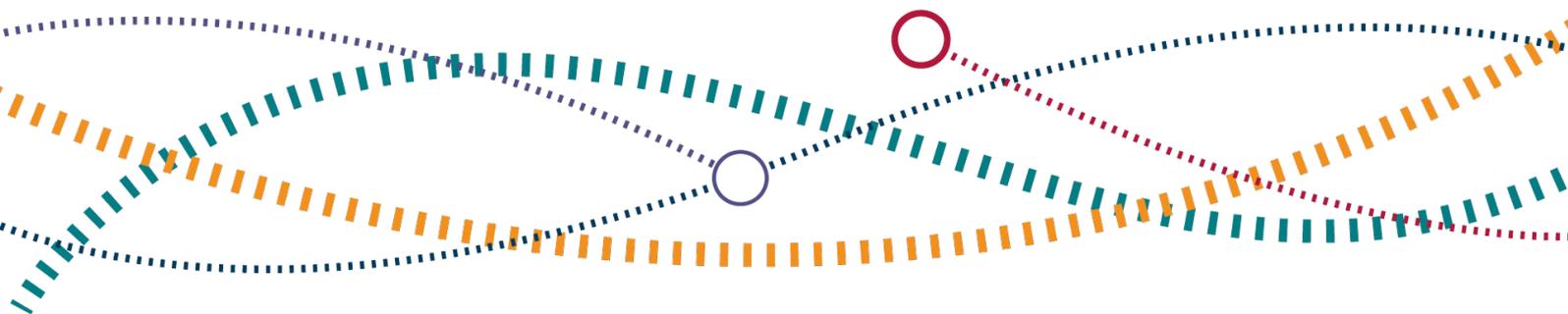




# Level Crossing Order History and Law

11 April 2022



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# Introduction

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1. The first railway legislation was a Private Act of 1801 which authorised the construction of the first section of the Surrey Iron Railway. This was a public railway, with hauliers using their own wagons and horses, providing a transport link for the industries of the River Wandle running from the Thames at Wandsworth.
2. In 1839-40 a Select Committee sat to consider the mushrooming railway industry and how to control it. This resulted in several Acts and the establishment of the Railway Inspectorate. Nearly all existing level crossings were created under private legislation in the form of special Acts as part of the construction of the railways during the nineteenth century.

## Railways Clauses Consolidation Act 1845

3. This Act remains in force and may be referred to by those who want to construct a railway, such as when proposing to extend a heritage railway.
4. This Act deals with the implementation of the special Acts which were made to authorise the construction of the railways. It covers a myriad of issues that require management during a railway's construction, especially its impact on existing landowners and occupiers. In relation to level crossings, the following sections are particularly relevant:
  - Section 46 – the expectation that a bridge shall be provided where the railway will cross any public highway, except where otherwise provided by the special Act.
  - Section 47 - the detailed principles for construction and operation of a level crossing:

To erect and maintain good and sufficient gates across such roads, on each side of the railway, and employ proper persons to open and shut such gates ... so that persons carts or carriages shall not be exposed to any danger or damage by passing carriages or engines along the rail road.
5. The Railway Clauses Consolidation (Scotland) Act 1845, made for special Acts for the construction of railways in Scotland, contains similar provisions regarding the provision of bridges and level crossings in sections 39 and 40.

6. When the construction of railways was first authorised, the special Act or Light Railway Order would specify how the railway was to cross roads and footpaths, etc. either by a bridge or on the level. Where the crossing was on the level, the arrangements for protecting users, both railway and highway, were also specified in that Act.

### British Transport Commission Act 1954

7. From the 1950s onwards, to manage the increasing amount of traffic on roads and railways, level crossings were modernised to permit remote or automatic operation with lifting barriers and/or traffic light signals. To facilitate this change, the British Transport Commission Act 1954 provided legal dispensation from the 1845 Act requirement for gates in order to allow barriers to be used, which enabled efficiencies to be made in the operation of crossings.

### British Transport Commission Act 1957

8. The British Transport Commission Act 1957 allowed the Secretary of State for Transport to make an order dispensing with the requirement of the Railway Clauses Consolidation Act 1845 and the Railway Clauses Consolidation (Scotland) Act 1845 to provide crossing keepers at public crossings. This permitted remote or automatic operation with lifting barriers and/or road traffic light signals and, by inference, allowed new open crossings without gates or crossing keepers but with signage only. The Secretary of State's Order specified the signs, barriers, lights or other devices necessary to protect the public.

## Development of the Level Crossing Order

### The 1960s

9. The 1960s saw:
  - The first Order to revoke parts of the special Act and add three schedules – the first schedule to identify the crossing, the second to specify the equipment at the crossing and the third to specify the operation of that equipment. There were no local traffic authority duties specified in orders until they were instigated by the Road Safety Act 2006.
  - The first Amendment Order to an existing Order (to change the barrier inclination and width of carriageway).

- The first Direction made under section 42 of the Road and Rail Traffic Act 1933 (to keep gates closed to the railway). This section of the Act enables the Secretary of State to direct the operator to keep public crossing gates closed to the railway instead of closed to the road, either constantly or for particular days or parts of the day unless a train needs to cross the road. ORR still makes Directions under this Act, notably every year to direct the gates of certain crossings across the UK to be closed to the railway when no trains are running over the Christmas period.
  - The first Amendment Order No.2 (to add stop lines and other road markings). Succeeding Amendment Orders could revoke previous Amendment Orders.
  - The first Revocation Order (to revoke an existing Order because the crossing closed).
  - The first Authorisation of Traffic Signs under section 54 and section 55 of the Road Traffic Regulation Act 1967 which allowed for signs of 'another character' from those specified in the Traffic Signs Regulations 1964 to be placed on the highway. Further replacement Traffic Signs Regulations and General Directions were made in 1975, 1981, 1994, 2002 and the current one in 2016. These Regulations prescribe all the signs and road markings permitted on the UK public road network. DfT continue to make Authorisations today under the succeeding Road Traffic Regulation Act 1984. Authorisations for Scotland and Wales are made by their respective devolved governments responsible for transport.
10. The British Transport Commission was replaced by the British Railways Board by the Transport Act 1962. This Act provided for the reorganisation of the nationalised transport undertakings. The title of the operator in Orders changed to 'British Railways Board' after this Act.

## Transport Act 1968

11. The Transport Act 1968 allowed the Secretary of State for Transport to make Orders specifying the protection measures for bridleway, footpath, accommodation or occupation crossings (under section 124). The Agency Agreement between DfT and ORR, made in 2008, gave permission for ORR to make Orders under section 1 of the Level Crossings Act 1983, which in turn covered those previously made under section 124.

12. Level Crossing Orders in one form or another were made by the Secretary of State for Transport, namely Department for Transport and its predecessors, with powers delegated to HSE from October 1996 (during the period that railway safety was a HSE function) until the powers were delegated to ORR in the Agency Agreement in 2008.
13. The earliest Orders ORR has records of are from 1959. They were made under section 66 of the British Transport Commission Act 1957 and, in effect, amended the special Act that permitted the creation of the railway line and the crossing, and the provisions of the Railway Clauses Consolidation Acts 1845. They made amendments such as changing the position of the gates (open or closed to railway), or the provision of a station or lodge, cattle-cum-trespass guards or person to open and close the gates.

### The 1970s

14. Orders developed further in the 1970s with:
  - The first Consent made under one of the special Railway Acts (the British Railway Act 1968 in this instance) which was to permit crossing equipment to be installed. Many special Acts were made to permit new crossings or changes to existing crossings until the provisions were incorporated into the Transport and Works Act 1992. Similar provisions were brought into effect in Scotland by the Transport and Works (Scotland) Act 2007. A Consent consists of a letter to the operator with schedules detailing the equipment and its operation, much like an Order. They remain in force until a new Order is made for the crossing: they need to be revoked by Department for Transport as, according to the Agency Agreement, only Orders made under, or encompassed by, the Level Crossings Act 1983 can be revoked by ORR.
  - The first yellow box marking cited within an Order as opposed to an Authorisation being made separately (sometimes by the local traffic authority).
  - The first Provisional Approvals made under section 41(1) and/or (2) of the Road and Rail Traffic Act 1933. This section of the Act enabled the Secretary of State to approve new public level crossings but was later repealed by the Transport and Works Act 1992. Provisional Approvals consist of a letter to the operator with schedules detailing the equipment and its operation, much like an Order/Consent.

- The first Orders made under section 124 of the Transport Act 1968 for crossings on unclassified roads.

### The 1980s

15. The Level Crossings Act was made on 9 May 1983 (LCA83) and came into force on 9 August 1983. It tidied up the requirements of previous legislation and provided a straightforward statutory approval scheme that could be applied to any public level crossing. Its primary purpose was to give the Secretary of State the power to make an Order to specify the protection measures appropriate for the safety or convenience of those using the crossing. An Order could be made at the request of the operator only.
16. The LCA83 states that Orders made previously under section 66 and section 124 have effect as if they had been made under LCA83, enabling them to be revoked by ORR when necessary. Section 117 of the Railways Act 1993 deems the LCA83 to be an existing statutory provision, therefore Orders made under LCA83 are subject to the enforcement provisions of the Health and Safety at Work etc. Act 1974.
17. Orders whose process had been started under section 66 and section 124 continued to be made until new ones were made under LCA83 from late 1985 onwards.
18. The first Variation Order to an LCA83 Order was made in 1989, whilst Amendment Orders continued to be made to the existing section 66 and section 124 Orders.

### The 1990s and onwards

#### Transport and Works Act 1992

19. Transport and Works Act Orders can authorise guided transport schemes, such as the construction of railways. These may include proposals for the closure of existing crossings or the creation of new level crossings.
20. This Act replaced the requirement for new schemes or changes to railway infrastructure to go through parliament as special acts.

#### Transport and Works (Scotland) Act 2007

21. Transport and Works (Scotland) Act, or TWAS, is an Order-making process which avoids the need for private Bills for transport-related developments.

## Level Crossing Regulations 1997

22. These Regulations, made under sections 15 and 82 of the Health and Safety at Work etc. Act 1974, amended the LCA83 to:

- give HSE (now ORR) powers to compel operators to apply for an Order;
- create an offence for an operator failing to comply with an Order. The offence is under section 33(1)(c) of the Health and Safety at Work etc. Act 1974, by virtue of Regulation 3(1) of the Level Crossings Regulations 1997. It carries the same unlimited fine as other offences under the Health and Safety at Work etc. Act 1974.
- allow for enforcement by way of the Health and Safety at Work etc. Act 1974; and
- provide a defence for an operator who has taken precautions and exercised due diligence (Regulation 3).

## Road Safety Act 2006

23. This Act brought about significant changes to LCA83 such as:

- the Secretary of State may require the operator or local traffic authority (or both) to provide protective equipment and maintain and operate that equipment;
- the Secretary of State may make an Order with or without a request from the operator - if without, the Secretary of State has to consult ORR and the local traffic authority enclosing a draft Order and giving at least 2 months' notice for responses;
- to allow the Secretary of State to delegate the making of Orders to ORR.

24. The Road Safety Act 2006 introduced Schedule 3 to Orders to specify the duties for local traffic authorities (the equipment to be provided by them and the conditions and requirements to be observed by them). This made it clear on whom the requirements of the Order and the scope of those requirements may be imposed.

25. From HMRI joining ORR in April 2006, Orders were signed by DfT until the 2008 Agency Agreement between ORR and DfT delegated the powers to ORR to:

- Make Orders, apart from those:
  - without a request from the operator;

- that ORR requests the operator to make; or
  - with issues with rights of way or the safety or convenience of other road users.
- DfT need to make Orders affected by these provisions, although in practice it would consult ORR to do so.
  - Make Directions under section 42 of the Road and Rail Traffic Act 1933.
  - Authorise traffic signs from the Private Crossings (Signs and Barriers) Regulations 1996 for private crossings to which the public have access.
26. However a number of crossings remain where the arrangements are still as specified by the special Act (manned gated crossings), so they do not have Orders.
27. Summary of the types of Order you may encounter:
- No Order. Made under the Original Act or Light Railway Order authorising construction of the railway.
  - Direction. Made under Section 42 of the Road and Rail Traffic Act 1933
  - Consent. Made under an Individual authorising Act.
  - Provisional Approval. Made under Section 41(1) and/or (2) of the Road and Rail Traffic Act 1933.
  - Order. Made under Section 66 of the British Transport Commission Act 1957.
  - Order. Made under Section 124 of the Transport Act 1968
  - Order. Made under the Level Crossings Act 1983.
  - Order. Amended by the Road Safety Act 2006

## Further reading

28. The Law Commission and Scottish Law Commission produced consultation documents (The Law Commission Consultation Paper No.194 and The Scottish Law Commission Discussion Paper No.143) that provide a useful summary of level crossing law and its history. This was part of their work on reviewing the legislation relating to level crossings. [The papers are available on their website.](#)

29. [The Level Crossing Orders Process](#) and the [‘Principles of Managing Level Crossing Safety’](#) on our website also provide further information.



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