

Technical Note on Level Crossing Act 1983 and the Level Crossing Regulations 1997/487

1. A Level Crossing Order does not create a separate or supplementary authorising process for the creation of a new level crossing. The principle of the crossing having been accepted by the making of an order under the Transport and Works Act, the Level Crossing Order is concerned with the protection and convenience of users of the crossing that has been authorised by the Secretary of State.
2. To that end, section 1 (safety arrangements at level crossings) of the Level Crossings Act 1983 provides a mechanism whereby the Secretary of State may impose requirements on the operation of the railway at or near the crossing and relating to protective equipment.

“Subject to the following provisions of this section, the Secretary of State may, in relation to any place where a railway crosses a road on a level (in this section referred to as a “level crossing”), by order provide for the protection of those using the level crossing.”

3. The Order making process is managed by the ORR on behalf of the Secretary of State. The process is normally initiated by the operator of the crossing and requires consultation with the relevant highway authority and ORR prior to submission of the application.
4. Regulation 4 of the Regulations (miscellaneous amendments to the Level Crossings Act 1983) amended section 1 of the 1983 Act to provide for the Secretary of State to initiate the order making process in the event that the operator of the crossing does not do so. He would do this on the advice of the ORR. Regulation 4(4) substitutes a new sub-section (6) to for the original sub-section (6) and inserts a new sub-section 6A as follows:

“(6) The Secretary of State may make an order under this section in respect of a level crossing on being requested to do so by the operator of the crossing or without any such request, but he shall not make such an order without any such request unless he has sent to the operator and to each local authority in whose area the level crossing is situated a copy of a draft of the order he proposes to make and a notice specifying the period (not being less than two months) within which the operator or local authority may make representations to him in respect of his proposal to make the order.

(6A) Where the Health and Safety Executive gives written notice to an operator of a crossing that in its opinion a request should be made to the Secretary of State to make an order under this section in respect of that crossing and the notice states the reasons for that opinion, the operator shall be under a duty to make such a request.”

5. Thus, in circumstances where a railway undertaker did not take appropriate steps to obtain a Level Crossing Order, the Secretary of State may ensure that an appropriate order is made.
6. Regulation 4(7) inserts a new section 10B into the 1983 Act to provide as follows:
“(10B) In performing his functions under this Act the Secretary of State shall take account of any advice given to him with respect thereto by or on behalf of the Health and Safety Commission.” (This will now be the ORR, as this function was transferred to the ORR under the Railways Act 2005.)
7. Finally, it is also worth noting that railway safety functions were transferred from the Health and Safety Executive and Health and Safety Commission to the ORR pursuant to the Railways Act 2005, which transferred responsibility for railway-related health and safety matters from HSE to ORR by giving ORR responsibility for the application of Part 1 of the Health and Safety at Work Act 1974 in respect of ‘railway safety purposes’. In the absence of

appropriate arrangements, the ORR would be entitled to exercise its powers under section 22 (prohibition notices) of the Health and Safety Act 1974 to prevent the operation of the railway.

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