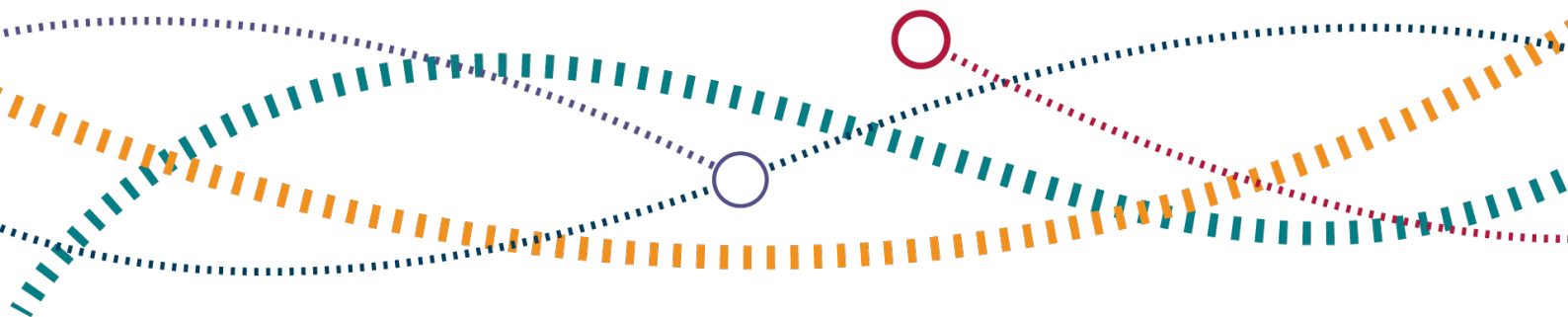




Principles for managing level crossing safety

Summary of consultation responses

June 2021



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Introduction

The Office of Rail and Road (ORR) has a strategic objective to encourage the improvement of level crossing risk assessment, which is set out in our Strategic Risk Chapter on Level Crossings¹. As part of this objective, we consulted on new guidance on principles for managing level crossing safety, which is aimed at supporting level crossing risk assessments. This will replace our current primary guidance document for level crossings, 'Level Crossings: A guide for managers, designers and operators Railway Safety Publication 7 2011', known as RSP7.

The consultation ran from 20 January to 26 February 2021. We received 52 responses to our consultation. The responses can be found in full on our website². This document summarises the responses we received, alongside how we have addressed these comments. The comments are grouped by the consultation questions we asked.

We also ran two public seminars which enabled us to explain the proposals for new guidance and provided an opportunity for questions and discussion. Points raised at the seminars were also considered alongside the written comments we received.

We have not individually listed all comments and how we have responded to them in this document.

¹ <https://www.orr.gov.uk/sites/default/files/om/health-and-safety-strategic-risk-chapter-4-level-crossings.pdf>

² <https://www.orr.gov.uk/search-consultations/consultation-new-orr-guidance-principles-level-crossing-safety>

Consultation Questions

- 1 We asked consultees seven questions in the consultation document³:
 1. Who are you responding as (an individual/for an organisation) and what is your role?
 2. Who would use this guidance in your organisation? When and how would it be used?
 3. Are the risks associated with all types of level crossings sufficiently and clearly covered? Are there gaps in the document that you think need to be addressed?
 4. If you carry out level crossing risk assessments, would you find this guidance helpful? Please explain your answer
 5. ORR has published a number of principles-based guidance on various topics. How do the principles in this level crossings guidance fit with other railway safety guidance that you use?
 6. What other information from ORR on level crossings would you find helpful?
 7. (For businesses only, not including public bodies) We are required to review the impact of any regulatory changes, including guidance, on businesses. How would the proposed guidance impact on your business in terms of familiarisation and any changes to your processes?
- 2 Questions 1 and 2 were for our understanding of who was responding to the consultation and how they would use the guidance in their organisation. Therefore, we have not responded to these comments.
- 3 We have summarised the comments we received for questions 3 to 7 below and our response to them.

³ <https://www.orr.gov.uk/sites/default/files/2021-01/consultation-on-principles-for-managing-level-crossing-safety-guidance.pdf>

Consultation Question 3

Are the risks associated with all types of level crossings sufficiently and clearly covered? Are there gaps in the document that you think need to be addressed?

- 1 In general, the feedback received on the new guidance was positive with no consultees questioning the need for any guidance. The information provided on human factors was also well received. However, there were concerns over the format of the guidance, the level of detail provided and potential gaps in the guidance.
- 2 The concerns raised are addressed below.

Information from RSP7 not included/specific information on types of level crossings

- 3 Consultees commented that there is information currently included in RSP7 that is not included in the new guidance, and there was a lack of detailed information and requirements in relation to specific level crossing types. There were concerns that this could lead to gaps in knowledge with level crossing design.
- 4 The new guidance is not intended to provide level crossing design solutions for what should be done at a level crossing once the risk assessment is complete. This is so the risk assessment for the level crossing starts from first principles instead of simply picking a level crossing type, such as what type of level crossing is already on site.
- 5 We note that some organisations may not have their own standards for level crossing design. We are not withdrawing RSP7 immediately to allow organisations to review RSP7 against their own standards and incorporate elements of RSP7 into their own processes if they wish to. However, RSP7 is out of date and will no longer be supported by us, so this would be done at the organisation's own risk.
- 6 It should be noted that RSP7 was not a standard, and that it allowed for crossing operators to take other action if it managed the risk appropriately.
- 7 RSP7 will be available on our website for a while. We will also provide more general information on level crossings on our website to supplement this guidance, including case studies that will help more general users understand how the principles can be applied to real life level crossings.

Public rights of way

- 8 A number of consultees felt the guidance did not cover issues associated with public rights of way in a sufficient level of detail. One issue that was raised by multiple consultees was that there was no specific statement in the guidance on the use of stiles and gates at footpath and bridleway crossings, particularly in relation to BS5709.
- 9 We are not looking to prescribe certain equipment at certain types of level crossings in this guidance, particularly when there is an existing standard like BS5709. We will include BS5709 on a list of relevant legislation and standards for level crossings on our website.
- 10 Consultees said that there were no details on active travel needs or the benefits of recreational travel to be considered in the process for closing a level crossing, including in any cost benefit analysis. Consultees also raised that divisions onto other roads or highways may not be suitable for pedestrians when a level crossing is being considered for closure, and that the guidance could provide more detail on the closure process.
- 11 Our guidance focuses on the control of risk at level crossings. We recognise with level crossing closures there are wider considerations beyond railway health and safety, such as road safety and maintaining public rights of way, but these considerations are not within ORR's remit. The closure process for a level crossing involves other parties that can comment on these considerations, such as local authorities.
- 12 We are not responsible for the management of public rights of way or the process for closing level crossings. Therefore, we do not propose to include detailed information on or specific requirements regarding these areas as they are outside of our remit. We state that the input of and collaboration with a number of different groups is important in any risk assessment of a level crossing, and particularly in relation to the closure of a level crossing.
- 13 We will provide more information on our remit in relation to level crossings on our website.

Equality Act 2010

- 14 The responsibilities of those managing level crossings in relation to the Equality Act 2010 was also raised as a gap in the guidance, although it was also noted that the new guidance referenced the Act more than RSP7.

- 15 While the Equality Act 2010 applies to level crossings, we do not have enforcement powers for the Act. Therefore, any enforcement action in relation to level crossings solely on the basis of the Act would need to be taken by the Equality and Human Rights Commission. All those involved with managing level crossings need to take their duties under the Act into account when making decisions about level crossings.

The principles applying or not applying to all types of level crossings

- 16 It was raised that not all principles could be applied to all types of level crossings, or that a specific principle might be applicable to a type of crossing, for example such as a footpath crossing, but were not signposted to be applicable. An example given by several consultees was Railway Principle 2, which was seen to state that all level crossings in future should have obstacle detection.
- 17 The principles are not a set of prescriptive requirements that must be followed at every crossing. If obstacle detection is judged to be grossly disproportionate to the risk at a crossing, the guidance does not require it to be installed. We have also adjusted the wording of principles to make this clearer, including in Railway Principle 2.
- 18 Not all principles will apply to all level crossings, as outlined in the introduction of the guidance. Part of the process of using the guidance for a specific level crossing is to consider each principle and judge if that principle applies to the crossing or not. This is also why we will not produce a matrix of which principles apply to each type of level crossing that would shortcut this process.

Signage

- 19 Concerns about signage on both vehicular and non-vehicular level crossings were raised by consultees. For vehicular crossings, there were concerns that the withdrawal of diagrams previously in RSP7 could lead to an increase in non-standard signage. There was also concern over the signs currently being used at footpath and bridleway crossings being outdated. There was also a request for guidance on the new signage for private crossings that has been developed by Network Rail and is being taken forward into law by the Department for Transport (DfT).
- 20 There is no change to the legal requirements regarding signage with the new guidance being issued. All traffic signage used at level crossings will still need to be authorised. This will be either by using signage specified in legislation such as the Traffic Signs Regulations and General Directions 2016 and the Private Crossings (Signs and Barriers) Regulations 1996, or by individual authorisation by DfT.

- 21 For vehicular level crossings with a level crossing order, the signage and layout will be still specified in the level crossing order.
- 22 DfT provides guidance on the placing of traffic signs and we will not duplicate this in our own guidance. This guidance will be signposted on our website. We have also fed back to DfT that the references to RSP7 in the Traffic Signs Manual will need to be updated.

Other guidance

- 23 We were asked how we viewed the principles fitting into ORR's guidance and wider policies. We were also asked how the new guidance would fit in with guidance and standards provided by other organisations, and if this led to any gaps. It was also raised that the RIGs provided on our website are out of date.
- 24 We want to avoid duplicating material that is provided in publications by other organisations, such as road standards or RSSB publications. This can cause confusion when these are updated, and our guidance risks not accurately reflecting these updates. Therefore, we have not included information in our guidance that is provided in standards and other guidance.
- 25 The Goal Setting Principles for Railway Health and Safety (GSPRHS) and how they fit into the new guidance was specifically raised. We view the new guidance as building upon GSPRHS, which covers a number of areas that should be considered in relation to good design. When people are specifically considering level crossing risk, we would expect people to refer to the level crossing guidance.
- 26 We have not included guidance on assessing competence or on Safety Management Systems as these are not unique to level crossings and are covered in existing ORR guidance.
- 27 We appreciate that some of the RIGs on level crossings need reviewing. We are in the process of reviewing them and where possible their content will be incorporated into the level crossing webpages.
- 28 The purpose of the guidance will be addressed in the foreword to the guidance. We will cover ORR's legal duties on our website. The website also has links to our other level crossing publications.

Applicability of the guidance

- 29 It was stated that the guidance could be extended to local planning authorities when making decisions on developments near a level crossing. We have included 'people

who deal with planning applications' into the list of potential users at the start of the guidance, though it will not be mandatory guidance for them.

- 30 We have also made it clearer that the guidance can be used by non-mainline operators such as freight facilities that have level crossings and for all level crossings in general. While level crossings on tramways often operate on a line-of-sight principle under road law, the principles in this guidance can be also be used by tramway operators if they wish.

Responsibility for managing risk at a level crossing

- 31 Several consultees asked for clarification on who is responsible for managing the risk at a level crossing. At vehicular crossings with a level crossing order, this is set out in the order.

Level crossing orders guidance

- 32 We were asked if we will publish guidance on level crossing orders alongside the new document.
- 33 We will publish new guidance on level crossing orders separately to this project and will retain the existing guidance in the interim.

Consultation Question 4

If you carry out level crossing risk assessments, would you find this guidance helpful? Please explain your answer

- 1 Consultees who carry out risk assessments at level crossings said that the guidance would be helpful for this purpose, with some comments.
- 2 It was noted that tools such as the Level Crossing Risk Management Toolkit provide greater detail and might be more helpful for a risk assessment. We expect that the guidance should be used alongside other tools as needed.
- 3 It was noted that the guidance would work in conjunction with Network Rail's standard for risk assessment to give sufficient guidance.
- 4 Some consultees said that they would continue to use RSP7 alongside the new guidance. It is up to the assessor to decide if they will continue to use withdrawn guidance and manage any risks associated with it.
- 5 It was raised that quantification of risk is a difficult area for non-mainline railways who do not have the same data pool as Network Rail to draw on. This is true and why we have tried to keep our guidance as simple as possible.
- 6 One consultee raised that the value of preventing a statistical fatality (VPF) varies depending on which part of the transport sector is being considered and this can affect funding for road improvements at or near level crossings. The VPF provided by DfT does not vary depending on which part of the transport sector is being considered.

Consultation Question 5

ORR has published a number of principles-based guidance on various topics. How do the principles in this level crossings guidance fit with other railway safety guidance that you use?

- 1 Most consultees did not use other railway safety principles published by ORR. Where consultees did, the majority felt that the guidance fits. There was however a desire for greater consistency in approach, format, and presentation between the guidance documents.
- 2 We note the point regarding approach, format, and presentation of ORR's railway safety principles-based guidance in general. We have worked to make this guidance more accessible to all readers than RSP7 e.g., including Alt Text for photographs.
- 3 One consultee raised that there was a conflict between the guidance and ORR's existing guidance 'Internal guidance on cost benefit analysis (CBA) in support of safety-related investment decisions', when referring to gross disproportion. They also raised that they believed Baker v Quantum (2011) had overruled Edwards v National Coal Board (1949).
- 4 We do not consider there to be a conflict between the two pieces of guidance, as they both cover the same point but with a different focus on emphasis. The CBA guidance says that you need to implement controls unless they are grossly disproportionate, while recognising that there is some professional discretion as to what is grossly disproportionate where the assessment goes beyond money. This guidance says that where something is not assessed as grossly disproportionate it should be deemed reasonably practicable.
- 5 ORR has considered the judgments in the Baker and the related Tangerine case and resulting commentary. We do not consider either case requires us to change our approach to the assessment of reasonable practicability: gross disproportion remains the test we will apply.
- 6 It was also raised that the use of VPF and gross disproportion factor may result in different results depending on the financial situation of the operator. We note that a fundamental principle of health and safety law is that affordability is not taken into account in the calculation.

- 7 It was noted that the new guidance would be less likely to conflict with other guidance, though there were concerns about gaps in information between this guidance and other organisation's guidance on issues such as the width of footways.
- 8 As previously mentioned, our level crossing webpages will include links to legislation, standards etc. We do not want to duplicate information that is managed by other organisations.

Consultation Question 6

What other information from ORR on level crossings would you find helpful?

- 1 Consultees were positive about the potential for case studies that show how the principles in the guidance can be applied in real world situations. It was noted that case studies would need to be presented carefully to prevent being taken as being mandatory. We note this and will make it clear that the case studies are illustrations and not mandatory practice.
- 2 Several local authorities and ADEPT said that they would like a case study of a footpath crossing with public rights of way issues, and how these issues could be resolved by working with the local authority. We note this as a suggestion for a future case study and will look to work with ADEPT to produce such a case study.
- 3 It was also raised that information on level crossing types as RSP7 provided would be useful. We will provide this information on our website. Network Rail and RSSB also publishes detailed information on level crossing types, though the latter is not available to non-members.
- 4 Several consultees noted that access to All Level Crossing Risk Model (ALCRM) used by Network Rail would be useful. The ALCRM score for a level crossing is publicly available through Network Rail's website⁴, and the output can be requested from Network Rail. As ALCRM belongs to Network Rail, we cannot provide access to it. However, we are aware that ALCRM is less useful for railways with low running speeds.
- 5 It was suggested that ORR could provide a risk assessment model or toolkit. We will not provide a risk model for all operators, and emphasis that those responsible for level crossings are responsible for identifying and managing the risk themselves.
- 6 It was suggested that ORR could provide a publicly available list of the priority footpath and bridleway level crossings for enhanced safety measures. Such categorization is undertaken, managed and reviewed by Infrastructure Managers. The law requires railway businesses to manage level crossing risk effectively using

⁴ <https://www.networkrail.co.uk/communities/safety-in-the-community/level-crossing-safety/>

their own safety management systems. ORR's role is to provide assurance that they are doing so.

- 7 Several consultees asked if a list of contacts could be provided in the guidance. We have decided against providing this in the guidance as such lists quickly become out of date, and it is easier to update this information on our website. We cannot publish contact details for individuals outside of ORR, such as in Network Rail.

Consultation Question 7

We are required to review the impact of any regulatory changes, including guidance, on businesses. How would the proposed guidance impact on your business in terms of familiarisation and any changes to your processes?

- 1 This question was asked as part of our requirement to gather information to help us review the impact of any regulatory changes, including guidance, on businesses and calculate a Business Impact Target Score. This requirement does not apply to public bodies, so only businesses were asked to respond to it.
- 2 The majority of consultees felt that the new guidance would either have minimum or no impact on their business in terms of familiarisation or changes of process.
- 3 It was raised that less prescriptive guidance could lead to an increase in costs and longer timescales to deliver individual crossing upgrades, due to reluctance to accept any risk or perceived deviation from the 'normal' way and a need to justify and evidence all risk-based decisions. We expect all risk-based decisions to be justified with evidence.
- 4 There were concerns raised by some consultees that any change to the guidance could lead to an increase in costs, as businesses would be required to make changes in line with the new guidance.
- 5 The law has not changed. Legal responsibilities remain the same, including the need to carry out a suitable and sufficient assessment of risk. The guidance does not mandate what actions need to be taken to reduce risk as low as reasonably practicable, as is legally required.
- 6 Some consultees were also disappointed that the Law Commission's recommendations on level crossing law had not been adopted, as they would make it quicker and simpler to make changes to level crossings.
- 7 We have discussed with DfT what options there are for taking forward some of the Law Commission's recommendations, and we will work with DfT and Network Rail on any future improvements to the closure process. Separately, we are working on making level crossing orders more streamlined within the current legal arrangements.

Other Comments

- 1 Along with the responses to the consultation questions, we received comments on specific elements of the draft guidance. We have reviewed these and made changes to the final version of the guidance based on these comments where appropriate.



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