to establish a Road Investment Strategy with a long-term funding guarantee, performance specification and a defined funding and investment plan, and will publish the first Road Investment Strategy later in 2014.**

**The Government intends to make further details about the RIS available over the summer, prior to publication, to support the legislative process.**

#### **Road Investment Strategy and Parliamentary accountability**

Some respondents questioned whether it was possible to have a long-term funding settlement for roads in the context of wider parliamentary accountability.

The principle that Parliament cannot bind its successors is well-established. Parliament's ultimate authority is clear, and our proposals do not call this into question. Our reforms are intended to put investment in highways on a similarly stable footing to other infrastructure sectors, such as in rail, water, gas, electricity and telecoms. Parliament has the power to overrule or intervene in these funding regimes; nonetheless Parliament has generally chosen not to do so, in order to reap the benefits that stable long-term investment can bring.

The Secretary of State will still have the power to formally vary the RIS at any time, should there be a major change in the government's transport policy. This would be subject to due process to ensure that there is full consultation and transparency for any changes. By adopting a broadly 5-year RIS cycle, it is also our intention that each and every Parliament will have its opportunity to shape the RIS for the next period. This has worked successfully for rail over the last ten years – the current Rail Investment Strategy approach (or HLOS) commenced in 2004 and is now preparing for the third investment period.



## Environmental protections and opportunities

- 4.56** Numerous respondents agreed that essential environmental protections would be sufficiently covered by existing legislation and the proposed governance regime, and that it should be straightforward to ensure these obligations apply to the new company. A few noted the significant improvements made in this area by the Highways Agency in recent years, and highlighted reforms as an opportunity to drive further improvements.
- 4.57** Several noted that the company could not be held principally accountable for wider environmental goals (such as reducing carbon emissions), which will be addressed through national measures and for which government bears responsibility. However, a number of respondents stated that the company's governance framework and performance regime needed to recognise the company's accountability for meeting its obligations in an environmentally responsible way and the important contribution it makes to these wider goals.
- 4.58** Some specifically highlighted the need to avoid creating perverse incentives, where the company (or supply chain) might be encouraged to de-prioritise, overlook or fail to properly address environmental outcomes.
- 4.59** A few respondents argued for stronger regulation and/or a specific statutory environmental or sustainable development duty, as well as statutory guidance or environmental standards, to form part of the governance framework.
- 4.60** We welcome the support expressed for the current work of the Highways Agency on improving environmental outcomes. As we set out in *Action for Roads*, our changes to the strategic road network and its management are designed to improve the environmental performance of the network, ensuring potential impacts on the environment are mitigated from the planning stage through to delivery, and we aim to use the opportunity of the RIS to tackle existing environmental problems on the network.<sup>7</sup>
- 4.61** As noted by several respondents, there is already a wide range of existing environmental legislation that the Highways Agency must currently comply with, and which provides extensive protection. It is obviously important that these protections are maintained to ensure that the company continues to deliver responsibly, alongside overall accountability arrangements. We also want to drive better environmental outcomes in the way we govern and steer the behaviour and performance of the new company.
- 4.62** Dealing with major, diffuse environmental challenges – such as climate change and air quality – is foremost the responsibility of government. Nevertheless, the company must continue to make a significant contribution in these areas. The company must also take the lead in delivering stronger outcomes in dealing with the direct impacts of its work, including around noise, flood risk, water quality, landscape and biodiversity.
- 4.63** With this in mind, following views expressed in responses to the consultation we are considering how best to reflect important requirements for environmental protections and sustainable development in the governance framework against which the new company will be held to account. There will

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<sup>7</sup> 'Maximising green gains', *Action for Roads*, pp. 39-44.

then be a vital role for the RIS, and in particular the performance specification, in setting the specific environmental performance measures and outcomes for the company – and its contributions to the achievement of wider environmental policies. This will allow government to feed in the views of road users and stakeholders at a strategic level, and provide a transparent set of requirements on environmental performance for government, the monitor and the public to hold the company to account against.

- 4.64** We will be doing further work in the coming months to consider how to best drive stronger environmental outcomes and incentivise the company to actively identify and pursue opportunities to strengthen environmental protections.

**The Government confirms that the company will have clear environmental responsibilities and that the performance regime will support and incentivise an improvement in the environmental performance of the strategic road network.**

## Cooperation

- 4.65** A number of respondents specifically agreed with and welcomed proposals to include responsibilities to cooperate and consult with operational partners, adjacent authorities and other stakeholders in the governance regime.
- 4.66** While a few consultation responses referenced cooperation between the company and the supply chain or other transport operators, the vast majority of responses concerned the relationship between the company and local authorities or other local bodies (such as LEAs or Local Transport Bodies).
- 4.67** Several highlighted the positive and constructive way in which the Highways Agency works with many bodies. Others also noted significant recent improvements in engagement – particularly with regard to the Agency’s increased focus on supporting local growth – and emphasised the need for reforms to encourage continued improvements during the transition to a new company.
- 4.68** However, several others highlighted problems in engaging with the Agency and raised concerns that local bodies would not have a strong enough voice under the new arrangements, with a number of respondents expressing a desire for further detail about how cooperation would work in practice. Some also believed that proposals needed to be strengthened, in some cases arguing for a specific statutory duty to cooperate, while others called for clear arbitration arrangements to be put in place to resolve tensions or disputes between the company and other bodies, such as local authorities, that could not be resolved through open dialogue.
- 4.69** Cooperation, in the overwhelming majority of cases, will be firmly in the interests of the company. But as highlighted in our consultation, we see a clear and specific need for the company’s governance and performance regime to build in assurance that the company forges open and effective working partnerships. This will be critical to the company’s delivery of its core statutory duties and wider responsibilities – both in operating and managing

traffic on the road network day-to-day and in planning the future development of the roads. Effective delivery will depend on these partnerships.

- 4.70** Cooperation with local authorities will be critical on a number of levels. Traffic will continue to pass from the local road network to the strategic road network and back again. If they are to continue to do so without disruption, the company will need to work closely with local highway authorities. The network management duty, which obliges highway authorities to facilitate the expeditious movement on the networks of other highway authorities, will place a clear requirement for the new company to work cooperatively.
- 4.71** There are also a range of other areas where local authorities currently interact with the Highways Agency. The company will continue to play an important role in the planning process, helping local authorities to assess the impact of development on nearby trunk roads. This cooperation will continue (although, as outlined below, the powers of the company will not be the same as those currently wielded by the Highways Agency). The company will also be expected to support the development of local plans, including those formulated by LEPs and Local Transport Bodies.
- 4.72** The company will also continue to work with operational partners on the network. The emergency services will all need to work together with the company, particularly in planning to deal with incidents on the network. The police will continue to play an important role enforcing traffic offences on the network. A high degree of cooperation is central to the operation of smart motorways and must continue into the future. Likewise, strong relations with delivery partners in the supply chain need to continue.
- 4.73** We fully recognise the importance of setting the right incentives and encouraging the right behaviours and culture in terms of cooperation – from Board level accountability and the company’s duties and responsibilities in the governance framework, through to the specific performance measures and requirements set in the RIS. We are therefore considering how best to reflect the need for the new company to work collaboratively in the governance framework, to form part of the basis on which the company will be held to account and judged on performance.
- 4.74** Government and the company will work together with local bodies and other stakeholders, to ensure that the further details of both the governance framework and the RIS reflect and incentivise the importance of:
- Balancing national and local needs.
  - Promoting local economic growth and sustainable development.
  - Collaborating in managing or improving parts of strategic or local networks, where this can support positive performance and efficiency outcomes – for example working in partnership on road maintenance.
  - Supporting end-to-end journeys.
  - Meeting performance goals with due consideration and mitigation of wider impacts, such as pressure on local road networks.

**The Government confirms its intention to put in place specific requirements on the company to cooperate with local authorities, emergency services and other stakeholders.**

### **External scrutiny and challenge**

- 4.75** The vast majority of respondents supported, in principle, the need for independent scrutiny of the company. However, the Government's proposed approach to delivering the scrutiny functions outlined in the consultation attracted the most diverse range of responses of all the key issues.
- 4.76** While a number of respondents supported the Government's preferred option – using Passenger Focus and the Office of Rail Regulation (ORR) to represent the interests of road users, scrutinise the company's performance and advise Ministers – the majority did not agree with the specific proposals as they were laid out.
- 4.77** Many opposed the Government's preferred option on either the user representative body or the efficiency monitor, citing a variety of reasons, primarily:
- A perceived lack of expertise on issues facing the roads sector.
  - A perceived inability to effectively represent the needs of all road users, notably non-motorised users or the freight community.
  - A potential for conflicts of interest where road and rail questions coincide.
  - A risk of diverting focus from their existing responsibilities.
  - Concerns that applying a model similar to that used in rail for the roads would ignore important aspects of the road network.
  - A perceived need for a more regulatory, rather than advisory, role.
- 4.78** These responses offered a diverse range of views rather than a single, shared criticism. Only a limited number explicitly opposed using both ORR and Passenger Focus; some opposed to the use of Passenger Focus explicitly supported the role of ORR to act as the efficiency monitor, while critics of ORR were neutral or positive about the use of Passenger Focus. Many respondents offered a view on one body, but remained silent on the other. Overall, there was no majority view.
- 4.79** Several respondents argued that a new body should be established to scrutinise the company, with a roads-only remit. A few made the case that these roles could better be carried out by alternative existing bodies – for example by establishing a formal group of key stakeholders building on the existing Motorists' Forum.
- 4.80** A range of respondents, amongst both supporters and opponents of our proposed approach, stated that ORR and Passenger Focus would need to undergo the necessary strengthening and transformation, be sufficiently resourced and acquire the necessary skills to perform these roles (which were

seen as substantially different in nature and scale to those performed by these bodies in the rail sector).

- 4.81** Several other issues were also raised in responses, the most significant of which included calls for:
- The scope of the user representative function to include consideration of wider social, economic and environmental impacts.
  - Openness and transparency, with the findings and recommendations of scrutiny bodies to be publicly available.
  - A broad range of stakeholders to be engaged or have a formal role in the process – including road users, local authorities and interest groups.
  - Clear roles, responsibilities and reporting lines for the Secretary of State, company and advisory bodies, along with appropriate and defined performance measures.
  - A clear conciliation process for resolving conflicting views.
  - Care to be taken in establishing scrutiny requirements to avoid placing additional, unnecessary layers of bureaucracy on the company.
- 4.82** We continue to see the creation of a user watchdog and cost monitor as an essential part of roads reform, making the new company more accountable for how it serves its users and how it spends its funds. This will represent a major advance in the transparency of the company, and will lead to better outcomes for all involved. We are therefore keen to establish an effective watchdog and an intelligent monitor.
- 4.83** In light of feedback we have carefully examined the different options for advisory bodies. We have considered potential models in terms of their efficiency, their ability to represent road users, the costs of set-up and operation, and their ability to be operational when the new regime comes into effect. We have given particular attention to proposals from respondents to set up a new, free-standing body to manage the interests of road users.
- 4.84** Representing the interests of road users and monitoring cost and efficiency are important functions for the effective and transparent scrutiny and challenge of the company. Any advisory body will need to secure the skills and resources necessary to perform their role from day one of the new regime. They will also need to carry out a substantial amount of preparatory work, such as developing new road user satisfaction measurements and gathering the evidence base needed for cost benchmarking. This work will take a significant period of time, and cannot begin until the advisory body is created.
- 4.85** These practical requirements can be achieved more quickly and efficiently by working with existing bodies, which will be able to get to work much earlier than a new entity. Existing bodies, whose strengths and abilities are already known, avoids the uncertainty and delay that necessarily comes with the creation of a new organisation. ORR is well-known for the rigour of its analysis, and possesses extensive experience of benchmarking performance of one infrastructure network against another. Passenger Focus is an independent organisation whose evidence-based research has already made

it the natural representative of three distinct types of traveller. The strong existing capabilities within ORR and Passenger Focus offer a firm foundation which we can build upon to represent the interests of road users.

- 4.86** This approach is in keeping with the Government's general policy not to create new arm's-length bodies, but instead to make the best use of the skills already within existing organisations and to avoid waste. While there can be exceptions to this rule, we remain confident that establishing these functions within ORR and Passenger Focus is the best and most cost-effective way to ensure that the company can be fully held to account from the first day of operation. We therefore intend to continue with plans to work in partnership with these two bodies.
- 4.87** However, we recognise the importance of these bodies developing extensive roads expertise. Both Passenger Focus and ORR agree with this and believe that the new roads functions should have a clear and robust degree of independence within their host organisations.
- At Passenger Focus, the organisation will form a separate roads team with its own independent branding. This 'Road User Focus' will carry out its own research within the organisation, and will be committed full-time to roads issues. There will be a dedicated board member, representing roads issues. Road User Focus will also host a stakeholder panel of major road-user organisations, to make sure that the priorities of the unit match with road users' experience on the ground.
  - At ORR, the roads function will form a special unit – provisionally called the 'Strategic Road Network Monitor'. This unit will be responsible to a roads committee, under the leadership of a new non-executive director, appointed to the ORR board by the Secretary of State to handle roads issues. The committee will have clear delegated powers from the main ORR board to oversee and advise the Secretary of State on all matters relating to roads. The Strategic Road Network Monitor will consist of full-time roads staff, including engineers and network management experts recruited from outside ORR. They will be able to call on wider help from ORR on common issues, such as economics and benchmarking, as well as on back-office functions.
- 4.88** The company will have a legal obligation to share cost and performance data with the advisory bodies. This information will be publicly available (unless commercially sensitive), and the advisory bodies will make public the findings of their research. This will allow the wider public to have a more informed view of the value provided by the company, and for commentators to take a wider view on performance. We will discuss with Road User Focus, the Strategic Road Network Monitor and the new company how to establish an efficient and proportionate framework for reporting.
- 4.89** Taken together, this is a system that is both independent and able to deal with the analytical challenges involved in bringing benchmarking and user representation to the strategic road network. We will therefore commence working with Passenger Focus and the ORR to set up Road User Focus and the Strategic Road Network Monitor.

**The Government will create a 'Road User Focus' unit within Passenger Focus to represent the interests of users of the strategic road network.**

**The Government will create a 'Strategic Road Network Monitor' unit within the Office of Rail Regulation, to ensure that the company delivers its commitments efficiently and effectively.**

**The Government confirms that both Road User Focus and the Strategic Road Network Monitor will make their findings public, and that data on the company's performance will be publicly available.**

- 4.90** In adopting these new functions, it is important that neither body is distracted from their existing work. This is especially important for ORR, which will continue its economic, safety and competition regulation of the railway. We will therefore provide additional resources to both bodies, so they can adequately resource Road User Focus and the Strategic Road Network Monitor. In the case of ORR, we will also create a clear accounting separation between the money to be spent on roads work and the money raised from the rail industry to fund ORR's regulatory activities, with each contributing its share of overheads.
- 4.91** We have also given careful consideration to whether the new monitor should be a purely advisory body or hold a regulatory role. Several respondents were attracted to aspects of the regulatory system. We agree that independent regulation can offer clear benefits. In particular, the cost challenge that comes with economic regulation has helped to drive better value and performance in several other sectors. As a minimum, some of the methods used in economic regulation – notably benchmarking – will be important tools for the monitor in driving efficiencies from the company.
- 4.92** The regulatory systems that form an integral part of other parts of the transport network – notably rail and aviation – are primarily concerned with ensuring that companies continue to operate for the benefit of their customers. This should also be true for the roads sector.
- 4.93** However, there are notable differences between these sectors and the roads sector. For example, the roads sector is 100% owned by Government and wholly funded by the taxpayer; and as the owner of the company, the Secretary of State will have sanctions and incentives, such as changing the Board or taking greater control of decisions, which are not available for private regulated utilities. For these reasons, some elements of economic regulation may not be relevant to the roads sector, but there is still a strong requirement to have the most effective mechanisms to improve efficiency and control costs for the taxpayer.

**The Government will continue to examine the precise balance between the advisory and regulatory elements of the monitor's role, and any specific measures available for enforcement, so that the company is held to account effectively by the monitor and takes action to fix any concerns that they raise.**

- 4.94** Other questions raised by the consultation included the remit of the different organisations, and whether it should extend beyond the strategic road network. The majority of those commenting were opposed to extending scrutiny to cover local authority roads, arguing that this would represent a bureaucratic burden and would not add value given the accountability of councils to local electors. However, others suggested that scrutiny could reasonably be extended to those local roads that were close to the strategic road network and where interconnection was greatest. Others suggested the question should be kept under review.
- 4.95** Given the balance of responses, we intend to keep scrutiny focused on the strategic road network for the reasons outlined in the original consultation. However, we recognise that some councils may wish to seek the advice of Road User Focus for reasons of their own, and are willing to cover costs. As such, we will ensure that there are no statutory barriers that prevent Road User Focus from working with local authorities. However, they will have no role on local roads where they are not invited by the local authority.

**The Government intends that Road User Focus will be able to consider issues affecting local roads, where this is requested and paid for by local authorities.**

- 4.96** We will also ensure that both bodies fully represent the interests of all road users, and not simply motorists. Road users have more diverse needs than users of most types of passenger transport, and this will need to be reflected in the new arrangements. Freight users often rely heavily on the network, and an understanding of their needs is central to understanding the economic importance of roads. Cyclists, pedestrians and horse-riders also have an important place in any assessment of roads, and a very distinct set of needs and vulnerabilities.
- 4.97** There was also discussion of whether the monitor should have a role in arbitrating disputes between the company and the Secretary of State. Where disagreements arise between the Secretary of State and the company, the advice of the monitor will be important in ensuring that they can be resolved fairly. The continued centrality of the Secretary of State, both as the owner and principal client of the company, means that the risk of disagreement between company and government is far less than in most regulated utilities. However, we will continue to consider how to deal with disagreements between the Secretary of State and the company.

### **Powers and functions**

- 4.98** The majority of respondents were content with (or neutral towards) our proposed approach for transferring the necessary powers and functions to the new company – including plans to set up the company as a highway authority – though many raised some specific concerns or sought further clarification on points of detail.
- 4.99** The changes being made will allow the new company to have all the necessary powers and duties to operate and manage the network on a day-



to-day basis. This will include powers for it to take forward road schemes or enhancements to the network, meeting any requirements under planning legislation. However, key policy decisions – for example deciding the extent of the network through trunking and de-trunking – will remain with the Secretary of State. No regulating powers are being transferred and the Secretary of State will continue to be responsible for approving orders where needed in legislation, for example: line orders, scheme orders, side road orders and compulsory purchase orders.

### *Planning powers*

**4.100** One of the main issues that attracted comment was the division of planning powers under the new arrangements. At present, the Secretary of State has a number of powers relating to development applications affecting the strategic road network, which are exercised on his behalf by the Highways Agency. These mean:

- The Agency is informed of proposed developments that will affect the network, and can give their views about potential impacts.
- If necessary, specific conditions can be attached to any grant of planning permission to ensure appropriate mitigation measures are in place. In extreme cases, where a proposed development would have a disproportionate impact on traffic that cannot be mitigated, these powers can be used to prevent the grant of planning permission.

**4.101** As set out in our consultation, setting up the Highways Agency as a separate legal entity will mean that the company cannot exercise these powers on behalf of the Secretary of State. A new regime is therefore needed to ensure that the company has sufficient powers to continue to protect network safety, while making sure these powers are efficient, transparent, support economic development and match the wider planning system.

**4.102** Several respondents welcomed an improved demarcation of the role of the company, as scheme promoter, and the role of Ministers as decision-maker. While some agreed that powers should be transferred to the company where possible, others argued that responsibility for decisions on planning applications should remain with the Secretary of State, with the company adopting an advisory role. A few also noted a need for the company to continue the Highways Agency's current role in providing pre-application advice to local planning authorities and developers.

**4.103** In light of these responses, we agree that the powers currently exercised by the Highways Agency on behalf of the Secretary of State would not be appropriate for a company held at arm's-length from government. In particular, the Secretary of State's powers to attach conditions to planning applications should remain with central government. We therefore intend to reform the planning system so that:

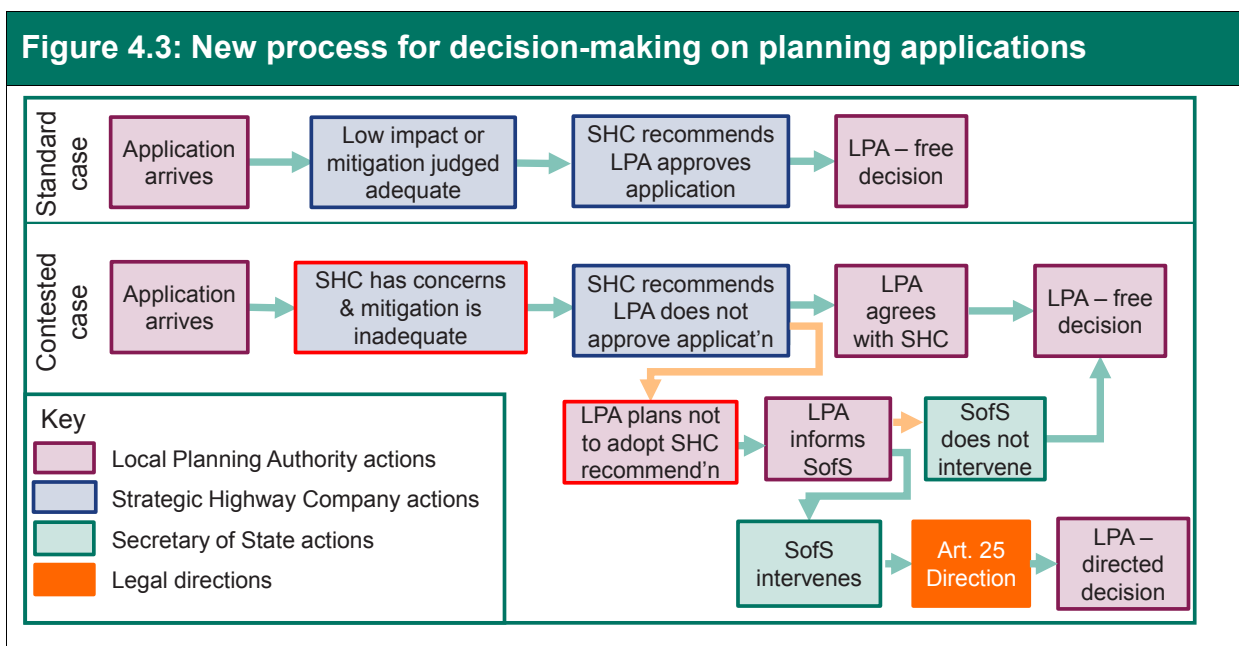
- The company becomes a statutory consultee on relevant planning applications affecting the network. This includes those situations where an application may affect the safety of network users. The company will have the opportunity to comment on the proposals, to inform the decision by the local planning authority. In line with standard practice for

statutory consultees, the company would be expected to provide its views within 21 days.

- The local planning authority would then be able to make its own decision on whether to approve the development, whether to attach conditions to the grant of planning permission, or whether to refuse permission outright. This means that the new company, unlike the Highways Agency, will not be able to direct the way the local planning authority treats the application.
- Given the expertise of the company on matters relating to the strategic road network, such as road safety, we would expect that the local planning authority will follow their advice in a large majority of cases. Where the local planning authority expects to overrule the company's concerns, they will be required to notify the Secretary of State for Transport in advance. The Secretary of State will retain his existing powers to issue directions on planning applications, and where he believes there will be a disproportionate impact on the road network or unacceptable increase in safety risk he may intervene.

**4.104** This approach – illustrated in Figure 4.3 – mirrors the regime used to monitor the grant of planning permission on a number of sensitive topics, including developments affecting world heritage sites or school playing fields. For most developers it should simplify the current process, as it removes the potential for the Highways Agency and its successor to place requirements on developers independent of the local planning authority. Instead, it should ensure that the large majority of cases are decided by the local planning authority, with advice from the strategic highways company, and without the use of planning directions by central government.

**Figure 4.3: New process for decision-making on planning applications**



- 4.105** This regime should provide a robust protection for the network, while ensuring an efficient system that supports economic growth. However, the fact that the company has no powers of direction will remove its only tool to prevent nearby landowners making new connections to its roads. This could pose a risk to safety, so we intend to use forthcoming legislation to confirm that anyone seeking to create a new access directly onto a trunk road must secure the approval of the highway authority. Developers will be able to secure this permission through their planning application, without the need to make a separate request.
- 4.106** As some respondents highlighted, the Agency also has an important role in contributing to the development of local land use plans. We will ensure that the company is required to work with local authorities, developers and other interested parties to support sustainable development. This includes helping developers to mitigate the impact of their proposals on the trunk road network, as well as publishing data on its planning activities.

**The Government will seek to amend planning powers to make the new company a statutory consultee for relevant planning applications, but will not transfer to the company the wider powers of direction currently exercised by the Highways Agency on behalf of the Secretary of State. The Secretary of State will retain his existing powers of direction, and may intervene under existing legislation to support the company where there is a disproportionate negative effect on the network.**

#### *Other powers and functions*

- 4.107** Several respondents raised concerns about proposals for the Secretary of State to remain the highway authority for some specified roads. Not all roads for which the Secretary of State is the highway authority are managed by the Highways Agency. Some roads – notably the M6 Toll and the Severn Crossing – are operated privately or under a concession agreement.
- 4.108** The day-to-day management of these roads broadly falls to those party to the agreement and we do not intend to change the underlying foundations of the agreement. Concessionaires will therefore be able to continue to operate their roads as at present. We will ensure continued provision of any services specified in the agreement that are currently fulfilled by the Highways Agency, for example snow clearing.
- 4.109** Where the Secretary of State has handed over the operation of a road under a design, build, finance and operate (DBFO) contract, we will consider the future of the existing contract on a case-by-case basis. Regardless of whether the DBFO is transferred, the changes we are making in legislation mean that the new company will be the highway authority to the operator of the DBFO. A few respondents offered differing views as to whether the company should have powers to introduce tolls or charges. However, as we made clear in our original consultation, decisions on tolling matters will remain with the Secretary of State. The new company will have no powers to introduce tolls or charges for use of its network.

**4.110** Other issues raised in responses included:

- General support for proposals to streamline regulations and processes where possible, including ensuring that the new company, as highway authority, is able to lead on the application of Traffic Regulation Orders (TROs) without referring to the Secretary of State – as is the case for local highway authorities. Some respondents also argued for removing the need for TROs to be published in the local press. We have no plans as part of these proposals to change this requirement, but will continue to keep it under review.
- Overall support for plans to transfer the assets to the company, as a necessary consequence of reforms. Some sought clarification over ownership and rights over the assets, for example how the ownership of assets would change with the trunking or de-trunking of roads. This will continue as it does at present, with assets handed over to the new highway authority where the Secretary of State determines that a road should be trunked.
- A clear need for relevant highway standards (such as the Design Manual for Roads and Bridges) to continue to be developed and maintained. Some saw this as a role for the new company, while others noted that alternative approaches were possible - and may be preferable (e.g. to avoid standards sitting with a single operator).

**4.111** As we set out in our consultation, the Highways Agency currently carries out a range of functions on behalf of the Secretary of State, but which fall outside of the core role of a highway authority. Such functions include, for example, maintaining the Design Manual for Roads and Bridges, operating the Electronic Service Delivery for Abnormal Loads, managing the national strategic salt stocks and providing support on Parliamentary and European matters.

**4.112** In most cases, we intend for the new company to continue to perform these functions, as the company will remain best placed to do so. We envisage that these would be covered by separate agreements within the suite of governance documents to recognise the difference between these activities and the company's core highway authority role. We will continue to explore this with the aim of ensuring important roles such as these are carried out by those best placed to do so.

# Next steps

1. We fully recognise the importance of getting the detail right as we move forward to implement these reforms, to provide confidence that the reforms will deliver the desired outcomes and further clarity about how they will work in practice.
2. We will be taking account of the more detailed views expressed in consultation responses and continuing to discuss reforms with key interested groups as we progress the next stage of work, in particular with regard to:
  - Bringing forward legislation to set up the Highways Agency as a government-owned strategic highways company, with the aim of setting up the new company to go live in spring 2015.
  - Developing the governance documentation in more detail – including the Licence, Framework Agreement and Articles of Association – and making these available in draft over the summer to support the legislative process.
  - Developing the first Road Investment Strategy, to be published later in 2014, and making further details about the RIS available over the summer, prior to publication, to support the legislative process.
  - Establishing the Strategic Road Network Monitor and Road User Focus, making sure that ORR and Passenger Focus take account of stakeholder views as they put in place arrangements for the two advisory bodies.

# Annex A: Detailed issues raised on key themes

## Company model

- 55 organisations made specific comments on this theme, of which 45 expressed support for reforming the Highways Agency (HA), agreeing that this will provide greater operational freedom, a more commercial approach and deliver efficiencies.
- 6 of the organisations that supported reforms explicitly advocated keeping the company in the public sector and opposed the notion of privatisation. Of those who did not clearly support transformation of the HA:
  - 2 were not convinced that the proposed model was appropriate and could deliver desired benefits, given stated desire not to privatise and/or due to the constraints imposed by governance regime.
  - 4 rejected the proposed company model on the basis that it was seen as inappropriate if the company was to remain publically-owned (i.e. seen as being set up as a platform for privatisation). Some of these argued instead for a company limited by guarantee, while others argued that the desired benefits could be delivered without a change in status of the HA.
  - 5 members of the public also expressed concern about privatisation of the HA – believing that proposals either represented privatisation, or that privatisation would be a further consequence of reform.
- In contrast, however, 12 organisations expressed support for more radical reforms to the way roads are managed and/or funded, advocating the need to explore alternative revenue streams (such as changes to motoring taxation or some form of road user charging) or new institutional models (such as regulated utility models).
- Other points raised in responses on the company model included the following:
  - 7 organisations commented that the success of the proposed model depended on getting the rest of the governance framework right, while a further 12 organisations and individuals indicated that more detail about the framework would be needed to judge whether the reforms were appropriate and able to deliver desired efficiencies.
  - 9 organisations commented that the proposed change would require the Highways Agency to undergo significant transformation to ensure it is well-equipped to deliver the challenging requirements set by Government under the new regime - developing the right structure, commercial skills, capabilities and culture, guided by strong leadership.

- 3 organisations suggested that further benefits in terms of efficiency and benchmarking performance could be achieved through a more regionalised model, whereby the company was divided into multiple regional operators – either as wholly separate bodies in their own right, or as a second tier of a single national operator.
- Single respondents each raised concerns that: a more commercial mindset might work against greater accountability, integration with other modes or improving environmental performance; reform was based on the need to deliver an increase in roads investment, rather than to deliver in a range of policy scenarios; and the company should not be given control over managing the asset, particularly if this allows the company to introduce tolls.

## Governance and accountability

- 24 organisations specifically agreed that governance proposals strike the right balance between autonomy and accountability of the new company, while general support was implicit in many other responses. However:
  - 10 organisations – although largely supportive of reforms in principle – were sceptical that arrangements would provide for an appropriate balance, and/or expressed concerns that proposals would be unnecessarily complex, adding further layers of bureaucracy.
  - 8 organisations, along with 4 members of the public, expressed some concern over the number of roles held by the Secretary of State under the proposals and/or the extent of constraints being placed on the new company, believing that these would in practice mean limited accountability, independence and legal separation, as well as causing potential conflicts of interest.
- 17 organisations expressed a clear desire for ensuring the company is sufficiently arms-length, with as much operational independence and flexibility as possible, avoiding unnecessary layers of governance while safeguarding the public interest and value for money. 3 specifically emphasised the need for government to avoid micro-management of the new company, for example through over-specification of the RIS.
- 11 organisations wanted more information about the central government controls that would apply to the new company, expressing a desire to ensure these prioritise flexibility and do not block the ability of the company – or the supply chain – to innovate and deliver efficiently.
- 12 organisations highlighted a particular need for the company to have sufficient flexibility over procurement processes, with consideration of how this would flow through to the supply chain – for example, how much flexibility or risk the company transfers to the supply chain, and the extent to which the company is able to enter long-term agreements and partnerships with the supply chain to improve efficiency. A few specifically commented on the desirability of the company adopting a whole-life cost/asset management approach.

- 7 organisations commented on incentive regimes, notably with regard to: the need for incentives to be linked to clear, objective measures, to apply where stretching performance goals are surpassed (rather than for delivering business as usual), and to be set with care, to avoid encouraging short-term behaviours or a singular focus on strategic road network goals without due regard to wider impacts.
- 6 organisations commented on the need for the Board to have the right structure and appointments to ensure the necessary skills, experience, integrity and independence to effectively discharge their responsibilities and accountability role(s).
- 39 organisations expressed a need for the governance framework to set out clear accountability, roles, responsibilities and objectives between the Secretary of State and the new company.
- A number of organisations also made specific comments regarding aspects of the content or operation of the governance regime, in particular:
  - 11 called for specific statutory duties (e.g. around network management, asset management, sustainable development, environment, safety or cooperation) or other requirements (e.g. around delivering the RIS, or achieving efficiencies) to be covered as part of the governance regime.
  - 10 called for the governance arrangements to include some form of wider accountability and/or link between the new company and local authorities, communities, users and other stakeholders.
  - 6 highlighted the need for government to remain responsible for setting and controlling policy and strategic direction.
  - 6 sought clarification over what sanctions would be available to penalise the company in the event of poor performance or failure to deliver – given that options seem limited short of legal routes, or revoking the Licence (which was seen as an impractical option).
  - 5 expressed a strong desire for transparency in dealings between government and the company.
  - 5 sought clarification about the Accounting Officer roles under the new arrangements.
  - 3 highlighted the need for DfT to develop or acquire the necessary skills and expertise to oversee the new company and effectively hold it to account for its performance.
  - 2 noted the need for governance arrangements to be flexible to accommodate future changes to the extent of the network to be managed by the company.

## Road Investment Strategy (RIS)

- 44 organisations actively welcomed the proposals for long-term funding certainty and the process for setting the RIS, and agreed they will help to address



stop/start investment, allow better planning and more efficient delivery – though some noted that much depends on the detail.

- Many of the organisations commented on the process for setting the RIS, in particular:
  - 25 expressed a strong desire for a clear, transparent process, with close and early engagement with wide range of relevant stakeholders – including all categories of road users, local bodies, supply chain, environmental bodies and other interests groups.
  - 19 highlighted the need to consider and integrate with wider government and transport goals in developing the strategy and specific requirements for the RIS.
  - 12 highlighted the need for the investment decision-making process through the RIS to be evidence-based, and take appropriate account of customer needs, in particular road users, local authorities and other local bodies (e.g. Local Transport Boards and Local Enterprise Partnerships), particularly through engagement on route based strategies, and efforts to align the RIS with local plans where possible.
  - 4 noted the challenging timescales for preparing the first RIS, and emphasised the need to ensure the company, and the supply chain, have sufficient time to develop plans to deliver the requirements, with full consideration of the options. Though some also acknowledged that the first RIS would necessarily and reasonably need to build on existing activities and commitments.
- Several organisations, while welcoming long-term funding and the RIS approach, highlighted some particular issues:
  - 9 highlighted the need for government to be mindful of wider infrastructure market in setting and phasing the RIS, and seek to avoid capacity pressures/peaks and troughs experienced in other sectors.
  - 20 highlighted the potential for uncertainty around the end of 5-year cycles, and the longer timescales involved in developing road schemes, expressing a desire for some longer-term visibility of plans beyond the 5-year RIS period. 3 members of the public also wanted to see longer-term planning as part of the RIS.
  - Several advocated options to address this, including: preparing the following RIS well in advance; extending RIS periods from 5 years out to 10-15 years; refreshing the RIS on a rolling (e.g. 2 or 5-year) basis; or for the RIS to include funding/requirements to invest in developing a visible future pipeline for the following period – although some acknowledged that securing committed public funding beyond the 5 year RIS period would be challenging.
- 3 organisations commented on the need to avoid destabilising the committed 5-year plan, once established, with some noting the importance of the proposed legislative underpinning in securing the RIS.
- However, some organisations also expressed a strong desire for retaining a degree of flexibility around the RIS, in a variety of contexts:

- 14 emphasised the need for the company to be given genuine freedom and flexibility to determine the best way to deliver outcomes set by government, particularly in the longer term, and avoiding micro-management by government.
  - 10 highlighted the need for the company to have funding flexibility – for example, to move funding between years or funding pots, fund interventions off the strategic road network, and allow for funding from other sources, such as local authorities or developers.
  - 8 highlighted the need for the RIS to be sufficiently flexible to adjust requirements in-period, either to accommodate small-scale changes, respond to major shifts in policy or avoid locking-in a programme that may later be judged to be sub-optimal.
- 11 organisations made specific comments regarding alignment of strategic road and rail investment plans, but views were divided between those in opposed and those in favour. Some cited the benefits of being able to plan transport investment in a more strategic, integrated and user-focused way by considering the balance needed across road and rail to address need, while others highlighted significant risks of creating peaks and troughs of demand on supply chain capacity, which would have implications for delivery.
  - 3 organisations also highlighted concerns about long-term funding commitments for strategic roads resulting in funding for other roads becoming more vulnerable or unstable – with some specifically highlighting concerns about future funding for local roads.
  - Many respondents also offered specific comments and views about the further detail of the process or content of the strategy, performance specification or funding and investment plan elements of the RIS.

## Environmental protections

- 23 organisations commented that environmental protections would be sufficiently covered by existing legislation and the proposed governance regime, and it should be straightforward to transfer the Highways Agency's (HA) existing obligations to the new company – which will be essential for fulfilling its role.
- 3 organisations, along with 2 members of the public, commented on the significant improvements made in this area by the HA in recent years, and noted that reforms were an important opportunity to drive further improvements.
- 9 organisations and 1 individual noted that government should remain responsible for strategic, national environmental goals (such as reducing carbon emissions), and the company could not be held accountable for these – though the performance regime should reflect the company's important role and contribution to these wider goals, while avoiding unnecessary constraints.
- 12 organisations highlighted the need for the company to be clearly accountable for fulfilling its role and meeting its obligations in an environmentally responsible manner – and that this should be reflected in a robust way in the governance regime, including at Board level.

- 11 commented on the importance of environmental issues being appropriately recognised and reflected in objectives and performance requirements for the company. Some commented on the particular need to ensure that requirements were reasonable and within the ability of the company to influence/control through its activities, as well as deliverable within the 5-year period of the RIS.
- 8 organisations commented on the need for specific requirements around environmental responsibility to be built into the governance framework:
  - 2 argued for stronger regulation to move beyond minimising adverse impacts and enable stronger outcomes to be achieved
  - 6 argued for specific statutory duties (for example around sustainable development, or protection and enhancement of the environment), statutory guidance or environmental standards to form part of the governance regime.
- 9 organisations and 2 members of the public highlighted the need for a joined up approach to environmental goals, with the company working closely with other operators, the supply chain, the watchdog and relevant interest groups in both setting performance goals and supporting sustainable development.
- 7 organisations noted the need to guard against creating perverse incentives, where the company (or the supply chain) might be inadvertently encouraged to de-prioritise, overlook or fail to properly address environmental outcomes.
- Other relevant issues raised by a single respondent included: a need for regular monitoring and transparent reporting on environmental performance; the important role of the supply chain in delivering environmental outcomes; and questions over whether the proposals could genuinely enable better outcomes.

## Cooperation

- 29 organisations specifically agreed with and welcomed proposals to specify responsibilities to cooperate and consult through the governance regime.
- 13 organisations highlighted current positive working with the Highways Agency (HA) and/or noted significant recent improvements in engagement, particularly with regard to the HA's increased focus on supporting local growth.
- 13 organisations also emphasised the need for reforms to drive further improvements in the transition to a new company, with 5 noting the need for the company to have the right culture, resources and flexibility to engage effectively.
- 6 organisations, along with 3 individuals, highlighted existing problems in engaging the HA and/or raised concerns that local bodies would not have a strong enough voice under the new arrangements, with 14 organisations wanting further detail about how cooperation would work in practice.
- 12 organisations believed that proposals needed to be strengthened, with some calling for a specific statutory duty to consult and cooperate.
- The majority of comments concerns cooperation between the HA and local bodies, with many noting that most road users did not distinguish between strategic and other road networks. 27 organisations highlighted that there is

therefore a specific need to ensure the company and local authorities forge open and effective working partnerships in operating and managing traffic on the road network day-to-day, and in working with LTBs, LEPs and others in planning the future development of the roads.

- 25 organisations emphasised a specific need for the company’s governance and performance regime to take clear account of the interactions with adjoining road networks, with particular regard to: striking an appropriate balance of national and local concerns; promoting economic growth and sustainable development; and supporting end-to-end journeys. This includes ensuring that the framework for the company avoids encouraging undesirable behaviours in meeting performance goals without due consideration of wider impacts, such as placing increased pressure on local road networks.
- 9 organisations drew attention to route based strategies as a key mechanism for engagement and effective interaction between the HA and local bodies around strategic planning, in identifying future needs for the development of the network.
- 8 organisations suggested that the governance regime needed to be flexible to allow the company to collaborate with local authorities on managing or improving parts of their respective networks, where this can support positive performance and efficiency outcomes.
- 8 organisations called for clear arbitration arrangements to be put in place to resolve tensions or disputes between the company and other bodies, such as local authorities. A further 5 suggested that the company be required to clearly set out processes, mechanisms and structures for how it would engage.
- A few others emphasised the need for the company to cooperate closely with other bodies, including the supply chain, operational partners, and other operators, authorities and bodies in the UK, Europe and internationally.

## External scrutiny and challenge

- 27 organisations explicitly supported, in principle, the need for independent scrutiny of the company – and the majority of others were implicitly supportive.
- 20 organisations supported the government’s preferred option for delivering the proposed scrutiny functions – using ORR and Passenger Focus – though in some cases this was contingent on both organisations undergoing the necessary transformation and acquiring the necessary skills and resources to do so.
- 13 organisations – comprising supporters and opponents of our preferred approach – indicated that ORR and/or Passenger Focus should be able to perform the proposed scrutiny functions if these organisations were sufficiently strengthened, restructured and resourced to carry out the proposed roles, seen as dramatically different in nature and scale to those performed in the rail sector.
- 30 organisations and 3 members of the public explicitly opposed the government’s preferred option. Opposition was based on a variety of reasons, primarily:
  - A perceived lack of skills, expertise or sector knowledge;
  - A perceived inability to effectively represent the needs of all users;

- Potential conflicts of interest;
  - A risk of diverting focus from their existing responsibilities;
  - Concerns that applying a model similar to that used in rail for the roads was an oversimplification.
- However, of those who opposed our approach, only 10 organisations explicitly opposed using both ORR and Passenger Focus, while 10 others supported the role of ORR to act as the efficiency monitor (while either opposing the use of Passenger Focus, or simply remaining silent on their involvement).
  - In addition, 7 organisations indicated a belief that government’s proposals included ORR adopting a regulatory role, rather than the advisory role envisaged.
  - 15 organisations specifically called for proposals to be strengthened, and in most cases argued for a new body to be established to scrutinise the company – with 3 arguing that this approach would ultimately prove less costly and disruptive, and more effective.
  - 7 others suggested that scrutiny could better be carried out by alternative existing bodies – for example by establishing a formal group of key stakeholders, that some suggested could build on the existing Motorists’ Forum.
  - Regardless of the preferred approach, 19 organisations expressed a clear desire for a broad range of stakeholders to be engaged and/or have a formal role in the process – including the full range of road users (including non-motorised users), local authorities, other local bodies, environmental and other interest groups.
  - 10 organisations called for scrutiny bodies to look beyond just the needs of road users, and consider wider social, economic and environmental impacts in order to ensure proper accountability.
  - 16 organisations clearly opposed extending scrutiny to cover other parts of the road network, though 10 suggested that scrutiny might usefully be extended to at least some parts of the local road network, or ought to be considered as a potential longer-term option to be kept under review.
  - 13 organisations commented on the need for the roles, responsibilities and reporting lines of the Secretary of State, company and the scrutiny bodies to be clearly defined, along with appropriate performance measures.
  - 3 organisations called for care in establishing scrutiny requirements to avoid placing additional, unnecessary layers of bureaucracy on the company.
  - 8 organisations expressed a strong desire for openness and transparency, with the findings or recommendations of scrutiny bodies to be publicly available, and in one or two cases calling for Government to be required to respond to these publicly as well.
  - 3 organisations and 1 member of the public suggested that government may have underestimated the costs involved in setting up the proposed scrutiny functions (though it is unclear to what extent this is based on a belief that ORR was intended to be the regulator).
  - 3 organisations called for a clear conciliation body or routes for resolving conflicting views or disputes in this context.

## Powers and functions

- 29 organisations specifically agreed with our approach to the division of powers and functions, and setting up the company as a highway authority – with little overt opposition. The majority of other comments related to points of detail on particular areas set out in the consultation.
- 11 organisations and 1 member of the public sought clarification about proposals for the Secretary of State to remain highway authority for some specified roads.
- 6 organisations specifically agreed that proposed powers for the Secretary of State to intervene were sufficient and appropriate.
- 30 organisations commented on proposals around planning powers, of which:
  - 15 agreed that relevant planning powers should be transferred to the company where possible, while 7 argued that it would not be appropriate for the company to make decisions on planning applications, and that their role should be to advise the Secretary of State.
  - 8 welcomed the improved demarcation of roles between the company, as scheme promoter, and Secretary of State, as decision-maker.
  - 4 highlighted the need for the company to continue the HA's current role in providing pre-application advice to local planning authorities and developers, and several emphasised the need to promote sustainable development in line with the NPPF.
  - 10 highlighted the need for the governance framework to clearly set out respective roles and accountability for the planning process under the new arrangements, and 6 sought clarification over particular aspects of how planning powers would be divided and operate in practice – for example with regard to Compulsory Purchase and funding contributions from developers.
- 15 organisations commented on proposals around streamlining regulation and processes where possible, of which:
  - 14 agreed with our plans to seek to streamline or reduce red tape where possible, including around Traffic Regulation Orders (TROs).
  - 4 expressed a desire for the proposed arrangements for TROs - giving the company the ability to implement non-contested TROs without Secretary of State approval – to be extended to local highway authorities.
  - 2 raised concerns where they perceived proposals to mean giving the company arbitrary powers to close roads without due regard to wider impacts.
- 14 organisations commented on proposals regarding the transfer for assets and contracts, of which 8 specifically supported transferring the assets to the company, as a necessary consequence of reforms – with 1 clear objector – while some others made more specific comments, including:
  - 5 sought clarification over ownership/rights over the assets – including 2 who were specifically concerned with how the transfer of assets to or from

local authorities through trunking/de-trunking arrangements would work in future;

- 2 highlighted specific issues concerning how Motorway Service Areas (MSAs) would be dealt with, for example where sites were currently leased from the Secretary of State.
- Numerous respondents made specific comments regarding current HA functions, particularly where these are currently carried out by the HA on behalf of the Secretary of State. In particular:
  - 12 organisations and 1 member of the public highlighted the need for relevant highway standards (such as the Design Manual for Roads and Bridges) to continue to be developed and maintained. Some saw this as a role for the new company, while others noted that alternative approaches were possible, and may be preferable (for example, to avoid standards sitting with a single operator). Some respondents emphasised that, regardless of the approach taken, such standards should reflect the needs of all users, including local authorities and Devolved Administrations, as well as the latest innovations and best practice.
  - 3 organisations emphasised the need for the company to continue to be provided with the means to conduct research and take account of future technological developments in future-proofing the network, and identifying opportunities such technologies might offer to improve network performance.
  - 2 organisations sought assurance that specific regulatory functions (such as type approval of street equipment) would remain with the Secretary of State.
  - 1 organisations highlighted the need for the HA to continue its current role in coordinating special orders for the movement of abnormal loads.
- 2 organisations commented on powers to toll or introduce charges – with one arguing that the new company should be given powers for this, and the other arguing that this should remain the responsibility of government.

## Other issues

- In addition to the extensive comments offered by respondents on the key themes, some responses made reference to wider issues that were deemed out of scope of this consultation. The most significant of these were:

**Wider strategy or policy**, where points raised included:

- Calls for an overarching national transport strategy covering all modes, and addressing issues around integration, investment and the role of transport networks in supporting the needs of users and the economy in a holistic way.
- Emphasising the importance of not considering the strategic road network in isolation from the wider road network, and calls for an overarching roads strategy or policy framework covering all roads, for all highways authorities to work within.

- Comments touching on wider policy issues, such as how roads are managed or funded, or the overall approach to road safety.

**Roads performance and investment**, where points raised included:

- Views and suggestions offered on specific performance outcomes or investment priorities, or more general comments on the Government's investment plans for roads.
- Comments on funding for local roads, with some specific calls for an approach to match that being taken for the strategic road network to support a well-functioning roads network.
- Comments championing continued attention being given to maximising the benefits of data and innovative technologies – such as smart motorways – in improving network performance and the user experience.

**Analysis**, where points raised included:

- Comments highlighting the need for more robust data about network performance and the condition of the assets to inform a better understanding of the network, support effective benchmarking and drive improvements in performance.
- Comments on various aspects of analysis around traffic forecasting or investment appraisal, including comments about: the route based strategy process; ensuring appropriate consideration is given to alternative investment options; or the need for new analytical approaches or techniques to supplement efforts to improve existing tools.



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