

**EXPLANATORY MEMORANDUM TO
THE DELEGATION OF FUNCTIONS (STRATEGIC HIGHWAYS COMPANIES)
(ENGLAND) REGULATIONS 2015**

2015 No. 378

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The purpose of these Regulations is to enable strategic highways companies to delegate the statutory highway functions listed in the Regulations so as to permit private sector contractors to carry out certain operations on a contracted out basis. These functions include highway maintenance and street works functions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 These Regulations are made under section 7 of the Infrastructure Act 2015 (“the 2015 Act”). They are part of a package of statutory instruments being made in connection with the implementation of Part 1 of the 2015 Act and the appointment of Highways England Company Limited (“Highways England”) as a strategic highways company. The other instruments are:

- The Infrastructure Act 2015 (Commencement No. 1) Regulations 2015 which bring Part 1 of the 2015 Act (and other provisions unrelated to the Department’s road reform measures) into force.
- The Appointment of a Strategic Highways Company Order 2015 (S.I. 2015/376) which appoints Highways England as a strategic highways company and the highway authority for the strategic road network in England.
- The Infrastructure Act (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 (S.I. 2015/377) which make consequential amendments to secondary legislation and transitional and savings provision in connection with the coming into force of Part 1 of the 2015 Act and the appointment of Highways England as a strategic highways company.

4.2 These Regulations track the provisions of the Contracting Out (Highways Functions) Order 2009 (S.I. 2009/721), which is the current means through which the Highways Agency delegates functions to private sector contractors where the operation of

certain highways has been contracted out. The 2015 Act provides at section 6(8) that existing delegations made by the Secretary of State (i.e. pursuant to that Order) will continue to have effect as if made by Highways England in relation to highways where Highways England has taken a transfer of the relevant functions in relation to the highway in question.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In 2001, Alan Cook published his independent review, *A Fresh Start for the Strategic Road Network*, which made a number of recommendations on how the management of the Strategic Roads Network could be improved. The review stated that major savings for taxpayers and benefits for the national economy could be made by reforming the Government's management of England's motorways and trunk roads. In July 2013, the Government published *Action for Roads: A network for the 21st century*¹ which proposed a different model for the funding and delivery of the strategic road network (motorways and major roads). This included steps to turn the Highways Agency into an organisation at arms-length from Government, specifically a Government-owned strategic highways company funded by Government. The new model would be supported by the introduction of a long-term Road Investment Strategy and establishing a road user watchdog to represent the views of roads users and a highways monitor to monitor the company's performance and efficiency. The overall intention of the reforms was to improve long term planning and funding certainty, and provide greater transparency and clear lines of accountability.

7.2 The Government consulted on its proposals in October 2013 and published its response to the consultation in April 2014. The Infrastructure Bill (Part 1 of which implements the Government's roads reforms) was introduced into Parliament in June 2014 and received Royal Assent on 12 February 2015. The Government intends to appoint Highways England as the strategic highways company for the whole of England with effect from 1 April 2015.

7.3 As a consequence of its appointment Highways England will exercise certain statutory functions and powers under highways-related and other legislation. These Regulations will allow it to authorise another person to exercise certain of its functions in relation to maintenance, improvement and other dealings with highways. This is essentially a continuation of the contracting out model operated by the Highways Agency

¹ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212590/action-for-roads.pdf.

(acting as the Secretary of State), and as noted above these Regulations are broadly comparable with the existing order (made under the Deregulation and Contracting Out Act 1994) allowing the Secretary of State to contract out highways-related functions². They do not extend the range of delegable functions beyond those already delegable by the Secretary of State.

8. Consultation outcome

8.1 The Department consulted on transforming the Highways Agency into a government-owned company in October 2013³. The Government's response to the consultation was published in April 2014⁴. 106 responses were received (69 from organisations and 37 by members of the public). The majority of organisations were largely supportive of the proposals whilst members of the public were generally more sceptical. Most respondents were broadly supportive of turning the Highways Agency into a government-owned company and welcomed the introduction of long-term funding certainty for strategic roads. There was also considerable support for the proposed governance and accountability arrangements for the new company and broad acknowledgment that essential environmental protections would be covered by a combination of the existing legislation and the proposed governance regime.

8.2 There was less support for the proposals for delivering independent, external scrutiny functions via Passenger Focus and the Office of Rail Regulation (ORR). 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. Some respondents wanted the Government to go further in creating a new regulator with a roads-only remit. In light of the feedback the Government carefully examined the different options for the advisory bodies, including the possibility of setting up a new free-standing body, but concluded that the skills and experience of the existing organisations meant that they were best placed to carry out these functions. This approach is in keeping with Government's general policy to make the best use of the skills and experience within existing organisations and to avoid waste.

8.3 The Government therefore confirmed that it would set up new discrete units – “Transport Focus” within Passenger Focus and a “Highways Monitor” within the ORR – to represent the interests of the users of the strategic road network, and to monitor the efficiency and performance of the company. During the passage of the Infrastructure Bill through Parliament the Government tabled amendments to strengthen the role of the ORR as Highways Monitor, giving it enforcement powers including the power to impose fines.

² The Contracting Out (Highways Functions) Order 2009 (S.I. 2009/721).

³ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254356/roads-reform-consultation-document.pdf.

⁴ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307286/ha-response-web-version.PDF.

8.4 The Transport Select Committee published its report *Better Roads: Improving England's Strategic Road Network*⁵ (HC 850) on 7 May 2014. The Committee was supportive of longer term, stable funding and better long-term planning, but not convinced of the case for changing the status of the Highways Agency. It also called for a stronger regulatory model for scrutinising the new company. The Government's response was published on 24 October 2014⁶ (HC 715) which argued that reform was essential to securing efficiencies and delivering a step change in the performance of our road network. It also confirmed that it remained open to considering ways in which scrutiny of the company could be strengthened. During the passage of the Infrastructure Bill the Highways Monitor was given a stronger scrutiny role including powers to fine the company and the House of Commons Public Bill Committee call for evidence also informed consideration of the provisions.

8.5 There has been no separate consultation on these Regulations as they form part of the implementation of the policy consulted on in October 2013. However, as mentioned above, they were shared with the Commons Public Bill Committee during the passage of the Infrastructure Bill and no comments were received.

9. Guidance

The provisions of these Regulations do not require guidance.

10. Impact

10.1 There is no impact on business, charities and voluntary bodies.

10.2 The impact on the public sector of the Government's roads reforms contained in Part 1 of the 2015 Act are set out in the updated Impact Assessment published when the 2015 Act received Royal Assent⁷. There is no additional cost on the public sector as a result of these Regulations.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government does not intend to put in place any specific monitoring of these Regulations. Section 7(3)(b) of the 2015 Act provides that an authorisation made under that section may not last longer than 10 years, which will provide an occasion for review. As regards the Government's roads reforms more generally, it is anticipated that each Road Investment Strategy will be set for a period of approximately five years, which will

⁵ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/850/850.pdf>.

⁶ <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmtran/715/715.pdf>.

⁷ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367436/roads-reform-impact-assessment.pdf.

provide an opportunity for periodic review of the policy and its implementation. The new Highways Monitor within the ORR will have the role of monitoring the performance and efficiency of Highways England and will provide regular, published advice to the Secretary of State. The Passengers' Council (known as Transport Focus) has a statutory responsibility to act as watchdog on behalf of road users in respect of Highways England's performance. The 2015 Act also requires the Secretary of State to report periodically to Parliament on the performance of Highways England.

12.2 In addition, the 2015 Act will be subject to Post Implementation Review in the usual way, in keeping with wider Government policy.

13. Contact

Pauline Morgan at the Department for Transport Tel: 020 7944 2392 or email: Pauline.Morgan@dft.gsi.gov.uk can answer any queries regarding the instrument.