

To:

Date: 22nd August 2014

PS14/069

Contact: Benjamin Ellis

The NFU and NFU Cymru represent more than 55,000 farming and growing members in England and Wales. In addition it represents some 40,000 'Countryside' members with an interest in the countryside and rural affairs.

Revising Railway Safety Regulations

The NFU and NFU Cymru welcome the opportunity to respond to this consultation. We are extremely concerned that moves to deregulate and to remove regulation in the rail industry could increase accident risk and significantly add to the burden upon other industries that border the railway, such as agriculture.

In particular, we have concerns regarding the removal of regulation 3 of the Railway Safety (Miscellaneous Provisions) Regulations 1997. This regulation requires operators to prevent unauthorised access by persons or animals to the extent necessary for safety.

Preventing accidents is a cornerstone of rail safety legislation that goes back hundreds of years. These Rail Safety legal requirements often go beyond basic minimum requirements as required by the Health and Safety at Work Act 1974 and are the reason why the rail network in this country is one of the safest in the world.

However, the UK is ranked 5th in the EU for accidents related to trespass. Of the accidents that do occur; the Office of Rail Regulation (ORR) 2013-14 annual health and safety report identifies that *"Of the risks to the public on Britain's mainline railway, as modelled by the SRM (Safety Risk Model) version 8, 76% is caused by trespass and 11% by pedestrians and 5.5% by road vehicle collision at level crossings."* (ORR Safety Report 2014 p32). The same report also identifies that *"Network Rail is currently heavily regulated because its health and safety management systems are still developing. Similar high-hazard sectors are less heavily regulated because they have a mature safety management culture."* (ORR Safety Report 2014 p10).

Health and safety legislation is complex, and there are many topics and issues where it has been determined that more specific regulations are required, rather than reliance upon the general duties imposed by the overarching act. We agree that transport managers should consider trespass as part of their risk assessment under the Health and Safety at Work Act, but this should compliment rather than replace requirements under this legislation. In particular we note that the health and safety requirements do not place as great an emphasis on access by animals.

We are concerned regarding the increased reliance on the operators risk management regime that the changes could bring. The ORR's own health and safety report identifies significant failures which are indicative of poor management of risk. *"Successes, such as reducing risks at level crossings, show that with the right leadership Network Rail can manage risk maturely, but as our enforcement action shows – see annex 1 - we still find significant examples of failures to recognise and act quickly to control risk effectively."* This is an experience shared by many of our members whose land is affected by the railway. Many of our members report sections of track line fencing being either missing, inadequate, or in a poor state of repair. We have also heard that reported safety concerns regarding fencing are not being dealt with in an expedient manner.

The voice of British farming

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We are concerned that weakening the specific requirement of the rail operator to prevent unauthorised access, would place a greater emphasis on the tens of thousands of landowners and occupiers that adjoin the railway to undertake these essential measures. Taking into account the complexities surrounding land ownership and maintenance duties, the possibility of an unsafe situation could therefore be increased.

Given our members experiences of poor maintenance and repair of existing fences, and the reasons outlined above; regulation surrounding fencing on railways should be strengthened and not weakened. Therefore the NFU and NFU Cymru are totally opposed to the removal of this regulation.

Please do not hesitate to contact me if you wish to discuss any element of this consultation response.