

This is the Heritage Railway Association's response to the ORR consultation document:

Managing level crossings: Guide for managers, designers and operators - April 2010

Background

The Heritage Railway Association (HRA) is the trade association of the 117 Heritage Railways and Tramways in Great Britain.

We would like to take this opportunity to thank the Office of Rail Regulation (ORR) for giving us this opportunity to comment on the consultation document.

The HRA membership comprises organisations with a total of 20,000 staff who are a mixture of paid and unpaid staff where average ratio is 1:10. The turnover varies from very small to over £5,000,000 per annum with an average of around £500,000.

The sector has a combined turnover of around £79 million. It operates in the transport, heritage and tourism fields which directly affect local businesses and local employment with total turnover of around £320 million.

The management of these organisations is often in the hands of persons who are volunteers.

Our members have broad business, safety and public interests covering the whole of the UK as well as strong interactions with colleagues in Europe.

Our members' operations are monitored by Her Majesty's Railway Inspectorate on behalf of the ORR and other bodies.

The HRA meets regularly with representatives of our members and communicate using a bi-monthly newsletter as well as electronic communication.

The HRA therefore represents a group of small companies and provides guidance on a wide range of issues to our members.

We start with some General Comments and then continue with Detailed Comments on each Chapter or Heading in the order of the document:

General Comments

Timing of the consultation

The Heritage Railway Association expresses its concern that it has been thought appropriate to launch this Guidance at a time when many of the legal issues affecting level crossings are the subject of review by the Law Commission and the Law Commission for Scotland. In particular, we find it frustrating that ORR has set a timetable for responses to its consultation paper of 13 July when only a fortnight later the Commissions are due to issue their consultation paper. This approach imposes an unnecessary heavy burden on small enterprises such as Heritage Railways.

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Narrow Legal Focus

Secondly, we would submit that the ORR paper is too narrowly focused in limiting it in the main to consideration of the Level Crossings Act 1983 and Orders issued thereunder. Important though this legislation is, it has no application unless the existence of a level crossing has already been sanctioned by other legislation, such as by way of a Special Act, a Light Railway Order or a Transport and Works Order. Special Acts can be of profound relevance, for example the British Transport Commission Acts of 1954 and 1957 in relation to mainline level crossings.

Also ignored is the case of section 93 of the New Roads and Street Works Act 1991, which is designed to safeguard the safety of persons and the operation of railway traffic when utility undertakers execute work on, under or over level crossings and their approaches.

Level Crossing Closures Issues

Given the statement in section 2.1 of Chapter 3 that a railway operator's primary objective should be to close level crossings permanently, it is surprising that the provisions of, and procedures under, sections 118A and 119A of the Highways Act 1980 (inserted by section 47 of the Transport and Works Act 1992), together with the supplementary provision contained in section 48 of the 1992 Act, are ignored. These sections established a procedure for making Orders to extinguish or divert level crossings.

Document Versions

The third paragraph before the contents list infers that the latest version of the Guidance will only be on the ORR web-site. We seek assurance that any changes will be notified to all dutyholders and not just placed on the ORR website.

Identification of Chapters, Sections, Clauses and Appendices

The document reads as though it was generated as three separate documents in differing styles which are then attached to each other. Some parts have paragraphs numbered, others only sub-sections and yet others with no numbering at all. There is a need for greater consistency.

The paper uses the term Appendix with a letter notation in two sequences in the text, which is a cause of some confusion as there are two differing series of Appendices with the same letters.

Detailed Comments

Background:

Mention has already been made of our concern with the timing of this consultation, given the imminence of the proposals of the two Law Commissions.

Foreword

It should perhaps be made clear that in addition to the Guidance not applying to tramways, it is also not intended to apply to guided busways.

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Chapter 1: The legal framework

Overview

Dutyholders

To the first set of bullet points we would suggest adding as a category "Undertakers of public utilities", since level crossings need to be considered not only in the context of surface activities but also the implications stemming from wires above and drains, pipes and cables beneath the crossing, as recognised by section 93 of the New Roads and Street Works Act 1991.

We would suggest adding a category "landowners" to the list of dutyholders

Enforcing Authority for non-railway health and safety matters

After the bullet points there is the statement that "ORR is the enforcing authority for railway health and safety legislation". This prompts the question as to who might be the enforcing authority for non-railway health and safety matters relating to level crossings. For example, under section 1(2)(a) of the Level Crossings Act 1983 it is possible to impose duties on local traffic authorities. Do ORR enforcement powers extend to these bodies, particularly if the traffic authority in question is the Secretary of State?

Key pieces of Legislation

Heading the second set of bullet points, there is a list of "key pieces" of legislation. This list seems to be somewhat eclectic. We have already remarked upon the omission of certain legislative references in our General Comments. We would further suggest adding the other legislative items listed in the second Appendix D, but note that "Street Works" is two words in the title to the 1991 Act.

Industry standards

In the second paragraph "principal" is misspelt.

Highways and planning law

This needs to consider the situation of private roads over which local traffic authorities do not have jurisdiction. Neighbours need to be a relevant party in this context.

Chapter 2: Managing risks at Level Crossings

Section 1: Clause 4

Replace "will" in the first line by "should".

Section 1: Clause 5

Replace the second 'or' in the second line by 'and whether'.

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Section 1: Clause 8

Mention should be made of adjacent properties in 'Factors affecting the continued suitability of arrangements'.

Mention should also be made of the obligations of highway authorities under the Health and Safety at work etc Act 1974.

Section 2: Clause 20: Item 5A of Table 1

The last word should be 'crossing' not 'crossings' (singular).

Section 2; Clause 20 Items 6, 7 & 8 of Table 1

Cross reference to the technical profiles in section 15. These have all been given the vertical profiles for the AHBC. We would ask for clarification as to whether this was correct because there is not the same risk for vehicle grounding as there would be at an AHBC.

The information in this table does not match that found in section 15.

Section 2: Clause 20: Item 9 of Table1

The word 'that' in the second sentence should be 'than'.

Section 4; Clause 38

The last word should be 'crossing' not 'crossings' (singular).

Section 5; Clause 51

The last word should be 'crossing' not 'crossings' (singular).

Section 5A; Clause 67

We see no reason why barriers should not be lowered in this situation.

Section 7: Clause 90

The item (a) re direct control for an ABCL needs justification. We doubt this can be achieved at the majority of installations.

Section 7: Clause 93

Definition of 'higher speed roads', as referred to in part (a) is required. (See also Section 8; Clause 117.)

Section 7: Para 97

In many current installations we believe circuitry is arranged so that if both lights are out the barriers will lower. The guidance needs to be aligned with practice.

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Section 7: Clause 99:

We do not support removing the DCI indication for a power failure or at least the alternative of having a separate power supply indicator should be permitted.

Section 7: Clause 105

On very low speed lines the addition of advance warning boards seems an unnecessary additional expense.

Section 8: Clause 114

A supervising point having direct control of all train movements seems inappropriate to the style and extent of signalling associated with lines where AOCLs are most often found.

Section 8: Clause 117

Definition of 'higher speed roads', as referred to in part (a) is required. (See also Section 7; Clause 93.)

Section 11; Clause 159

With regard to public foot crossings, the document is biased towards mainline operations in the TPV equation (page 44, section 11, paragraph 159). This would be unsuitable for heritage railway operations since it could give developers the opportunity to avoid costs of upgrading crossings due to new industrial or housing schemes.

Risk assessment methodology would be useful for all crossings.

Section 11: Clause 161

Additional information is needed in item (c) to indicate how the balance of risk would be calculated.

Section 12; Clause 177

There is a significant national investment implication if tactile thresholds are required at all level crossings.

Section 14; Clause 194

One "effective" too many.

Section 15; Clause 216

At the end add "where practicable".

Section 19; Clause 303

After "bridleway" add "and cycle tracks".

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Section 19; Clauses 310 to 333

These identify what is required but not whom it should be done by. We would like to see advice on how railway and highways authorities come to a clear understanding of their respective responsibilities on items such as fencing, boundaries for highways, maintenance and signage.

First Appendix D – Common Terms

Introduction

We wonder whether there needs to be some qualification that would limit defined terms to particular contexts. For example, "railway" is undefined in the Level Crossings Act 1983 and earlier legislation, so that the term may be interpreted differently in those contexts. "Tramway" has a different definition in the New Roads and Street Works Act 1991 from that in the Transport and Works Act 1992, which are both different from the definition given in the paper.

Railway terms

Railway

There should be added to the definition the words "but does not include a tramway". This is the whole reason for including a definition of "tramway" in the paper and without these words the railway definition would be just as apt to apply to tramways.

Heritage railway

There seems no point in including this definition as it is not used in the body of the text.

Other guided transport system

There seems no point in including this definition for the same reason.

People terms

People

It is customary to use the term "persons" rather than "people" in legislation (see, for example, the Health and Safety at Work etc Act 1974). Is any distinction intended? As defined, the term appears to exclude employers and self-employed persons when working on the railway in those capacities.

Train terms

Train

There seems no point in including the last sentence.

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Add a new item as follows:

'Horn' This term is used to include both horns and whistles, where the latter is more common on steam engines.

(Steam engines are found on significant portions of the mainline as well as on heritage railways)

Chapter 3: A guide to level crossing submissions

Section 1.2

In the second paragraph, we suggest substituting "what an Order may contain" for "what an Order contains".

Section 2.2

In line two, substitute "establish" for "recognise".

Section 2.3

The reference to "the Light Railways Act 1912" should be to "the Light Railways Acts 1896 and 1912" and the reference should also apply to England and Wales since although these Acts were repealed for those jurisdictions in 1993, many Light Railway Orders issued under them still remain in operation.

Delete "when brought into force".

Section 3

In footnote 2 "Crossin" needs a "g" and "highways" needs an initial capital.

In footnote 4, the section is "1(2)(a)", not as given.

Section 4.3

In the second paragraph, there is a reference to "the level crossing risk manager". This appears to be the first mention of this functionary whose role is restricted to one organisation only and is not in common use.

If it is intended to introduce this role elsewhere perhaps the legal basis for this could be explained as well as the role and responsibilities of the function.

Section 4.5

The works are also likely to attract the verification procedure and the appointment of an independent competent person pursuant to the Railways and Other Guided Transport (Safety) Regulations 2006 and it would seem desirable to make this point and explain the relationship between the two procedures. An equivalent reference appears in section 6, third paragraph.

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Section 5

Footnote 7 quotes the relevant Statutory Instrument numbers. This is not done elsewhere, even in the second Appendix D. This practice would seem to be a useful addition to the relevant legislation but should in any case be consistent throughout the document.

Section 6

A reference to the Railways Clauses Consolidation (Scotland) Act 1845 should also be included.

Section 8

There should be a cross-reference to the second Appendix D if it is to be retained.

Second Appendix A

We question the appropriateness of listing the names of persons within this guidance document since they will inevitably change from time to time.

The names of the entities designated by the initials LNE, LNW, M & C should be given in full.

Second Appendix C

In paragraph 5, it is not clear that the wording is intended to indicate, as we assume to be the case, that the provision requires a profile of the road viewed lengthwise as well as from side to side.

-----end of response-----