

Response to proposals to transform the Highways Agency into a government-owned company

This document responds to the Department for Transport consultation on transforming the Highways Agency into a government-owned company:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254356/roads-reform-consultation-document.pdf

Summary and overall response

Overall, we support some aspects of these proposals, such as a clearer funding programme for transport over the long term and the formation of a formal watchdog to scrutinise the functions of the Highways Agency. We are also pleased to see that proposals for a new generation of private toll roads have been dropped, along with the idea for a dedicated motorway charge to pull in more private funding.

However, in general we do not see how the need for these improvements lead to the conclusion that the Agency should operate on a more commercial basis as a company separate from government.

Granting more commercial freedom to the Highways Agency would be accompanied by risks to both transparency and the limited current processes of consultation with the public and community representatives in areas affected by funding decisions.

Where improvements to the current practices of the Agency are concerned, such as in greater accountability to citizens and local authorities, or improving the environmental performance of existing strategic roads, the application of commercial pressures would in fact seem to work against these being implemented effectively. The proposals do not include effective sanctions on the new company if it fails to comply with requirements.

We largely support the introduction of longer term funding plans for transport, but believe strongly that these should be put together in an integrated way between different modes, and with some flexibility retained to enable democratic changes in policy and circumstances to be taken into account.

Coming during a period when traffic forecasts are increasingly in doubt, and when Government policy relying on these forecasts is to expand the road network dramatically, these plans risk 'locking-in' large amounts of funding for the most inefficient mode of passenger transport over many years as part of a policy that is later found to be mistaken.

The level of efficiency savings proposed (at around 15%) depend largely on the actions of external contractors, and seem particularly modest when compared with the risk of wrongly committing tens of billions of pounds to building new and wider roads in the long term. There is a very large risk inherent in pushing through these plans now that road-building policies will be committed to at the expense of other, more efficient, modes of transport and future policies that could save much more public money than is gained by commercialisation.

We would also have more support for long-term funding plans if there was better integration between modes, allowing for flexibility in Government transport policy and priorities, while achieving some of the potential gains in terms of long term certainty for supply chains. There is already a close match between the current funding periods for road and rail, and these could be integrated relatively easily as they are already centrally agreed by the Department for Transport. Integrating bus and cycle funding into these plans would be more challenging but worth pursuing in the medium to long term. This would be also be a sensible move in the light of the fact that, in terms of building and repairing infrastructure, the supply chain for different transport modes has large amounts of overlap within a number of industries.

We are also very concerned that investment in measures to manage demand are not included in these plans, despite these being included as one of the levers available to policy makers in the Secretary of State's original response to the Cook Review.¹ This flies in the face of the success of previous programmes from the Highways Agency to influence demand, which showed very high levels of value for money and, by also saving on new construction, could affect the overall efficiency of the management of the SRN, far beyond what these plans to commercialise the operations of the Highways Agency could achieve.

Responses to consultation questions

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

We are concerned about a democratic deficit in these proposals. Proposals to fund new road building through private investors have fallen out of favour and the first of what was proposed to be a new wave of private toll roads, the A14 in Cambridgeshire, has now been changed to a publicly funded road project. With the taxpayer and the public purse as the only significant funder for the Highways Agency for the foreseeable future, the current agency model remains appropriate.

Having the Department for Transport (DfT) as the primary strategic decision maker gives clear responsibilities to Ministers and Parliament, and to the Departmental Accounting Officer for the spending voted to the DfT by Parliament. Changing this model could be accompanied by an improved remit, more scrutiny from the public and better practices from the Highways Agency, but these do not depend on this change and could be brought in without creating a new company.

Similarly, greater funding certainty does not depend on the new model proposed, and – as we set out in our answers to the other questions – a more commercial model could mitigate against improved integration with other modes and improved accountability or transparency.

While we do support longer-term funding plans for transport spending, these proposals come during a period when traffic forecasts are increasingly in doubt, and when Government policy (relying on these forecasts) is to expand the road network dramatically. Therefore, these plans risk 'locking-in' large amounts of funding for the most inefficient mode of passenger transport over many years as part of a policy that is later found to be mistaken.

If this does happen, then future Governments will either find themselves unable to change a policy that is clearly wrong, or will change the policy and reduce the funding for road-building and widening accordingly, disappointing those who hoped for definitive long-term plans to be upheld.

¹ A Fresh Start for the Strategic Road Network: The Government Response, DfT, May 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4241/government-response-cook-review.pdf

We would have more support for long-term plans if there was integration between modes, allowing for flexibility in Government transport policy and priorities, while achieving some of the potential gains in terms of long term certainty for supply chains. There is already a close match between the new Highways Agency funding plans and the HLOS periods for rail, and both are agreed centrally by the DfT, making integration extremely reasonable to propose for these modes. Bringing long-term bus and cycle funding into these plans would be more challenging, but not impossible - for example, the Active Travel Fund proposed by a range of groups in the run up to the Spending Round could easily be rolled into a joint rail/road funding envelope when it was created. And even in the absence of integrated funding, funding plans should be much better integrated with railfreight planning (see our response to Question 2).

Integrating planning for investment between different modes of transport would also be a sensible move in the light of the fact that – when it related to building and repairing infrastructure – the supply chain for different transport modes has large amounts of overlap within a number of industries providing construction design, planning, products, plant and materials. In addition to allowing flexibility in policy, it would be more politically credible to this supply chain if the Government were to commit to broad overall levels of transport infrastructure investment across the range of modes than to attempt to ring-fence money for a policy mainly of road-building.

We are also concerned that demand management has been left out of the proposed remit for the company, despite the potential for dramatic effects on the efficient use of the current SRN, in particular around towns cities where a large number of local journeys joining long distance traffic lead to the worst congestion on the network (see our response to Question 2).

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

Our experience with the initial phase of the Route Based Strategy process being out by the Highways Agency does not give us confidence in this process. We have taken part in workshops and evidence-gathering exercises aimed at gaining information about current problems on the SRN and have found this process to be far too focused on strategic roads.

Both local roads and transport policies, and other long distance modes have been left out of consideration, despite the large impact these can have on the SRN. For example, the maps presented at the workshops have only shown the major road network and major settlements, leaving out minor local roads and railway lines entirely. In showing current and expected stresses on the network, no attempt was made to distinguish between long distance, strategic journeys and short, local commuter and leisure trips.

What is needed is proper integration between modes when planning for the transport needs of different areas and corridors, with corresponding integration for funding plans. This would allow for flexibility in Government transport policies in response to political and democratic changes, and to changes in the evidence base, including future traffic forecasts, demand for different modes, the efficiency of different modes of transport and the effectiveness of smarter travel measures demand management. As mentioned in our response to Question 1, it would also achieve (probably more robustly) gains in long-term certainty for supply chains.

A more specific need for integration comes from the way the SRN affects and works with railfreight and interchanges – there is a real danger that if the Highways Agency and the provisions in the RIS don't work with and support such interchanges, they will undermine the effectiveness of significant railfreight investment. Corridors where large amounts of railfreight improvements are already committed include the A34 and A14, and the impact on lorry traffic on the SRN from these improvements will be considerable and should certainly be considered as part of the process of preparing the RIS.

With a route-based approach, there is also a danger the RIS becomes a list of schemes, rather than a more strategic programme of investment. Important aspects of the management of the SRN, including methods of fulfilling some of the new duties we suggest for the Highways Agency, are best implemented as network-wide programmes rather than as add-ons to individual schemes. This would be especially true when those schemes are being scrutinised and pressed to achieve greater efficiency, when these 'add-ons' are often the first to be squeezed out. Instead, the RIS should be constructed with the aim to include a number of network-wide programmes of measures, including retrofitting to reduce environmental impacts, travel demand management, improvements to support cycling, noise treatments and safety improvements.

Questions of demand management have also not been asked during these discussions, although we and other groups have brought up these issues and we wait to see if any potential measures are included in the next phase of the RBS process. If they are not, then this is a huge missed opportunity, as active travel and smarter choices programmes to be used to relieve pressure on the SRN, particularly on its most congested stretches around cities.

In our response to Cook, we also highlighted the success of the Highways Agency's Influencing Travel Behaviour programme, which was highlighted in the Transport White Paper of 2011 as achieving very high levels of value for money:²

"7.29 The Highways Agency manages an Influencing Travel Behaviour programme, working with local authorities and the private sector to produce voluntary area travel plans, focussing on improving the interaction between the local and national networks. Recent evaluation work has shown that these plans can, with the right level of commitment from all partners in the right location, achieve high value for money, with benefits outweighing costs by up to 13:1. Crucially, benefits include a reduction in congestion on both local and national roads, as well as a reduction in carbon emissions.

Case study: Cambridge Science Park

Working in partnership with Cambridge County Council, the Highways Agency developed an area-wide travel plan at Cambridge Science Park. At the site, covering 60 employers and 5000 staff, sustainable travel measures were implemented including car sharing. Having developed a monitoring methodology that converted trip savings achieved by the travel plan into journey time savings, the HA were able to demonstrate reduced journey times of 5-6% across the surrounding local and strategic road networks (A14 and A11), generating cost benefits of £200k in the first year from an initial investment of £70k."

By helping to relieve pressure points on the network without new construction, similar programmes could have a dramatic effect on the overall efficiency of the management of the SRN, so leaving these measures out of the current RBS programme and the proposed remit of the new company seems contrary to the aims of these reforms. One way of doing this could be through route utilisation objectives similar to those in rail, which prioritise the efficient use of the network.

The delivery of sustainable development and the aims for this set out in the NPPF ought to be an important element of the Highways Agency's duties. With an outcome-based approach focused on the performance of roads, there is a risk that the long-term benefits of integrating spatial and transport planning are forgotten. The Highways Agency should be set up to have a duty to take an active role in planning, steering development to places which can be easily reached by walking, cycling or public transport, as well as to support local planning policies. One way of doing this could be through a duty to co-operate, extended and improved from that seen in Localism Act, to ensure the Highways Agency and local planning and transport authorities work together to ensure the management and development of the SRN supports and works with local policies and vice versa.

² Creating Growth, Cutting Carbon, DfT 2011

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3890/making-sustainable-local-transport-happen-whitepaper.pdf

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?

AND

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?

AND

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

No. The proposed benefits of the creation of a Government-owned company and a long-term funding plan rest heavily on the actions of external contractors and the confidence of the supply chain in the plans, as set out in the Impact Assessment for this policy, which says that there is reasonable confidence that the “supply chain will believe the plans and change behaviour accordingly; if this is not true the benefits will be significantly lower.”

In reality, the risk that the supply chain will not have confidence in the political longevity of the Government’s commitment to a large increase in road-building is very high, and we believe that there is already sufficient doubt about the basis for current policies for this risk to be considered much more seriously.

The risk of not achieving a ‘sustained split from the political process’ is also highlighted in the impact assessment for the proposals, which outlines how political and environmental concerns have previously prevented a large-scale road-building programme from going ahead. Paragraph 6.2 says:³

“Although we anticipate that the statutory footing can deliver this, road building has been the subject of significant public protest including direct action in the past. Until the supply chain is comfortable that unexpected political and budgetary pressures will not interfere with the investment programme and funding guarantee, the government-owned company may not be able to deliver the efficiency gains anticipated.”

As stated in our response to Question 1, better integration between modes in terms of transport planning and funding would be a more robust way to reassure the supply chain.

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?

No. The planned expansion of the SRN, which these proposals are intended to support, would be likely to have a huge impact on the environment, with new land required for bypasses and widening projects, severance of habitats, impact on waterways and wetlands, and disruption of ecology and landscapes vital to the overall ecosystem of the UK.

Particularly worrying in the draft new roads policies is the plans in Action for Roads for a new ‘expressway’ standard – effectively proposals for the long-term dualling of the SRN. With Campaign to Protect Rural England, Friends of the Earth, Greenpeace, the Wildlife Trusts, Woodland Trust and RSPB, we recently

³ Impact Assessment document:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253366/roads-reform-ia.pdf

warned of the potential impact of this on National Parks, AONBs and the World Heritage Site at Stonehenge.⁴

While these proposals for reform are intended to support a range of policies, ensuring they contain a rigorous and failsafe approach to environmental protection becomes even more important if the Highways Agency is to be made more independent of Government at the same time as being funded to expand the network.

The National Planning Policy Framework (particularly paragraphs 6-8 and 29) is clear that "to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system" and that: "Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives."⁵

The current HA performance specification does not provide reassurance that the remit for the new company or the RIS would support these policies. There is also a danger that environmental protection is seen as minimising the damage from individual road expansion schemes when it should be about improving the environment through the actions of the agency throughout its operations, including the overall impact of its network and its investments. With others we have also argued for appropriate new standards and design for the all-purpose network that gives all users a better deal while enhancing and protecting the environment.

Stronger regulation than that proposed clearly is needed for the Highways Agency if it is to achieve these aims, and this needs to include contributing to the Government's commitments under the Climate Change Act and its legal duties to meet EU air quality standards. The examples given of the budgets of regulators from other utilities given in the Impact Assessment document cite the way Ofgem "plays an active role in delivering energy efficiency schemes". This is a reference to the way energy companies have been obliged to help reduce demand to support the Government's carbon reduction plans. Models of this sort, where the new company is tasked with managing demand as well as providing a service have been ignored in putting together the proposals for this consultation but could have much to offer in terms of efficiency on the roads and the efficient use of public funds.

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?

Not necessarily. These paragraphs outline a number of ways the new company ought to interact with these organisations that are improvements on the current level of engagement from the Highways Agency, but no detail is given of the requirements or of the regulatory basis for enforcing these, except via the Secretary of State. Detailed requirements should be outlined in how the new company will engage with each of these groups, including also the new Local Transport Bodies and Local Enterprise Partnerships, as well as interest groups and community representatives covering all road users, not just motorists.

The effect of the SRN on local roads is a crucial consideration that is not adequately covered in these paragraphs. Since virtually no journeys begin and end on the SRN alone, the new company should also have a duty to contribute to improving door to door journeys and promoting travel choice right across the road network not simply on its own roads.

A duty to work effectively with local authorities – as suggested in our response to question 2 - would be one way to rectify this. Such a duty could prove particularly important in urban areas, where many authorities are

⁴ Charities warn National Parks under threat from Highways Agency dual carriageways, <http://www.bettertransport.org.uk/media/15-july-NGO-roads-map>

⁵ National Planning Policy Framework, DCLG, May 2012 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

pursuing policies of traffic reduction and work to expand the SRN could not only interfere with these policies and be a counterproductive use of public money.

Other duties relevant to these issues could include meeting the requirements of the Traffic Management Act or, where the SRN passes through or close to settlements, in smaller cities such as Hereford as well as in the larger conurbations, to have an active role as technical advisers in promoting sustainable solutions to traffic issues.

With the focus of these plans on spending efficiency, it is also hard to see how a company operating under commercial pressures would be able to justify fulfilling many of the functions outlined in these sections in a wholehearted and voluntary way while cutting operational costs.

The Secretary of State's role, while retaining control of overall strategy and funding levels, appears to come with no sanctions short of revoking the licence of the company – a measure which is likely to be seen as too drastic to be carried out except in the case of the most dramatic failures.

We understand that the aim of the proposals is to grant commercial levels of operational freedom to the new company, but strongly believe any new regulations and legislation should include clear interim sanctions that can be applied by the Secretary of State in the event of the failure of the new company to fulfil its obligations in a number of ways, including co-operation with other parties and achieving its management and investment goals as set out in the RIS.

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?

No. While we have some confidence in the ability of Passenger Focus to take on the interests of another group of travellers, as representing bus passengers has been quite effectively realised by the organisation in recent years, we are concerned that the proposals do not allow for a number of important facets of accountability to the wider community:

- a) With free access and no pricing associated with the use of the roads, there are large questions about the possible sanctions that could be implemented by the watchdog and efficiency monitor. Both bodies are proposed to provide only 'independent advice to the Secretary of State' who, as outline above, would have no statutory sanctions available, short of revoking the company's licence
- b) Accountability should not be focused only on 'users of the SRN' but on the social, environmental and economic effects on wider society. Doing this effectively would provide for the involvement of groups representing these interests in specific ways within the functions of the proposed watchdog. This could be similar to the role envisaged in the 'Preferred Option' box for motoring organisations, where it envisages a: "Formal role for user representative bodies, such as the AA, RAC and freight representatives, in guiding the activities of the user watchdog."
- c) No routes of redress for failure to comply with new accountability processes are envisaged by the consultation, short of persuading the Secretary of State to revoke the company's license or legal routes via Judicial Review. With the Department of Justice currently planning to water down legal tests for challenges based on procedural errors,⁶ this would leave the watchdog and the wider community with very few options if the new company failed to co-operate with or listen to their views
- d) Accountability should also extend to the devising of policies. We support the 'formal role in processes such as the setting of the RIS' suggested in the penultimate paragraph of the 'Preferred Option' box

In addition, we support the proposal considered in paragraph 3.19 (not included in the 'Preferred Option') for the watchdog's functions to extend to local authority managed roads, as it is often not clear or apparent to citizens which bodies are responsible for which functions in relation to roads. This would also potentially help

⁶ Judicial Review – proposals for future reform, Department of Justics, Sep 2013 <https://consult.justice.gov.uk/digital-communications/judicial-review>

improve integration between modes and improve the Highways Agency's approach to public transport including buses, and to cycling measures.

We also consider it crucial that any watchdog scrutinises and influences the role of the Highways Agency in meeting the needs of non-motorised users, and enhancing the environment and reducing impacts of the network.

We note that, while the demands of the proposed watchdog in terms of data are tackled in the proposal and Impact Assessment, there are no proposals for open data, accessible to other groups and the general public. This is a missed opportunity to significantly expand the accountability of the Highways Agency, and would bring benefits under the current model, as well as being a vital measure for the scrutiny of a more arms-length organisation.

Finally, the proposed budgets for the watchdog and efficiency monitor seem to be very low compared with similar regulators and this would further restrict their effectiveness. Paragraph 5.3.79 of the impact assessment summarises the annual budgets of ORR (£28.9m), OFGEM (£72m) and OFWAT (£18.7m) but a much lower funding level is proposed to cover the roads bodies - an anaemic £1m to £3m per year. It is hard to see how this will be enough for the effective collection, analysis and dissemination of information about the performance of the new company, let alone for sufficient outreach and promotion of the new activities of the bodies to ensure a good level of public engagement and understanding of the new functions.

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**Stephen Joseph, Chief Executive
Campaign for Better Transport**

Campaign for Better Transport's vision is a country where communities have affordable transport that improves quality of life and protects the environment. Achieving our vision requires substantial changes to UK transport policy which we aim to achieve by providing well-researched, practical solutions that gain support from both decision-makers and the public.

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