

17th April 2023

FAO: The Inspector

Note to the C3R Public Inquiry pertaining information on the Level Crossing Order Process

Following a request by the Inspector on Thursday 13 April 2023 during the Public Inquiry, Network Rail has produced this Note setting out the process for obtaining a level crossing order pursuant to the Level Crossings Act 1983 (the “**1983 Act**”).

The statutory scheme under the 1983 Act is as follows:

- a. The Secretary of State has the power to make an order providing for the protection of those using a level crossing: s.1(1). He may do so following a request by the operator of a crossing or of his own motion: s.1(6).
- b. The operator of the crossing is under a duty to make such a request if the ORR gives written notice that in its opinion such a request should be made: s.1(6A).
- c. Before an operator makes a request for an order, it must consult the ORR and the local traffic authority about the draft order to be submitted: s.1(8)(a). Both the ORR and the local traffic authority have a period of at least 2 months to make representations to the Secretary of State: s.1(8A)(b).
- d. The Secretary of State must take into account any advice given by or on behalf of the ORR: s.1(10B).
- e. Such an order may make such provision as the Secretary of State considers necessary or expedient for the safety or convenience of those using the crossing: s.1(2).
- f. Once an order has been made, the operator of the crossing is under a duty to ensure it is complied with: s.1(3)(a). It is a criminal offence to fail to comply, subject to the defences that: (a) the contravention was due to the act or default of another person not being one of his employees; and (b) that he took all reasonable precautions and exercised all due diligence to avoid the contravention: regulation 3(1)-(2) of the Level Crossings Regulations 1997.¹

Pursuant to an Agreement made between the Secretary of State and the ORR under paragraph 7 of Schedule 3 to the Railways Act 2005, the ORR has agreed to perform the function set out in s.1 of the 1983 Act on behalf of the Secretary of State.

¹ Empowered by section 33(1)(c) of the Health and Safety at Work etc. Act 1974.

Further guidance can be found in the ORR's, "Level Crossing Order Process" (2022) document - <https://www.orr.gov.uk/sites/default/files/2022-04/level-crossing-order-process.pdf>.

The potential need for the level crossing orders was set out in the document titled "List of Consents, Permissions or Licences under Other Enactments" (ref: APP-07) submitted as part of Network Rail's application.

Following consultation with the ORR by the Network Rail project team on the proposed upgrades to the level crossings as part of the C3R project, the ORR have instructed Network Rail to issue updated/new level crossing orders prior to the commissioning of the new MCB level crossings at Meldreth Road, Milton Fen, Waterbeach, Dimmocks Cote, Croxton and Six Mile Bottom and Dullingham. Pursuant to s.1(6A) of the 1983 Act, Network Rail has treated this as the ORR giving written notice that in its opinion a request should be made to the Secretary of State under s.1(6) of the 1983 Act.

The process under the 1983 Act is a stand-alone process from the planning permission and Transport and Works Act Order (TWAo) regimes.

There are two important points to make:

- a. Due to the obligation to comply with an order made under the 1983 Act, with a failure to do so being a criminal offence, the relevant land acquisition and associated consents (namely the TWAo and planning consents) cannot be obtained after the order under the 1983 Act has been obtained.
- b. The same person is deciding both whether to grant the TWAo and the order under the 1983 Act; namely the Secretary of State. In those circumstances, it is difficult to conceive of the scenario where the Secretary of State would, on the one hand, grant the TWAo but then refuse the order under the 1983 Act.

In terms of the approach adopted by the ORR, the Guidance states: *"We support a joined-up collaborative approach between the operator and local traffic authority because this will deliver better risk management at a level crossing. It enables better consideration of the risks that arise from a level crossing being an interface between the railway and road, such as the impact that the length of time level crossing barriers are down can have on road traffic and user behaviour. Early engagement enables design decisions to be discussed with all parties and increases the opportunity for alternatives to a level crossing to be considered."*

There are several stages in the order process which deliver the relevant requirements of the 1983 Act and the Management of Health and Safety at Work Regulations 1999. They are summarised in the flow chart below and then considered in more detail within the guidance document.

For reference, the C3R project commenced the consultation with the ORR and the local traffic authority in November 2021 and the project is currently at the beginning of Step 3 of the process. Since November 2021, the project has been liaising with the ORR on a monthly basis and the local

traffic authority throughout the level crossing ground plan design, and planning permission, processes at regular intervals.

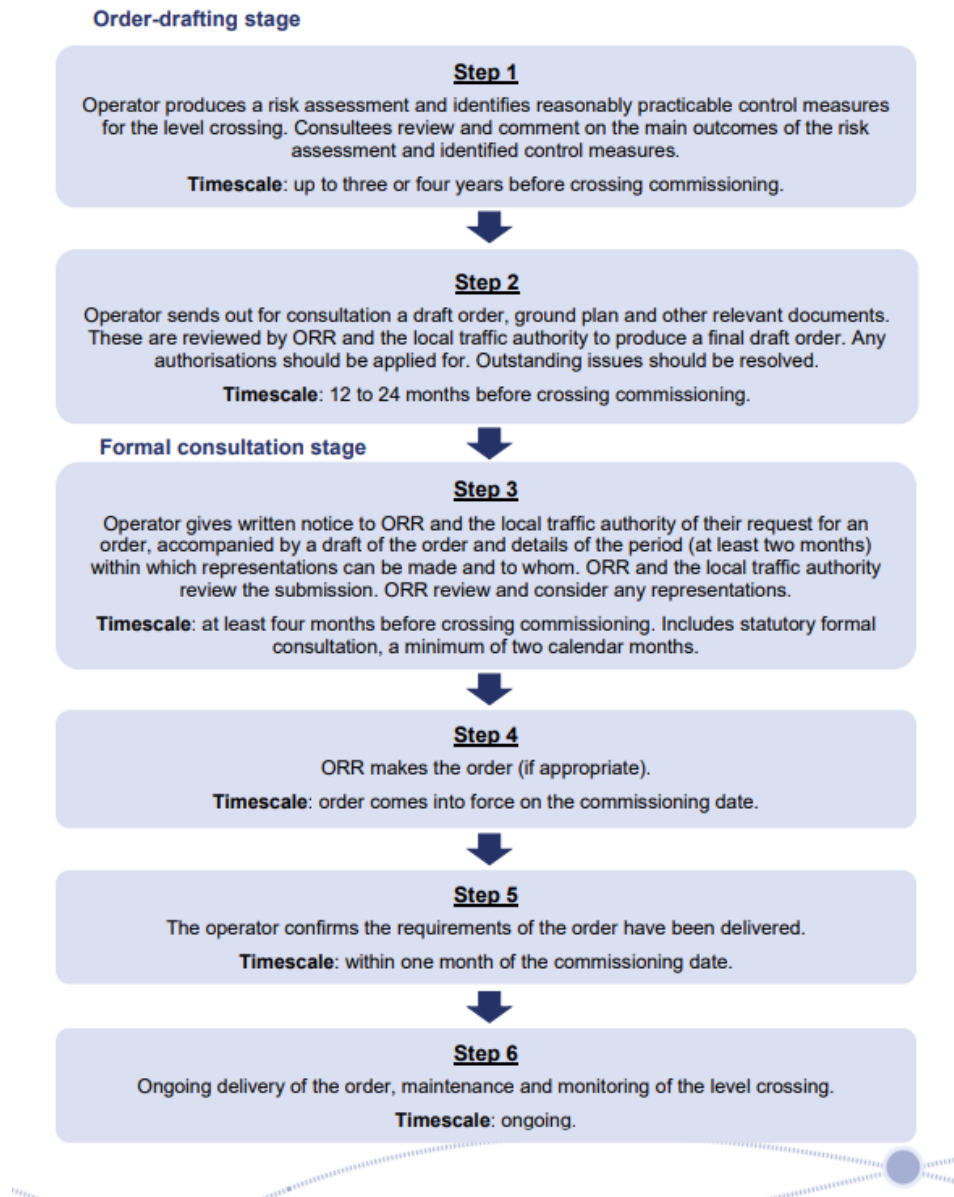


Figure 1: Flow chart illustrating the level crossing order process and suggested timescales (ORR, 2022)

Yours sincerely,

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