

Comments re the proposed changes to the Railway Safety (Miscellaneous Provisions) Regulations 1997 (MPR 97)

With specific reference to Regulation 3 of the MPR 97

At present under Regulation 3 of the MPR 97 Network Rail has a duty to fence the railway to prevent trespass by people or large animals which would cause harm to railway users as well as the trespassers. Whilst Network Rail are not particularly good at maintaining boundary fences against farmland at least they currently have an obligation to do so which provides some recourse to the land owner and occupier.

To replace this duty with a risk based approach will provide Network Rail with a greater opportunity to prevaricate and allow the deterioration of boundary fences further until there is an unfortunate incident on the line which will prompt a rapid response. Network Rail may therefore by default become even more reactive than they are now.

Under the proposals the maintenance of boundary fences would become subjective according to the views of the employee tasked with carrying out the risk assessment. As land occupation and stocking is fluid the proposals would mean that an assessment could be carried out on one day when for example there are sheep in the field which may be perceived as lower risk and the boundary condition deemed to be suitable to prevent trespass. The following day there may be bullocks in the field and the boundary fence would not be suitable which would invalidate the assessment.

Experience has shown that reports of boundary walls or fences being down can take months or even years to be assessed and remediated, whereas a report of an unsecure private crossing gate effects an immediate response. This hierarchy of risk which would be adopted may see the further neglect of line side boundaries whereas in reality the fallen boundary where stock can get on to the line is no less of a risk than the private crossing gate, where the users are aware of the procedure for using the gate.

In conclusion we would ask that the obligations under Regulation 3 of the MPR 97 are retained.