



Level Crossing Reform Action Plan

December 2014

**Version 1
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1 Executive Summary

1.1 This Level Crossing Action Plan (“the Action Plan”) sets out how the Department for Transport (“the Department”) intends to take forward those recommendations of the joint review of level crossing legislation by the Law Commission for England and Wales and the Scottish Law Commission¹ (“the Law Commissions”) which it indicated it wished to consider in more detail before coming to a conclusion in its response².

1.2 The Department views the Law Commissions’ report and recommendations as a key step towards delivery of a modern, streamlined, legislative regime which will be appropriate for the management and operation of level crossings going forward and remains committed to delivering this vision as quickly as possible.

1.3 Subject to decisions made by Ministers as a result of the work outlined in the Action Plan (at **Annex B**), it will be necessary to also review those recommendations which were originally accepted by the Department and come forward with a consolidated package of revisions. The Department has suggested an indicative timetable for completion of all the necessary work at **Section 4**.

1.4 The Department requested the Law Commissions to undertake a review of the legislation governing the management and operation of level crossings in 2007.

1.5 The request followed a consultation exercise with key stakeholders undertaken by the Office of Rail Regulation (“ORR”), the independent railway safety regulator. Responses to that consultation indicated that there was strong support for a review as there was a belief that the legislation was outdated and, because it was unclear and difficult both to access and understand, gave rise to potential safety concerns.

1.6 ORR’s consultation uncovered that few consultees were aware of the extent and applicability of relevant legislation and noted particular difficulty in identifying which parts remained in force and which were redundant given their general antiquity and the large number of amendments which have been made to many of the provisions over the

¹ Available from <http://lawcommission.justice.gov.uk/areas/level-crossings.htm>.

² Available from http://data.parliament.uk/DepositedPapers/Files/DEP2014-1316/141009_Annex_A_-_Response.pdf.



years. A review was strongly supported by stakeholders with the primary objective of consolidation, simplification and modernisation of existing legislation with a view to providing greater efficiency, particularly in terms of decision making, and clearer definitions of roles and responsibilities to make compliance easier.

1.7 The primary purpose of the Law Commissions' review, which was publicly announced in 2008, was therefore to make recommendations to establish a simpler, clearer and more accessible legislative framework. Following public consultation on potential options during 2010, to which 114 formal responses were received from a wide range of interested parties, the Law Commissions published their report and recommendations in September 2013.

1.8 The length of time necessary to complete the review reflects the complex nature and interplay of a significant number of different legislative regimes at level crossings. These include the confluence of not only railway and roads law but also rights of way, criminal and civil enforcement regimes and sanctions, land ownership and compulsory purchase amongst others.

1.9 The Department would like to take this opportunity to thank the Law Commissions for their comprehensive analysis of the current regimes which interact at level crossings and thorough assessment of the available options. Whilst the Department has been able to accept the majority of the recommendations made by the Law Commissions, it is largely in areas where the complex interplay of different regimes is most prevalent that the Department feels that further policy and legal investigation is necessary before we can agree with the Law Commissions' conclusions or come forward with alternative proposals. In particular, in a number of cases, key recommendations were not included in the public consultation exercise during 2010 and the Department feels that these should be explored further with stakeholders to ensure that implementation will achieve the aims of the review in practice.

1.10 The Action Plan sets out these areas and the work the Department intends to undertake to provide further evidence for consideration of options by Ministers. The Department notes that the delivery of many of the Law Commissions' recommendations will require new primary legislation and that one of the objectives of the review was to bring all level crossing legislation under a single Act of Parliament. Once the

Department has reached a final policy position on delivery, it will decide how best to implement the changes but must balance the potential delays in waiting for an ideal opportunity and earlier implementation of some of the key recommendations.

1.11 Working with stakeholders will be critical to understanding the challenges duty holders face at level crossings and the potential solutions. The Department will put mechanisms in place to ensure that all stakeholders have an opportunity to comment on the issues and anticipates that formal consultation may be necessary to ensure that all of the issues are fully explored and that we can move forward on the basis of consensus.

1.12 The Department notes that there are significant synergies between many of the Law Commissions' recommendations and that, depending on the outcome of the investigation into the principles and specific issues covered in the Action Plan, there may need to be consequential changes elsewhere. An indicative timetable for the conclusion of all these work streams is provided at **Section 4**.

Scope

1.13 The legislation on level crossings for which the Department is responsible applies to Great Britain (England, Scotland and Wales) only. Northern Ireland has its own level crossing legislation which is the responsibility of the Northern Irish Assembly. All information and other material in this action plan therefore relates to Great Britain only.

1.14 With the exception of tramways in Scotland, railway safety matters, including level crossing safety and the making of level crossing orders, are reserved to Westminster in the Scottish and Welsh devolution settlements although in Scotland many other aspects of railway policy are devolved.

1.15 It should be noted that, where areas of responsibility have been devolved to Scottish and Welsh Ministers, this Level Crossing Action Plan relates only to England.

2 Policy Context

2.1 Although the UK has one of the best level crossing safety records in Europe, if injuries to road vehicle occupants are included, collisions at level crossings nevertheless represent the largest single cause of train accident risk³.

2.2 It is extremely rare that train occupants are killed in a level crossing accident but the consequences of any incident can be catastrophic and result in a multi-fatality accident where a train strikes a road vehicle causing derailment. Although no train passengers have died in a level crossing accident since 2004 (when a car was deliberately parked at Ufton Nervet for the purposes of committing suicide and the resulting derailment killed the car driver, the train driver and five train passengers), there were 10 train/road vehicle strikes and eight fatalities at level crossings during 2013/14⁴.

2.3 There are approximately 6,300 level crossings on Britain's mainline railway. Requirements for individual level crossings are subject to suitable and sufficient risk assessments by Network Rail as the relevant safety duty holder under the Health and Safety at Work etc Act 1974 ("HSWA"). There are also around 2,000 level crossings on heritage networks which are the responsibility of the relevant operator. Enforcement of these requirements is by ORR in its role as the independent railway safety regulator.

2.4 The law in relation to level crossings is a complex combination of public and private acts. Under special Acts (any Act authorising the construction of a railway) railway companies were often given express rights to cross public roads and, in many cases, included accompanying obligations to maintain level crossings. After the passing of the Railways Clauses Consolidation Act 1845 and the Railways Clauses Consolidation (Scotland) Act 1845, special Acts would have incorporated appropriate sections of the 1845 Acts. In addition, significant legal obligations are embodied in contracts between the original railway companies and landowners at individual level crossings.

³ Source: RSSB Annual Safety Performance Report 2013/14, available from www.rssb.co.uk/Library/risk-analysis-and-safety-reporting/2014-07-aspr-2013-14-full-report.pdf.

⁴ Source: RSSB Annual Safety Performance Report 2013/14, available from www.rssb.co.uk/Library/risk-analysis-and-safety-reporting/2014-07-aspr-2013-14-full-report.pdf.



2.5 The law can be conveniently divided into that relating to “public road and footpath” level crossings and to “private road and footpath” level crossings. However, some of the legislation also makes a distinction between “roads to which the public has access” (a potentially broader category than public rights of way) and other roads, and between roads which are “public carriage roads” and other roads. Apart from the 1845 Act there are further provisions relating to level crossings in the Railway Clauses Act 1863 with regard to public carriage roads and the Highway (Railway Crossings) Act 1839, the Railway Regulation Act 1842 and the Transport Act 1968 with regard to highways and, in Scotland, roads which are not public carriage roads.

2.6 The current statutory provisions relating to level crossings over public carriage roads (which also applies to level crossings over other roads to which the public has access) is set out in the Level Crossings Act 1983. This Act was the result of a Private Member’s Bill and was amended by the Level Crossing Regulations 1997 [S.I. 1997/487] which were made under the Health and Safety at Work etc Act 1974. Further amendments have been made to the Level Crossings Act 1983 subsequently, most recently by sections 50 and 51 of the Road Safety Act 2006.

2.7 The Level Crossings Act 1983 provides that the Secretary of State may make an order to provide for the protection of those using a level crossing. In practice, protective measures are applied for under the Level Crossings Act 1983. Procedures and orders are issued in relation to individual level crossings by ORR on behalf of the Secretary of State. Such orders may specify the protective equipment to be used at the level crossing and the requirements of the order will displace requirements under existing statutory provision including the 1845 and 1863 Acts.

2.8 The nature of protection available to other rights of way to which the Level Crossings Act 1983 powers do not apply has been enhanced by the Transport and Works Act 1992 which gives the Secretary of State power to issue directions to the railway operator for the placing of signs or barriers of a character specified in the direction on, or near, the road path or path near the crossing. The availability of these powers is dependent on a Transport and Works Act order being sought and, subject to the nature of the application, the Secretary of State wishing to impose conditions on approval.



2.9 The current law relating to level crossings, as described above, is not easy to access because there is no obvious place where all the legislation is brought together. There are literally thousands of separate statutes containing provisions relating to level crossings, not all of which are mentioned here. Many of these statutes are extremely old and difficult to understand as they contain anachronistic terminology and refer to outdated terms (such as “turnpike” and “public carriage” roads) which are unhelpful when interpreting the meaning of the legislation in modern conditions. Many of the older prescriptive provisions are no longer relevant and have been overtaken by more modern safety controls and equipment. Some statutes have also been partially repealed making it difficult to identify which provisions remain in force and which are no longer in force.



3 Working in Partnership

3.1 The involvement of a wide range of stakeholders will be crucial in monitoring progress in delivering the Action Plan, identifying areas of particular interest and holding the Department to account.

3.2 The Department intends to create a number of different engagement mechanisms in order to ensure stakeholders receive regular updates on progress and are given the opportunity to feedback to the Department on emerging proposals. These include, for example, an e-mail News Flash service, meetings, workshops and future public consultation.

3.3 Whilst undertaking the review and publishing its public consultation, the Law Commissions have already established an advisory group and wider circulation list of stakeholders. If stakeholders agree, the Department intends to perpetuate these arrangements to inform the direction of travel and delivery of the Action Plan.

3.4 Any proposals arising from the Action Plan, and any future legislation, will need to be underpinned by a comprehensive evidence base and impact assessment. The Department will continue to use existing statistical sources to collect data on level crossings, for example on safety performance, and to monitor trends.

3.5 It should be remembered that the legislative framework, whilst crucial, is only a part of the wider landscape which affects level crossing management and operation. The industry is continuing to focus on complementary risk reduction initiatives and programmes which the Department is supporting through ring-fenced funding.

4 Indicative Timetable

4.1 The Department has accepted the case for reform which the Law Commissions' report establishes. Its detailed assessment of both the current legislative framework and options for change have been extremely beneficial in assisting the Department in developing its response. Much of the work has therefore already been completed but there remain some key areas where choices must be made by Ministers and these are explained in further detail in the Action Plan (at **Annex B**).

4.2 The Department wants to ensure that this process does not significantly delay implementation and therefore wishes to establish a challenging timetable for reaching firm conclusions for implementation. The Department has therefore set a challenging indicative timetable for completion of the necessary policy work by the end of 2015 as follows:

2015	
Spring	Stakeholder workshops
Summer	Public consultation
December	Finalising proposals

2016	
	Search for Parliamentary Slot
	Agree final provisions
	Instruct Parliamentary Counsel



Annex A – Glossary

Action Plan	Level Crossing Reform Action Plan
Department	Department for Transport
HSWA	Health and Safety at Work etc Act 1974
Law Commissions	Law Commission for England and Wales and the Scottish Law Commission
ORR	Office of Rail Regulation

Annex B – Action Plan

The following table details the Law Commissions’ recommendations which the Department has indicated that it wishes to consider the issues further with a view to potential acceptance, modification or rejection.

The Department notes that the responses to **Recommendations 72 to 83** are a matter for the Scottish Government and intends to discuss these provisions separately with Transport Scotland.

#	Recommendation	Departmental Response	Comments & Actions
3	We recommend that safety at level crossings should be governed entirely by the Health and Safety at Work etc. Act 1974, supported by regulations and codes of practice thereunder. [Paragraph 2.32]	<p>The Law Commissions recognise in their report that the number of incidents at level crossings in Great Britain is already low by comparison with other industrialised countries and have recommended regulation under the Health and Safety at Work etc. Act 1974 (“HSWA”) not for fear that the current safety regime is inadequate but that the current regulatory framework is unclear with too many sources of regulation.</p> <p>HSWA already applies to railways, and level crossings in particular, both in terms of train operations and the management of infrastructure and the regime is already well understood within the industry. Network Rail, and most heritage railway operators, are already subject to these duties. Network Rail, in particular, has indicated that it already assesses whether risk is as low as reasonably practicable at level crossings in accordance with HSWA.</p> <p>The Office of Rail Regulation, in its role as the independent railway safety regulatory, also applies</p>	<p>Although HSWA already applies to the railways, the Department notes that responses to the Law Commissions’ consultation demonstrated that there were a number of specific issues raised about how such a move might be implemented and the potential implications of a move to full HSWA.</p> <p>The Law Commissions have set out their rationale for concluding that safety at level crossings should be governed entirely by HSWA and the Department will seek further advice from stakeholders as to how such a move might affect current duty holders, which other bodies have – or should have, duties at level crossings, and what impact a broader application of HSWA at level crossings might have, for example, on safety performance.</p> <p>As well as these questions, the Department will also need to understand, in potentially applying HSWA duties to bodies not currently subject to the regime, such as highway authorities and</p>



#	Recommendation	Departmental Response	Comments & Actions
		<p>HSWA principles to the assessment of risk at level crossings and when drawing up level crossing orders under the Level Crossing Act 1983.</p> <p>The Department will work with the Law Commissions, the Office of Rail Regulation, the Health and Safety Executive (if required) and other stakeholders to develop the necessary supporting legislation and codes of practice to ensure that the implications of this change are clear to relevant duty holders.</p>	<p>some heritage railways, whether this would be reasonable, how well understood the regime is in these areas, what guidance or other materials will be required to assist potentially new duty holders in understanding their responsibilities and who is best placed to produce this material.</p> <p>The Department will also consider, in conjunction with the Office of Rail Regulation, how the creation of any new duties might mesh with the publication of an approved code of practice on level crossings.</p> <p>Action (DfT): A stakeholder workshop will be held in spring 2015 to discuss the possible options for the application of HSWA to level crossings.</p> <p>Action (DfT): Public consultation during summer 2015 once viable policy options have been confirmed.</p>
5	<p>We recommend that the Secretary of State make regulations under section 15 of HSWA 1974 to impose a duty similar to that in section 3 of HSWA 1974 in relation to level crossings on railways operated on an</p>	<p>The Department notes that heritage railways operated on an entirely voluntary basis with no employees already have obligations, as the relevant duty holders, to ensure the safe operation of their services and any level crossings on their networks.</p>	<p>The Law Commissions' report makes it clear that the current obligations on heritage railways to manage and operate level crossings on their networks are perhaps not as well understood within sections of the sector as they could be. The Department will consider, in conjunction with the Office of Rail Regulation, the Law Commissions and the Heritage Railway</p>



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	<p>entirely voluntary basis with no employees. [Paragraph 2.59]</p>	<p>The Office of Rail Regulation has published guidance offering advice and assistance on the appropriate management of safety, including level crossing operation, on heritage railways⁵.</p> <p>However, the Department considers that the extension of the application of similar duties to those under section 3 of HSWA to such railways requires further consideration and intends to consult with stakeholders, including the Office of Rail Regulation, the Heritage Railway Association and those operators who would be affected, to determine the potential impacts before making a decision on this recommendation.</p> <p>If the Department concludes that the imposition of these duties is not appropriate, it accepts that there will remain a gap in the regulation of safety on these railways and will consider with stakeholders the most appropriate mechanism for dealing with this issue.</p>	<p>Association, what additional measures may be necessary to ensure that these are disseminated more successfully.</p> <p>In order to understand whether the imposition of a new duty on heritage operators with no employees as recommended by the Law Commissions is appropriate, the Department will need to better understand the concerns which have led to this conclusion, how any such new duty might be framed and what impact this would have on affected operators.</p> <p>Action (DfT): Meeting between the Department, the Law Commissions, the Office of Rail Regulation and the Heritage Railway Association during March 2015.</p> <p>Action (DfT): Public consultation during summer 2015 once viable options have been confirmed.</p>
<p>6</p>	<p>We recommend that the Department for Transport should consider whether provision should be made to impose duties similar to those in Part 1 of HSWA 1974 on heritage railways</p>	<p>As with its response to Recommendation 5, the Department notes that the extension of Part 1 of HSWA requires further consideration with stakeholders. The Department also notes that such an extension could not be limited solely to the management and operation of level crossings.</p>	<p>The Law Commissions' report makes it clear that the current obligations on heritage railways to manage and operate level crossings on their networks are perhaps not as well understood within sections of the sector as they could be and will consider, in conjunction with the Office of Rail Regulation, the Law Commissions and the</p>

⁵ See <http://orr.gov.uk/about-orr/who-we-work-with/rail-infrastructure/minor-and-heritage-railways>.



#	Recommendation	Departmental Response	Comments & Actions
	<p>with no employees. [Paragraph 2.60]</p>		<p>Heritage Railway Association, what additional measures may be necessary to ensure that these are disseminated more successfully.</p> <p>In order to understand whether the imposition of a new duty on heritage operators with no employees as recommended by the Law Commissions is appropriate, the Department will need to better understand the concerns which has led to this conclusion, how any such new duty might be framed and what impact this would have on affected operators.</p> <p>Action (DfT): Meeting between the Department, the Office of Rail Regulation and the Heritage Railway Association during March 2015.</p> <p>Action (DfT): Public consultation during summer 2015 once viable policy options have been confirmed.</p>
7	<p>We recommend that a duty should be imposed on the Secretary of State, the Scottish Ministers and Welsh Ministers, railway operators and traffic authorities to consider the convenience of all users of level crossings when making any decision in the</p>	<p>The Department welcomes the Law Commissions' proposals and notes that the convenience of all users is of critical importance for the management and operation of level crossings. However, it believes further consideration will need to be given to exactly how, and by whom, matters of convenience should be considered in the context of the future legislative framework for the management and operation of level crossings in</p>	<p>Any actions are dependent on decisions made in respect of Recommendation 10 and the Department would need to liaise with the devolved administrations on the imposition of any new duty as it would apply to Ministers as the Law Commissions recommend.</p> <p>Further consideration on the imposition of any new duty, and on whom such a duty might fall, is</p>



#	Recommendation	Departmental Response	Comments & Actions
	<p>course of carrying out their functions affecting a level crossing. [Paragraph 2.105]</p>	<p>the context of its response to Recommendations 10.</p> <p>The Department notes that, under HSWA, some consideration would naturally be given to the question of convenience during the risk assessment of individual level crossings since, if significant inconvenience is likely to arise, this should be identified as a safety issue due to the increased likelihood that greater risks may be taken by some crossing users. However, it also recognises that some matters of convenience may not have a direct relationship with safety and might not, therefore, be addressed under HSWA.</p> <p>Although this is otherwise a reserved matter, should the Department conclude that such a duty should be imposed on Scottish and Welsh Ministers, it will need to consult fully with, and obtain the agreement of, the Scottish Government and Welsh Government before its introduction.</p>	<p>required before the Department can reach a firm conclusion on introduction.</p> <p>The Department also notes that the development of comprehensive guidance would be necessary to assist bodies on whom any such duty might fall in understanding their new obligations.</p> <p>The Department reiterates that convenience issues are critical and must be reflected in any revised level crossing management and operation regime.</p> <p>Action (DfT): Subject to further investigation on Recommendation 10, a meeting with the devolved administrations will be scheduled to discuss the proposed new duty which would apply to Ministers.</p>
8	<p>We recommend a power to seek a declaration in the High Court, or a declaratory in the Court of Session, where the railway operator has failed to satisfy the duty to consider convenience. [Paragraph 2.106]</p>	<p>The Department agrees it is important that a form of redress is available should a railway operator fail to take convenience into account and will consider further whether a power of declaration or a declaratory is appropriate in the context of its responses to Recommendations 7 and 10.</p>	<p>Action (DfT): To ensure, subject to decisions in relation to Recommendation 10, that such redress is available should a railway operator fail to satisfy a duty to consider convenience.</p>



#	Recommendation	Departmental Response	Comments & Actions
9	We recommend that level crossing orders should be abolished. [Paragraph 2.134]	See response to Recommendation 10 .	See response to Recommendation 10 .
10	We recommend that Regulations under section 15 of HSWA 1974 make provision for parties to agree a level crossing plan in respect of any individual level crossing, whether public or private. [Paragraph 2.200]	<p>The application of HSWA ensures decisions about risk management at level crossings are framed by the general principles of prevention applied to the management of health and safety at work throughout all other sectors. The Department is clear that any document (legal or otherwise) which provides for site-specific information about a particular level crossing, whether this be a level crossing order, a level crossing plan or another form of documentation is not necessary to enable duty holders to discharge their obligations under HSWA and do not override their duties under Part 1 of HSWA.</p> <p>However, the Department notes the clear preference of stakeholders for a single legal document which can be relied upon to provide site-specific information about an individual level crossing.</p> <p>The Department accepts that, whilst it provides a number of advantages, the current structure of level crossing orders has nevertheless resulted in a number of practical difficulties which the Law Commissions highlight in their report. However, the detail of the Law Commissions' recommended</p>	<p>The Law Commissions have highlighted a number of drawbacks within the current level crossing order system. The Department recognises these and wishes to explore in more detail with stakeholders the types of issue that these create, their practical impacts and potential solutions. These will enable the potential options to be explored in more detail to inform a decision on the future of the level crossing order regime..</p> <p>The Department notes that the complex interplay of the Law Commissions' other recommendations, such as the development of approved codes of practice, have potential to significantly impact on this issue.</p> <p>Action (DfT): A stakeholder workshop will be held in spring 2015 to discuss potential options.</p> <p>Action (DfT): Public consultation during summer 2015 once viable options have been confirmed.</p>



#	Recommendation	Departmental Response	Comments & Actions
		<p>level crossings plans has not been fully considered by stakeholders or consulted upon.</p> <p>The Department will therefore explore with stakeholders whether level crossing orders should be abolished and, if they are, whether they should be replaced with level crossing plans as the Law Commissions recommend or a different system of recording the commitments of the parties at level crossings.</p> <p>The Department believes it is critical that, if a new system is introduced, this must ensure that an appropriate balance between safety and convenience is maintained. It is also important that any new system disapplies the provisions of special Acts for the specific level crossing where the parties commitments for that crossing are recorded. It also notes that it is important that risk is continually assessed as required under HSWA and that any changes that need to be made as a result of such risk assessment can easily be implemented so that the duty holders can meet their obligations under HSWA. The Department notes that clause 9(2)(b) of the draft Bill includes a proposal to this effect in relation to the recommended level crossing plans.</p> <p>If, after further consideration, level crossing orders are abolished the Department also notes the</p>	



#	Recommendation	Departmental Response	Comments & Actions
		importance of ensuring that transitional provisions are included to preserve the effect of individual level crossing orders until such time as they may be replaced.	
12	We recommend that the Secretary of State consider extending the power for the Office of Rail Regulation to issue approved codes of practice so that the power applies in respect of the whole of the railway network, including heritage railways and tramways. [Paragraph 2.217]	The Department will need to give further consideration, in consultation with the Office of Rail Regulation, as to whether its powers should be extended to issuing approved codes of practice beyond section 16 of HSWA to cover the whole railway network including heritage railways and tramways.	<p>The Department intends to discuss, initially with the Office of Rail Regulation and subsequently with stakeholders, whether the power to issue approved codes of practice should be extended to the rest of the railway.</p> <p>The Department will need to understand where there are gaps in the current regulatory regime and the Office of Rail Regulation's existing powers as the independent railway safety regulator which would justify the issue of approved codes of practice and in which areas this power might be used.</p> <p>The Department notes that, although compliance with an approved code of practice is not mandatory, such codes have special legal status. The extension of these powers therefore requires careful consideration to maintain proportionality.</p> <p>If the Department concludes that the extension of these powers is desirable, it will seek the views of stakeholders through public consultation.</p>



#	Recommendation	Departmental Response	Comments & Actions
			<p>Action (DfT): Meeting with the Office of Rail Regulation during February 2015 to discuss this issue in more detail.</p> <p>Action (DfT): Public consultation during summer 2015 if extension of powers is supported and deemed to be desirable.</p>
13	<p>The Secretary of State as regards crossings in England, the Scottish Ministers as regards crossings in Scotland and Welsh Ministers as regards crossings in Wales, should be given the power to issue directions in respect of level crossings. Directions may impose such requirements as the Secretary of State, Welsh Ministers or Scottish Ministers (as appropriate) consider necessary or expedient for the purposes of the safety or convenience of users. [Paragraph 2.246]</p>	<p>The Department accepts that, if level crossing orders are abolished (see Recommendation 10), provision needs to be made to provide directions which would impose such requirements as are considered necessary or expedient for the purposes of safety or convenience.</p> <p>The Department will need to consult further with the Scottish Government and Welsh Government if it concludes that the Law Commissions' recommendation should be implemented and the way forward would have to be agreed with them.</p>	<p>Any actions are dependent on decisions made in respect of Recommendation 10 and the Department would need to liaise with the devolved administrations on the introduction of the new power which the Law Commissions recommend.</p> <p>The Department notes that a number of broader factors would need to be taken into account should consideration be given to the devolution of these powers particularly where there might affect decisions on, for example, railway franchises and other strategic issues on the network which are not devolved.</p> <p>Further consultation on these powers, and the joint statement of policy on their use the Law Commissions recommends which would need to include an agreed solution to the above concerns, would be required before these proposals could be implemented.</p>



#	Recommendation	Departmental Response	Comments & Actions
			<p>Action (DfT): Meeting with the devolved administrations to discuss potential options subsequent to decisions made in relation to Recommendation 10.</p>
14	<p>We recommend that the Secretary of State should make regulations under section 15 of HSWA 1974 imposing obligations on highway, traffic and roads authorities for the purposes of reducing risk so far as reasonably practicable at level crossings. These might include obligations to:</p> <p>(1) provide, maintain and operate specified protective equipment at or near a level crossing where appropriate; and/or</p> <p>(2) erect signs and/or paint road markings in the vicinity of a level crossing where required. [Paragraph 2.255]</p>	<p>The Department notes the issue which the Law Commissions have considered in recommending a new obligation on highway, traffic and roads authorities but believes that the current obligations on traffic authorities and the operator of the crossing under the Level Crossings Act 1983 remain appropriate within the envelope of a level crossing order (or any other single document that may be adopted in its place) and should be continued.</p> <p>If, as the Law Commissions recommend, level crossing orders are abolished and the Level Crossing Act 1983 is repealed, the Department will consider how the current obligations that may be placed on traffic authorities in relation to specific level crossings should be perpetuated.</p>	<p>The Department will consider how the current obligations on traffic authorities should be perpetuated subject to its consideration of Recommendations 3 and 10.</p> <p>Action (DfT): To consider how to ensure that traffic authorities' current obligations are reflected in any revised regime and consult on options if necessary during summer 2015.</p>
15	<p>We recommend that a duty should be imposed on</p>	<p>Whilst the Department acknowledges that poor co-operation and consultation is a known weakness</p>	<p>The Department will need to consider how such a duty to co-operate might be framed, taking into</p>



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	<p>railway operators and traffic authorities to enter into and maintain ongoing arrangements to co-operate with one another for the purposes of performing their functions in respect of public level crossings. [Paragraph 2.270]</p>	<p>within the current system, it considers that the detailed proposals from the Law Commissions are overly burdensome.</p> <p>The Department will consider further with stakeholders whether a more general duty to cooperate, such as that available under the Railways and Other Guided Transport Systems (Safety) Regulations 2006, would be beneficial and notes that there are already a number of highly successful road-rail partnerships in operation which could provide a model of best practice.</p>	<p>account the Law Commissions' analysis and recommendations, and better understand how the duty of co-operation in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 works in practice.</p> <p>The Department will consult with stakeholders on any proposals to create a new duty of co-operation, to whom this should apply and what sanctions might be available should this not be complied with (see also Recommendation 16).</p> <p>The Department will also seek further information on how existing road-rail partnerships work in practice, how these could be supported and whether voluntary guidance on their creation and operation would be useful.</p> <p>Action (DfT): The Department will consider the possible options for a duty to co-operate and potential enforcement models with a view to consultation on policy proposals during summer 2015.</p> <p>Action (DfT): The Department will investigate best practice in the creation and operation of road-rail partnerships with a view to the production of voluntary guidance in conjunction with stakeholders by December 2015.</p>



#	Recommendation	Departmental Response	Comments & Actions
16	We recommend a power to seek declaratory relief where the parties have failed to comply with the duty to co-operate. This power should be without prejudice to any remedy available in public law. [Paragraph 2.274]	If the Department concludes that a more general duty to cooperate should be imposed (see Recommendation 15), it will decide whether a power to seek declaratory relief might be appropriate in circumstances where the parties have failed to comply with that duty.	Action (DfT): The Department will ensure that the issue of sanctions for non-compliance is included in any consultation during summer 2015 around the introduction of a new duty to co-operate.
21	We recommend that the following provisions should be disapplied in relation to level crossings on railways in Great Britain: (1) section 1 of the Highway (Railway Crossings) Act 1839; (2) section 9 of the Railway Regulation Act 1842; (3) section 5 of the Railways Clauses Act 1863; and (4) section 42 of the Road and Rail Traffic Act 1933. [Paragraph 2.299]	The Department will consider, within the context of the accepted recommendations, whether it would remain appropriate for the above legislation to be disapplied in relation to Great Britain.	Action (DfT): Action will only be taken if decisions elsewhere mean that this legislation can be disapplied to level crossings.
22	We recommend that a level crossing direction should take precedence over any	If level crossing orders are abolished (see Recommendation 10) and provision is made for a legal document that sets out the responsibilities of	Action (DfT): Subject to decisions made in relation to Recommendation 10 , the Department



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	<p>conflicting provision in a special Act relating to safety or convenience at that level crossing. [Paragraph 2.306]</p>	<p>the parties at individual level crossings, the Department will consider whether a power to make directions is needed. In the event that provision is made to provide directions (see Recommendation 13) it would at the same time consider whether any directions should take precedence over provisions contained in a special Act which relate to safety or convenience.</p>	<p>will need to consider whether directions should take precedence over special Acts.</p> <p>The Department reiterates its concerns about the visibility of special Acts and the provisions they contain which would need to be considered in relation to individual level crossings when any power of direction might be used.</p> <p>Such issues would need to be explored in more detail in the joint statement the Law Commissions recommend under Recommendation 13.</p>
<p>23</p>	<p>We recommend that health and safety regulations made under HSWA 1974 should be able to disapply a special Act to the extent that it conflicts with any duty imposed by those regulations. [Paragraph 2.308]</p>	<p>The Department agrees that the provisions of any legal document produced in relation to an individual level crossing (for example the level crossing plans proposed by the Law Commissions) should take precedence where a conflict arises with a special Act. The Department notes that clause 9(2)(b) of the draft Bill indeed provides for this in relation to requirements under the proposed level crossing plans.</p> <p>Further consideration will need to be given as to whether health and safety regulations more generally should disapply inconsistent special Acts on a “blanket”, rather than case-by-case, basis. There are around 10,000 special Acts. Some of these may contain specific convenience provisions and, in the case of private level crossings, the</p>	<p>The Department notes that one of the current problems with the existing regulatory framework is the availability of legislation.</p> <p>The Law Commissions did not address, in its report or recommendations, whether special Acts should be publicly available and the Department will consider whether this would be desirable.</p> <p>It is clear that special Acts will need to be perpetuated and the Department remains concerned that some of the important safety and convenience provisions they contain might be lost through a blanket disapplication where the original obligations and duties these create are not available for scrutiny.</p>



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		<p>HSWA regime may sometimes only apply to the railway party where, for example, the user of the crossing is not an employer or self-employed person.</p>	<p>The Department will seek further advice from relevant stakeholders as to how these issue might be resolved and come forward with options for consultation.</p>
24	<p>We recommend that where a level crossing plan is in place, any conflicting provision in a special Act relating to safety or convenience at that level crossing should not apply. [Paragraph 2.310]</p>	<p>The Department agrees that the provisions of level crossing orders (or whatever legal document is adopted in their place) should, where any conflict arises with a provision in a special Act, take precedence.</p>	<p>Where in place, level crossing orders already disapply any provisions in a special Act. The Department believes that this principle should be perpetuated.</p> <p>Action (DfT): Only if it is decided to change this principle will the Department consult with stakeholders during summer 2015.</p>
26	<p>We recommend that there should be a new statutory system for closing public and private level crossings, with or without replacement, by means of level crossing closure orders. [Paragraph 3.19]</p>	<p>The Department thanks the Law Commissions for investigating the available options and suggesting how a new closure procedure might work in practice. It notes that the recommended proposal is extremely close to the existing system under the Transport and Works Act 1992 and that the scope for simplification is limited due to the necessity of reflecting the vital public protection elements, such as consultation, required under the European Convention on Human Rights.</p> <p>The Transport and Works Act 1992 system was last comprehensively reviewed in 2006 and the Department will need to give further consideration with stakeholders to the benefits of introducing a</p>	<p>The Department recognises that the closure of level crossings is the only certain way to eliminate the risk of an accident and that this process can have wider benefits not only for the railway but also for the road network.</p> <p>As the Law Commissions have noted, any closure mechanism will engage the European Convention on Human Rights and the bespoke system they have recommended is similar to the current process envisaged under the Transport and Works Act 1992 which the Law Commissions have accepted would still need to be used in more complex cases or where closure is being pursued as part of a larger development.</p>



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		<p>new system and, in particular, the types of crossing for which this may be suitable. The introduction of a new system will only be considered if the Department concludes that the existing mechanisms available for closure cause specific problems which need to be addressed.</p> <p>The Department has considered the Law Commissions' other recommendations in relation to closure were a new system to be introduced and, with the above caveat, has responded to each of these individually below.</p>	<p>Whilst the Transport and Works Act 1992 process was not specifically created for the closure of individual level crossings, it has nevertheless been used successfully for this purpose (for example in the Railtrack (Ammanford Level Crossings) Order 1997 [S.I. 1997/2466]).</p> <p>The Department notes that many of the problems highlighted by stakeholders during the Law Commissions' 2010 consultation, and on which the Department receives a significant level of correspondence, cannot be resolved by purely legislative means.</p> <p>Action (DfT): Produce a paper in spring 2015 on the current closure methods and comparing these to the Law Commissions' proposals.</p> <p>Action (DfT): Hold a stakeholder seminar in spring 2015 to discuss the issues and options.</p>
86	<p>We recommend that the Government considers whether to make a single set of regulations in relation to signs at public and private level crossings which are not governed by road traffic</p>	<p>The Department has considered carefully whether there is any merit in removing the current provision for level crossing signs under the Traffic Signs Regulations and General Directions 2002 ("TSRGD") and merging these with the Private Crossings (Signs and Barriers) Regulations 1996 to form a single set of level crossing regulations.</p>	<p>Action (DfT): The Department will consider whether the results of the RSSB research should lead to any changes in the current signage regime. If these are necessary, the Department will consult on options for delivery.</p>



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	regulations. [Paragraph 6.48]	<p>It notes that the regimes in place for public and private level crossings have a different legislative basis and are managed differently since responsibilities fall on traffic authorities (for public level crossings) and the railway operator (for private level crossings). The circumstances of the crossing points, such as the equipment available and conditions of use, are also likely to differ significantly with the result that a degree of diversification is always likely to be present. Responses from stakeholders also indicate that a lack of understanding of current signage and bad positioning were more important issues than its regulatory basis.</p> <p>The Department has therefore concluded that a single set of regulations governing signage at all level crossings would not be appropriate but is considering the results of the research work undertaken by RSSB (formerly the Rail Safety and Standards Board) as part of its review of TSRGD and broader signage issues.</p>	