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LEVEL CROSSINGS TO WHICH THE PUBLIC HAVE ACCESS – GUIDANCE ON LEGISLATION AND ENFORCEMENT					
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Summary		This RSD Guidance (RIG) gives guidance on the health and safety legislation governing level crossings to which the public has access and gives advice to Inspectors on the approach to be adopted when considering enforcement action.			
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Detail

1 The purpose of this RIG is to give guidance on the appropriate legislation to be used when enforcing physical standards at level crossings in England and Wales. Similar advice may be appropriate for level crossings in Scotland, but different legal provisions may apply (particularly in Scotland in relation to crossings to which the public have access). Further guidance on enforcement of legal provisions on user worked crossings specifically is dealt with in RIG-2011-03.

2 Level crossings currently present the largest source of train accident risk. There are some 5,939 railway level crossings on the mainline railway and a further 1,500 or so on heritage railways and in docks and other industrial premises.

3 Definition of 'crossing operator' – The crossing operator referred to in this RIG is the company that manages the railway. In relation to the Level Crossings Act 1983 (LCA) (as amended) it is defined as the organisation responsible for maintenance of the permanent way at the crossing. In most cases on the national network this will be the infrastructure manager, Network Rail, although in some cases such as freight only lines it may be a train operator.

LEVEL CROSSING TYPES AND STATUS

4 Historically crossings have been categorised as public or private; this status is fundamental to the ways in which protection methods are specified and provided.

5 **Public crossings** are either vehicular, bridleway, or footpath crossings; the crossing operator has a duty to ensure that the crossing is properly maintained, is safe and suitable for use. Public level crossings are normally authorised under an Act of Parliament, Consent, or Light Railway Order. [Not to be confused with Level Crossing Orders (made under the LCA) which only specify or modify protection arrangements].

6 **Private crossings** are usually vehicular crossings but can be footpath or bridleway crossings. The crossing operator has a duty to provide certain protective facilities but there is a greater responsibility on the authorised user to ensure the crossing is used safely, for example obeying any warning signs, closing the gates, or using the telephone (if one is provided) before crossing.

7 **Crossings to which the public have access.** Private crossings may become 'crossings to which the public have access' due to circumstances such as changes in land use, or adoption of private roads by local authorities. In these circumstances the protection methods may have to be reviewed, and a Level Crossing Order under the LCA may become appropriate.

Public vehicular crossings

8 “Public carriage road” level crossings were created and identified by name in the original Act of Parliament, which authorised the construction of the railway. The relevant Act normally incorporates section 47 of the Railways Clauses Consolidation Act 1845. Some crossings may have been authorised under subsequent Railway Acts, for example where a new road was required to cross an existing railway. The construction of new crossings may be authorised under an Order made under the Transport and Works Act 1992 (section 1).

Public bridleway and footpath crossings

9 These crossings are not specifically identified by name in the original Act authorising the construction of the railway, but have been authorised using alternative powers such as those in s46 of the Railways Clauses Consolidation Act 1845 for highways **other than** public carriage roads.

Private crossings

10 Private crossings were installed when the railway was built, for the benefit of farmers and other individuals whose land was divided by the railway. These are either:

Accommodation level crossings built to let landowners gain access to their land when it was divided by the railway; or

Occupation level crossings built to access private dwellings, farm buildings etc, when a private access (‘occupation’) road was crossed by the railway.

11 Inspectors should be aware that some private level crossings with limited protection are being used by members of the public as a result of changes in land use or by the public gaining access to the countryside. The crossing operator (infrastructure manager) should be monitoring these situations and understand the type (vehicular or pedestrian) and amount of additional usage. As an independent regulator it is ORR’s responsibility to ensure that the crossing operator controls the risks on the infrastructure. In such situations the crossing operator should risk assess the crossing and ensure that there is adequate protection for the type and level of usage or move to close or secure the crossing to prevent additional use.

Combined crossings

12 There may be locations where more than one crossing type exists side by side, for example a private road and adjacent public footpath. These should be treated as two separate crossings with their own safety arrangements.

PROTECTION ARRANGEMENTS

Public vehicular crossings

13 Generally these crossings will have a Level Crossing Act Order if they have been upgraded or changed since the 1950s. Crossings built under the original railway Act had to have “Good and sufficient gates and employ a proper person to operate them” with the crossing either open to rail or to road. Most of these have been upgraded and those that remain are generally distinguished by the presence of mechanical gates and a signal box overlooking the crossing. When the protection measures at a crossing require to be upgraded the provisions of the original Act are modified by a level crossing Order.¹

14 A small but significant number of crossings are covered by ‘consents’ made under various pieces of other Railway Legislation, such as Light Railway Orders, or consents under the Road and Rail Traffic Act 1933. Inspectors should be aware that many of these look very similar to a Level Crossing Order, but are not enforceable.

15 The relevant Order for the crossing will specify the signs, signals, road markings and method of operation of the crossing.

Public bridleway and footpath crossings

16 Generally these crossings may have a Level Crossing Act Order if they have been upgraded or changed since 1983.

17 Gates or stiles normally protect these crossings. Gates should be self-closing without any latches and should open away from the railway. It is essential to provide the same facility at each side of the crossing (i.e. gates and stiles are not intermixed at one crossing, and both gates must be of the same width) so that users do not become trapped on the crossing, for example because they have been able to enter through a gate but cannot proceed over a stile. Miniature red stop and green lights or other active indication of an approaching train may be provided where sighting distance is limited, audible warnings may be provided at the crossing and, as a last resort, whistle boards provided to give warning of an approaching train.

18 It should be possible for horse riders to open gates on bridleway crossings without dismounting, unless there is a risk of contact with overhead power lines.

¹ Historically this was done by using powers in various pieces of legislation but is now done by making an Order under the LCA that specifies the protection arrangements for the individual crossing. Earlier Orders made under s66 of the British Transport Commission Act 1957 and under s124 of the Transport Act 1968 are effectively considered as Orders made under s10(A) of the LCA 1983.

Private crossings

19 These crossings generally do not have Level Crossing Act Orders; they are provided with signs and basic protective measures, usually hand operated gates or barriers and sometimes telephones. Their safe operation relies on the user operating them properly. Signs are specified under the Private Crossings (Signs and Barriers) Regulations 1996. As with footpath crossings, red stop and green lights or whistle boards are sometimes used to reinforce the basic protection measures provided.

Guidance on protection arrangements

20 Full guidance on protection arrangements is detailed in http://www.rail-reg.gov.uk/upload/pdf/level_crossings_guidance.pdf

However the requirements of this guidance are not retrospective and existing protection arrangements may not comply with the current guidance. This should not deter Inspectors from enforcing improvements that are necessary and proportional to the risk where current arrangements at crossings are not considered to be adequate to control risks.

ENFORCEMENT

All crossings – the requirement to have a suitable and sufficient risk assessment

The fundamental enforcement principle that must be applied whether a crossing has an order or not is that a suitable and sufficient risk assessment must have been carried out by the infrastructure manager. This must be based on accurate information and include in the process any other employers who use the crossing either as train operators or authorised users of a private level crossing. Any Level Crossing order applied for must be the product of this risk assessment process and Inspectors should take appropriate enforcement action guided by EMM if the risk assessment process has not complied with MOHSWR and the ACOP.

Public crossings - Securing changes to existing protective arrangements or requiring new protective arrangements

21 In this situation Inspectors should use the LCA 1983, as the requirements are more specific than the general requirements of HSWA.

22 A Notice can be issued requiring the crossing operator to seek a new level crossing order or requiring changes to an existing order. Such a Notice would be issued under the LCA 1983. Inspectors should consult the Level Crossings Project Team Principal Inspector if they are considering a formal enforcement notice in these circumstances.

Public Crossings - Failing to maintain existing protective arrangements

23 Protective arrangements are normally specified in a LCA Order. It is a requirement under Reg 3(1) of the Level Crossing Regulations 1997 to comply with the requirements of a Level Crossing Order and failure to do so constitutes an offence. An Improvement Notice (under HSWA) can be used where appropriate to require compliance with a LCA Order. When serving an IN re non-compliance with a Level Crossing Order, inspectors should quote on the IN Regulation 3(1) of the Level Crossing Regulations 1997 and the current, relevant Level Crossing Order, with amendments as necessary. Note that the requirements of an Order are absolute and not subject to a “reasonable practicability” test unless explicitly permitted in the Order.

24 Where deficiencies in the protection arrangements are noted EMM should be applied to determine the risk gap. A list of matters to consider is given in [appendix 1](#). Serious deficiencies to the decking or in the boom’s mechanism may warrant a notice. The method of operation of the crossing will normally also be a relevant matter.

25 Simple non-compliance with a Level Crossing Order such as incorrect signage should be brought to the attention of the crossing operator and confirmed in writing. It may be worthwhile reminding crossing operators that motorists might have a technical defence of improper use of the crossing if they can show that incorrect or deficient signage was provided at the crossing. It is the responsibility of the crossing operator in the first instance to liaise with the Highway Authority to rectify any problems with signs.

26 Disputes involving the Highway Authority regarding the maintenance of signage, cutting back of vegetation etc. should be discussed with both the crossing operator and the Highway Authority.

Non-vehicular crossings

27 These are mainly footpath crossings. The HSWA will be the primary legislation to apply at such crossings since the majority of issues likely to arise are concerned with vegetation clearance, decking and sighting times, which are not generally covered by other legislation.

Private crossings

28 The crossing operator has a duty to provide a safe and suitable crossing. Subsequent changes in use may require increased protection arrangements, however there may be difficulties in actioning and funding these as most crossing operators believe they have limited liability under the original railway Act. This can lead to disputes and delays and Inspectors may have to intervene to ensure that safety is maintained, (e.g. by prohibiting increased use until suitable protective

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arrangements are in place). Any changes introduced by the crossing operator (e.g. increased speeds over a crossing) would make the crossing operator liable for upgrading the crossing as this is increasing the risk.

FURTHER INFORMATION AND CONTACT

31 Inspectors will come across a range of level crossings made under different legislation in the course of their work. Information on the category of individual crossings can be obtained from the Sectional Appendix, Quail maps and from the crossing operator directly.

32 For information on legal or operational matters arising from this RIG, please contact the Principal Inspector of the Level Crossings Project Team.

APPENDIX 1

When inspecting crossings, the critical physical standards to consider are as follows:

- a) The condition and safety of the decking system over the crossing - both from the car driver and pedestrian viewpoint. Loose or poorly fitted decking is a risk to users and could also derail a train. Where proprietary (removable unit type) decking is used, end restraints to prevent the units moving along the track are an important safety feature.
- b) The surface must also be safe for cyclists and free from significant defects that might cause a fall e.g. a large pothole. Heavily skewed crossings may cause cyclists to fall as wheels enter the flangeway. Cyclists Dismount signs may be appropriate and proprietary decks are available that cover the flangeway to road users.
- c) At automatic public vehicular level crossings, the vertical road profile - this should be designed and maintained to prevent grounding of long low road vehicles in accordance with the guidance in http://www.rail-reg.gov.uk/upload/pdf/level_crossings_guidance.pdf
- d) Vegetation clearance - to ensure that signs and warning equipment are visible and not obscured, and at footpath, bridleway and user-worked crossings the sighting distances for trains are maintained. Vegetation clearance on the highway is the responsibility of the Highway Authority, but the crossing operator may need to raise this with the Highway Authority.
- e) Cattle/trespass guards –should be provided where livestock is regularly moved over the crossing, or where there is a significant risk of trespass by pedestrians. Guards should be provided on all crossings where the

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railway is electrified by a live conductor rail and be accompanied by a gap in the conductor rail. Where fitted, guards should be in sound condition with no missing or loose rails.

- f) All road markings such as white line/yellow box markings/ reflective studs detailed in the crossing Order are the responsibility of the crossing operator (including the centre of carriageway markings on the crossing approach). The use of rubber surfaced crossings has resulted in the need to renew road markings on crossings more frequently.
- g) Signage as detailed in the crossing Order is the responsibility of the crossing operator. Other signage (usually warning signage), again as identified in the level crossing Order, is the responsibility of the Highway Authority

The critical question that must be asked is whether the current arrangements in the order and/or at the existing crossing are sufficient to ensure the safety of crossing users of all categories, trains and their staff and passengers. There are a range of additional risk controls available to infrastructure managers that can be fitted to or provided at level crossings and possible improvements should always be considered during any risk assessment or investigation of an incident.