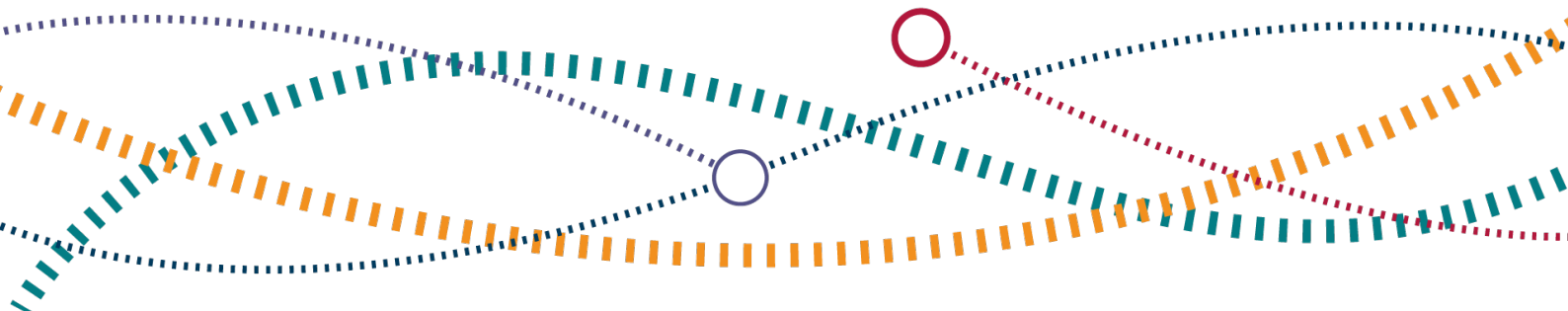




Level Crossing Order Process

11 April 2022



Contents

Introduction	3
Principles for Managing Level Crossing Safety	4
ORR's role	4
Who is this document for?	5
How to use this guidance	5
<hr/>	
2. Consultation and collaboration	7
<hr/>	
3. Risk Assessment	8
<hr/>	
4. Level Crossing Orders	9
What is a level crossing order	9
Format of the order and templates	10
Variation orders	11
Revocation orders	12
Minor non-safety changes to the particulars of level crossing orders	12
Directions	13
Who makes a level crossing order	14
ORR's policy for which level crossings need an order	14
When to apply for a level crossing order	15
Temporary level crossings	15
Traffic signs and road markings	15
Parking and other traffic restrictions	17
<hr/>	
5. The level crossing order process	18
Introduction	18
Order-drafting stage	20
Step 1	20
Step 2	22
Formal consultation stage	24

Step 3	24
Step 4	26
Step 5	26
Post-commissioning inspection	26

6. Ongoing delivery of the level crossing order, maintenance and monitoring 28

Introduction

- 1.1 This guidance sets out the process that should be followed when making a level crossing order. It sets out the role of the Office of Rail and Road (ORR) and others in the process and the ongoing delivery of an order. It also covers consultation and collaboration, risk assessment, the different types of orders, and how to apply for an order.
- 1.2 We (ORR) make level crossing orders under the Level Crossings Act 1983. The Act sets out the procedure and consultation arrangements which must be followed to make an order. By following this guidance, the requirements of the Act in relation to making a level crossing order will be met.
- 1.3 This guidance replaces the section on level crossing orders that was in 'Level Crossings: A guide for managers, designers and operators' (Railway Safety Publication 7). It was produced following a review of the previous process and was developed with the help of a stakeholder steering group whom we invited to engage from early on in the project. We would like to thank the members of the stakeholder steering group: Amey, Association of Directors of Environment, Economy, Planning and Transport (ADEPT), Department for Transport, Hertfordshire County Council, Institute of Public Rights of Way, Network Rail, SYSTRA, Transport for Wales and Transport Scotland.
- 1.4 We also thank the other stakeholders who provided feedback on the guidance.
- 1.5 We provide a number of [level crossing order templates](#), which may be downloaded and modified to help with drafting a level crossing order. In conjunction with this guidance, we are revising the templates, and these will be updated on our website from 11 April 2022.
- 1.6 Existing orders remain valid after the publication of this guidance and the new templates, but any new orders should be based on the new templates as they become available.
- 1.7 This guidance and the new order templates also address some of the recommendations in the 2013 [Law Commission and Scottish Law Commission report on level crossings](#), with the new process and order templates designed to:
 - emphasise the importance of good working relationships between the railway operator and local traffic authority for the making and ongoing delivery of a level crossing order;

- encourage wider consultation and collaboration beyond that required by the Level Crossings Act 1983, because of the benefits it delivers in risk management and public safety;
- simplify the order process as far as possible, while meeting the requirements of the Level Crossings Act 1983; and
- be easier to use and more accommodating of changes to the level crossing, particularly innovations in technology, to reflect the principles-based approach set out in our guidance '[Principles for managing level crossing safety](#)'.

1.8 A level crossing is where a railway crosses a road on the same level, introducing risk to both the road and railway. This guidance is for level crossing orders, which are generally made for public vehicular level crossings. Our guidance 'Principles for managing level crossing safety' applies to all level crossings.

1.9 A level crossing order sets out the protective equipment that should, as a minimum, be provided at a level crossing for the safety of those using it, including its operation and maintenance; it may also take account of the convenience of users. It gives the operator of the level crossing or local traffic authority (or both) specific responsibilities for delivery of an order and on-going maintenance of the level crossing and its approaches.

Principles for Managing Level Crossing Safety

1.10 Our guidance 'Principles for managing level crossing safety' is intended to assist in the assessment and control of risks at level crossings. A number of principles are set out, describing our expectations for identifying and controlling risks, and a list of key factors to consider accompany each principle. It emphasises the importance of collaboration, a thorough understanding of who uses the level crossing and human factors in relation to level crossing design. There is also information on the principles of prevention and how they may be applied to level crossings, reasonable practicability and decision-making.

1.11 We recommend that 'Principles for managing level crossing safety' is used in conjunction with this guidance.

ORR's role

1.12 ORR is the independent safety and economic regulator for Britain's railways. We oversee compliance with health and safety law but we also deliver specific level

crossing order functions under the Level Crossings Act 1983 and the Road Traffic Regulations Act 1984. We do this on behalf of the Secretary of State for Transport under the arrangement known as an [agency agreement](#), which also includes the making of directions under the Road and Rail Traffic Act 1933.

- 1.13 We can take enforcement action if the requirements of an order are not met, as it is a criminal offence to fail to comply with the provisions of a level crossing order. In addition, the correct use and placement of traffic signs and road markings, which are set out in an order, are important for any action the Police may take in relation to road traffic offences.

Who is this document for?

- 1.14 This guidance is a resource for those who have a role in drafting, making and the on-going delivery of level crossing orders, specifically:

- operators of level crossings; and
- local traffic authorities: this can include National Highways for crossings on the strategic road network, Scottish Ministers in relation to trunk roads in Scotland, and those with delegated authority.

- 1.15 It applies to those level crossings for which we may make a level crossing order, on:

- mainline railways (national rail); and
- non-mainline railways (e.g. heritage railways, metro systems, rail freight sites).

- 1.16 This guidance is not applicable to tramways. The Level Crossings Act 1983, which sets out the requirements for level crossing orders, applies to railway level crossings. A tramway is defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and is not a railway.

How to use this guidance

- 1.17 The main purpose of this guidance is to set out the process for making level crossing orders. It also provides advice on when an order may be appropriate. It shows how the order process links with our guidance 'Principles for managing level crossing safety'.

- 1.18 We provide [level crossing order templates](#) which may be downloaded and modified to help with drafting a level crossing order. These templates can be used in conjunction with the required risk assessment and consultation to draft an order which sets out the individual protective arrangements for a level crossing.
- 1.19 We are in the process of updating the templates. They will be made available on our website from 11 April 2022 as they are produced and are referred to as 'new templates' in this guidance.
- 1.20 In addition to this guidance, other health and safety guidance, legislation and standards relevant to the railway and roads should be considered. Equality and environmental legislation and other relevant standards and guidance should also be considered. Further information is available on our website.
- 1.21 Our [level crossing webpages](#) contain a lot of other useful information, including the legal framework for level crossings and their history. A list of frequently used traffic signs and road markings is also available. Layout diagrams, giving examples of how traffic signs and road markings may be used, will be available soon on these webpages.



2. Consultation and collaboration

- 2.1 There is a legal requirement for consultation when a level crossing order is made under the Level Crossings Act 1983. The operator must consult with ORR and the local traffic authority about the control measures that will be provided at the level crossing. Control measures mean the protective equipment, its operation and maintenance, including road traffic signs and road markings.
- 2.2 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.
- 2.3 We encourage greater collaboration, and our guidance 'Principles for managing level crossing safety' describes a wider group of possible stakeholders than those required by the Level Crossings Act 1983. Identifying and engaging with stakeholders as part of the planning stage for any work in the vicinity of the level crossing, including during the order-making process, is likely to deliver benefits in relation to risk management and public engagement. Collaboration between the operator and the local planning authority early on in any planning applications that could affect the use of a level crossing is likely to deliver more cost-effective improvements in risk management.

3. Risk Assessment

- 3.1 A suitable and sufficient assessment of the risks to the health and safety of employees and any others who may be affected by the level crossing is a requirement under the Management of Health and Safety at Work Regulations 1999. We expect the operator to provide a risk assessment for the level crossing when applying for an order.
- 3.2 The first consideration in the risk assessment should be whether there are reasonably practicable alternatives to the level crossing, such as replacing the level crossing with a bridge or underpass, or diverting the road onto an alternative route.
- 3.3 Where alternatives to a level crossing are not reasonably practicable, the risk assessment should identify the protective equipment and requirements for the operation of the railway, at or near the level crossing, that are needed to manage the identified rail and road risks so far as reasonably practicable. This and any other information submitted is used to populate and, where needed, to modify an order template so that the order details the protective equipment at the level crossing and its operation and maintenance.
- 3.4 Our guidance 'Principles for managing level crossing safety' is intended to assist in the assessment and control of risks at level crossings.
- 3.5 The risk assessment requirement is ongoing, so when an order has been made, any further or temporary changes to the level crossing, its operation or maintenance, or in the local environment affecting the nature or level of use of the level crossing, should be risk-assessed regardless of whether they will result in the need for a new order. There will be no justification for failing to upgrade the safety arrangements at a level crossing where they are required by the findings of a suitable and sufficient risk assessment, for example where the findings conflict with any existing arrangements contained within a level crossing order. In such cases a new order can be applied for.

4. Level Crossing Orders

What is a level crossing order

- 4.1 The Level Crossings Act 1983 allows for a level crossing order to be made. An order is a formal written direction from the Secretary of State for Transport that provides for the protection of those using a level crossing. It must be followed. Each level crossing order is relevant to an individual level crossing and directs the operator or local traffic authority (or both) to provide arrangements at that level crossing for the safety of those using it. It is a criminal offence under section 33(1)(c) of the Health and Safety at Work etc. Act 1974 to fail to comply with the provisions of a level crossing order as required by Regulation 3 of the Level Crossings Regulations 1997.
- 4.2 An order sets out what is “necessary or expedient for the safety or convenience of those using the crossing” (including train passengers). An order may require the operator of the level crossing or the local traffic authority (or both) to:
- provide protective equipment at or near the level crossing;
 - maintain and operate that equipment in accordance with the order; and
 - deliver requirements as to the operation of the railway at or near that level crossing.
- 4.3 There is often debate on how the phrase ‘safety or convenience’ should be interpreted. The Law Commission and Scottish Law Commission Report on level crossings (2013) provides useful guidance. It concluded that, whilst we can ensure that convenience is taken into account, the broad aim of an order must nevertheless be safety provision. This is because the objective of an order is to ‘provide for the protection’ of level crossing users.
- 4.4 Protective equipment is defined in the Level Crossings Act 1983 as including barriers, gates, lights, traffic signs (including road markings), and manual, mechanical, automatic, electrical, telephonic or television equipment or other devices.



Format of the order and templates

4.5 The order itself contains the following sections: the citation gives the name of the level crossing and the operator, and the date the order comes into force; the interpretation section includes an explanation of the terms used in the schedules; the application section sets out the schedules which contain the principle clauses for the operator and local traffic authority, and the application of traffic signs regulations; and the revocation section lists those previous orders revoked by this order.

4.6 A typical order will set out in its schedules:

- What protective equipment will be provided, operated and maintained by the operator. This is usually the protective equipment such as barriers, road traffic lights, traffic signs and road markings etc.
- What protective equipment will be provided and maintained by the local traffic authority. This is usually the traffic signs and road markings on the approaches to the level crossing.

- How the level crossing will be operated by the operator.
- The responsibilities that both the operator and the local traffic authority have in collaborating with each other, the emergency services and the Secretary of State (ORR).

4.7 We are developing new level crossing order templates based on the following groupings of level crossings:

- Manually Controlled Barriers, including those with obstacle detection or CCTV;
- Automatic Half Barriers;
- Automatic Barriers (locally monitored);
- Gated.

4.8 The templates contain clauses that are organised by asset type. The clauses are a starting point for developing an order that reflects what protection arrangements are provided at a specific level crossing. Not all the clauses provided in a template will therefore be required in an order and additional clauses may need inserting, depending on the specific circumstances at a level crossing. The optional and alternative clauses are clearly indicated by the square brackets around them.

4.9 Layout diagrams, giving examples of how traffic signs and road markings may be used, will soon be available on [our level crossing webpages](#) along with a list of frequently used traffic signs and road markings.

Variation orders

4.10 Variation orders were an interpretation of section 1(5) of the Level Crossings Act 1983. They were used to request a change to the existing order where wholesale renewal or upgrade of the level crossing was not being proposed but where the operator intended to make some changes to the protective arrangements specified in the existing order.

4.11 After 11 April 2022 we will no longer make variation orders. Instead, a new order should be requested if changes in the protective arrangements are made which result in the existing order or variation order(s) no longer reflecting what is provided at the level crossing. This is because of the complexity variation orders introduce and therefore potential for error, plus the new templates are designed to

be more accommodating of certain changes in the protective arrangements at a level crossing.

- 4.12 We will exercise a proportionate approach to the scope of the risk assessment and other information we require to support an order, based on the extent and nature of the proposed changes to the level crossing.

Revocation orders

- 4.13 The operator will need to apply for a revocation order to revoke the existing order if a level crossing is being closed. This is because, whilst an order exists, the operator and local traffic authority are obliged to comply with it. A revocation order may also be required when parts of an existing order are no longer needed, such as when a level crossing is closed to vehicles.
- 4.14 The process is the same as that used for a new order, since a revocation order is considered to be a new order under section 1 of the Level Crossings Act 1983. Order-drafting and formal consultation with us and the local traffic authority are therefore required. We will exercise a proportionate approach to the scope of the risk assessment and other information we require to support a revocation order, based on the extent and nature of the proposed changes to the level crossing.
- 4.15 When the revocation relates to closure of a level crossing, the operator should include in its submission:
- details of the proposal;
 - evidence from the local traffic authority to support the proposal, such as a stopping-up order for the road in question;
 - details of how the site of the former level crossing will be made safe.
- 4.16 It is not our role to decide if the level crossing should be closed. This is managed through other parties and processes such as those set out in the Transport and Works Act 1992.

Minor non-safety changes to the particulars of level crossing orders

- 4.17 We have a process for dealing with minor changes to a level crossing where there is no adverse impact on safety, such as changing the audible warning from a siren

to a spoken warning or changing the name of the local traffic authority specified in an order.

- 4.18 To issue a new order in such cases would be disproportionately resource-intensive for the operator and us. It has therefore been agreed with the Department for Transport that such changes will be dealt with in accordance with our guidance note '[Managing non-safety related changes to the particulars of level crossing orders](#)'. It is still important for the operator to have risk-assessed the proposed changes to the level crossing to ensure that there is no adverse impact on risk control.
- 4.19 This process is for orders made using the more detailed old templates and does not apply to those made using the new templates available from 11 April 2022.

Directions

- 4.20 Directions are required to allow the operator to change the position of level crossing gates on public roads to be kept closed across the railway when they are normally kept closed across the road.
- 4.21 We make directions under section 42 of the Road and Rail Traffic Act 1933, not the Level Crossings Act 1983, so no statutory consultation is necessary.
- 4.22 For instance, we make directions every year at the request of the operator for certain gated level crossings where the gates are closed to the railway over the Christmas period when there are no trains running.
- 4.23 The operator should apply to us for a direction by email, preferably at least a month before it's needed, for us to consider the safety implications of the change.



Who makes a level crossing order

- 4.24 In most circumstances the operator requests and drafts a level crossing order and we make the level crossing order on behalf of the Secretary of State for Transport. There are circumstances when an order may need to be made directly by the Secretary of State for Transport and this guidance does not cover those circumstances. We can advise on the process on request for these rare situations.

ORR's policy for which level crossings need an order

- 4.25 An order may be made 'in relation to any place where a railway crosses a road on a level'. Our policy is to make orders for public vehicular road level crossings. This reflects the nature of the risks involved with vehicular level crossings on public roads, and the complexity of level crossing protection arrangements where traffic signs and road markings are required. Whilst we may make orders for other types of level crossings, doing so is likely to be exceptional and would probably be driven by particular risk management compliance issues.
- 4.26 In England and Wales, 'road' means any highway or other road to which the public has access. The phrase 'road to which the public has access' means a road to which members of the public have unfettered access, whether or not there is a public right of way. In Scotland the position is different, as an order may only be made where a railway crosses a road within the meaning of the Roads (Scotland)

Act 1984, section 151(1). So, for an order to be made in Scotland, there must be a 'public right of passage' over the road.

4.27 We recognise that the status of some level crossings is not always clear-cut, for example where a road is private on one side of the railway and public on the other. Early engagement with us in these situations is encouraged.

When to apply for a level crossing order

4.28 Operators most commonly apply for a new order when:

- there is an existing order for the level crossing and the operator is proposing changes to the protective arrangements described in that order; or
- a level crossing no longer needs its order, for instance if it is closing, in which case a revocation order should be sought.

4.29 There are some level crossings on public vehicular roads that do not already have an order because their protective arrangements continue to be those specified in the original special act for the construction of that railway, usually made during the nineteenth century. The Railway Clauses Consolidation Act 1845 and the Railway Clauses Consolidation (Scotland) Act 1845, which are still in force, deal with the implementation of the special acts and set out detailed principles for the construction and operation of a level crossing. Level crossings on public roads which do not have orders are generally gated level crossings operated by a crossing keeper and, if the protection arrangements are to be changed, then we would advise the operator to apply for a level crossing order.

Temporary level crossings

4.30 If it has been identified that it is necessary to bring into use a temporary level crossing on a public vehicular road, for example for construction works, then a level crossing order is the most appropriate mechanism for authorising the relevant changes.

Traffic signs and road markings

4.31 An order specifies the prescribed and authorised traffic signs and road markings at the level crossing and on its approaches that are necessary for its safe use.

- 4.32 Any person who contravenes such traffic signs and road markings may be prosecuted under the Road Traffic Regulation Act 1984 and/or Road Traffic Act 1988.
- 4.33 Prescribed traffic signs and road markings are set out in the [Traffic Signs Regulations and General Directions 2016](#) (TSRGD). For further guidance on design and placement of traffic signs and road markings, refer to the [Traffic Signs Manual](#) and other guidance provided by organisations such as National Highways.
- 4.34 The Welsh Government has issued a traffic signs authorisation for traffic signs in English and Welsh that can be used at level crossings in Wales as alternatives to certain signs prescribed in TSRGD. The Welsh Government also provides [the traffic sign designs](#).
- 4.35 If the risk assessment identifies that non-prescribed traffic signs or road markings are required, then the operator needs a separate authorisation. This includes where the operator has identified the need for:
- (a) a variation to a traffic sign or road marking prescribed within TSRGD, such as narrow road traffic light signals (wigwags) or a curved yellow box road marking. The operator should request the authorisation from the Department for Transport in England, Transport Scotland or Welsh Government giving at least 3 months' notice. Applications for variations to traffic signs or road markings at level crossings on the National Highways Network should be sent to National Highways, who will review them and forward to the Department for Transport;
 - (b) signs from the Private Crossings (Signs and Barriers) Regulations 1996 (or any regulations that supersede these). The operator should notify us if any of these signs are going to be used at the level crossing. We will make the authorisation for these signs as this task is delegated to us from the Department for Transport under the Agency Agreement;
 - (c) a new or novel traffic sign or road marking not covered by TSRGD or the Private Crossings (Signs and Barriers) Regulations 1996 (or any regulations that supersede these). The operator should make an application to the Department for Transport, Transport Scotland or Welsh Government giving at least 3 months' notice.
- 4.36 A non-prescribed traffic sign or road marking cannot be placed on the road unless it has been authorised. We cannot include an unauthorised traffic sign or road marking in an order.

Parking and other traffic restrictions

- 4.37 Parking and other traffic restriction signs or road markings may only be placed where they are specified by a traffic regulation order made by the local traffic authority. We will only include these signs or markings in orders if they are essential to the safety of the level crossing. Traffic regulation orders are administered by the local traffic authority, whose co-operation may be sought by the operator should they consider using parking restrictions at or near a level crossing.



5. The level crossing order process

Introduction

- 5.1 There are several stages in the order process which deliver the relevant requirements of the Level Crossings Act 1983 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.



Figure 5.1 Flow chart illustrating the level crossing order process and suggested timescales

Order-drafting stage

Step 1

Operator produces a risk assessment and identifies reasonably practicable control measures for the level crossing. Consultees review and comment on the main outcomes of the risk assessment and identified control measures.

Timescale: up to three or four years before crossing commissioning.



Step 2

Operator sends out for consultation a draft order, ground plan and other relevant documents. These are reviewed by ORR and the local traffic authority to produce a final draft order. Any authorisations should be applied for. Outstanding issues should be resolved.

Timescale: 12 to 24 months before crossing commissioning.



Formal consultation stage

Step 3

Operator gives written notice to ORR and the local traffic authority of their request for an order, accompanied by a draft of the order and details of the period (at least two months) within which representations can be made and to whom. ORR and the local traffic authority review the submission. ORR review and consider any representations.

Timescale: at least four months before crossing commissioning. Includes statutory formal consultation, a minimum of two calendar months.



Step 4

ORR makes the order (if appropriate).

Timescale: order comes into force on the commissioning date.



Step 5

The operator confirms the requirements of the order have been delivered.

Timescale: within one month of the commissioning date.



Step 6

Ongoing delivery of the order, maintenance and monitoring of the level crossing.

Timescale: ongoing.

Order-drafting stage

Objective: Agreement between the operator, ORR and local traffic authority on what should go in the order, so that the operator can produce a final draft order.

Step 1

Operator produces a risk assessment and identifies reasonably practicable control measures for the level crossing. Consultees review and comment on the main outcomes of the risk assessment and identified control measures.

- 5.2 We encourage this engagement and collaboration at the earliest opportunity, which can be up to three or four years before the level crossing is due to be changed. The operator and local traffic authority should be aware that design decisions made at this point are very difficult and costly to change later. These decisions therefore need to be agreed with all concerned at this stage.
- 5.3 This engagement and collaboration should lead to mutual agreement on the maintenance of road surfaces, traffic signs and road markings required to ensure their ongoing effectiveness for the safety of the level crossing and compliance with the order.
- 5.4 Set out below are the key considerations for the individual consultees for step 1.

Step 1 key considerations for the operator

- (a) Engage with the local traffic authority and us, so that we can review and comment on the main outcomes of the risk assessment and identified control measures.
- (b) Consider collaboration with other relevant parties, refer to our guidance 'Principles for managing level crossing safety'.
- (c) Provide us with the following documents:
 - risk assessment and details of why the chosen protection arrangements have been selected;
 - ground plan (a technical drawing showing the existing and future features of the level crossing including traffic signs and road markings);

- where necessary, the documented outcomes of processes identified and referred to in the risk assessment, such as a signaller workload assessment, signalling scheme plan, an assessment of any consequences of a signal being passed without authority and ergonomics report.
- (d) Apply for a traffic signs authorisation as soon as possible if risk assessment identifies the need for a non-prescribed traffic sign.

Step 1 key considerations for the local traffic authority

- (e) Engage with the operator early in the process to consider the outcomes from the risk assessment and proposed control measures for the level crossing.
- (f) Provide any information relevant to the current and future use of the level crossing; this might include intelligence on planned developments, traffic surveys and any road safety audits.
- (g) Identify and agree the installation and maintenance of protective equipment with the operator and us, including traffic signs, an electrical supply where needed, road markings and the road surface. Also agreeing timescales for their delivery.
- (h) Consider collaboration with other relevant parties, referring to our guidance 'Principles for managing level crossing safety'.

Step 1 key considerations for ORR

- (i) We will review and where necessary challenge the operator's submitted documents. In particular, we will check that:
- the risk assessment and option selection result in appropriate management of the risks at the level crossing;
 - the risk assessment is based on up-to-date information on who uses the level crossing, when they use it and the frequency of use. Up-to-date data is likely to be less than two years old and should be gathered over a suitable time period(s) to enable a good understanding of level crossing use, for example a 9-day traffic census.
- (j) We will visit the site if appropriate. This might be if the risk assessment identifies particularly problematic issues with the level crossing or, for example, use of novel technology is proposed. Site visits will preferably be conducted with both the operator and local traffic authority representatives

present. We will provide feedback to the operator about whether the control measures proposed are considered to be suitable and sufficient.

Step 2

Operator sends out for consultation a draft order, ground plan and other relevant documents. These are reviewed by ORR and the local traffic authority to produce a final draft order. Any authorisations should be applied for. Outstanding issues should be resolved.

- 5.5 It is important for the operator to allow sufficient time for order-drafting, formal consultation and to enable us to make an order before commissioning. We suggest 12 to 24 months prior to the commissioning of the level crossing as a suitable timeframe for this step to begin.
- 5.6 Set out below are the key considerations for the individual consultees for step 2.

Step 2 key considerations for the operator

- (a) Consult ORR and the local traffic authority on the draft order intended for submission at formal consultation. Start with a relevant order template and, having modified it, provide a draft order with changes marked-up. Use our template consultation letters to give details of the proposed changes to the level crossing and the length of consultation. We prefer these to be sent to us by email.
- (b) Start the consultation on the same date for the local traffic authority and us and email us a copy of the letter or email sent simultaneously to the local traffic authority as proof of consultation.
- (c) Identify whether any signs from the Private Crossings (Signs and Barriers) Regulations 1996 (or any regulations that supersede them) are required and notify us as soon as possible.

Step 2 key considerations for the local traffic authority

- (d) Review the operator's submission, checking that the details of the highway layout, traffic signs and road markings reflect discussions with the operator, and raise and resolve any issues with the operator.

Step 2 key considerations for ORR

- (e) We will check that the information provided is up-to-date, such as the ground plan and traffic census. We may request an updated risk assessment and associated information if there has been a considerable length of time between the risk assessment and order-drafting consultation.
- (f) We will review the submission at this point to ensure that:
 - proper account has been taken of any relevant discussions or queries raised earlier, and that these are reflected in the draft order and latest version of the ground plan. Any amendments to an order should be agreed and outstanding issues resolved before proceeding to formal consultation;
 - the order accurately specifies the protection and operation of the level crossing, including traffic signs and road markings.
- (g) We will raise any outstanding matters with the operator promptly and work together to obtain an agreed resolution.
- (h) We will consider and respond to any representations received from the local traffic authority or other consultees.

5.7 However, if, after discussion with the operator, the final draft order does not reflect our view as to what is required at the level crossing, then the Level Crossings Act 1983 allows us (on behalf of the Secretary of State for Transport) to make any changes to an order we think are necessary.

Closure of order-drafting stage

5.8 The order-drafting stage closes once broad agreement is reached between the operator, the local traffic authority and us on the protection arrangements that are to be provided at the level crossing. This includes the level crossing design, site layout, traffic signs and road markings. Any outstanding issues need to have been identified, discussed and resolved so that the operator can submit their final draft order for consideration at the formal consultation stage.

Formal consultation stage

Objective – to produce a signed order following a consultation period of at least two months.

Step 3

Operator gives written notice to ORR and the local traffic authority of their request for an order, accompanied by a draft of the order and details of the period (at least two months) within which representations can be made and to whom. ORR and the local traffic authority review the submission. ORR review and consider any representations.

- 5.9 The operator should give written notice to us and the local traffic authority of their request for an order, accompanied by their final draft order and details of the period within which representations may be made and to whom.
- 5.10 Formal consultation is the stage which the Level Crossings Act 1983 states must last for a **minimum of two calendar months**. It starts when the operator sends the formal consultation emails or letters along with their final draft order to us and the local traffic authority. The operator should give a date at least two calendar months ahead in their letters and, if posted, also factor-in the time it would take for the letters to be received.
- 5.11 The formal consultation period should ideally start at least four months before commissioning to allow for the statutory minimum two-month consultation period, consideration of any representations and the making of the order.
- 5.12 Set out below are the key considerations for the individual consultees for step 3.

Step 3 key considerations for the operator

- (a) Use our [template consultation letters](#) to give details of the proposed changes and the length of consultation. We prefer these to be sent to us by email.
- (b) Start the consultation on the same date for the local traffic authority and us, and email us a copy of the email or letter sent to the local traffic authority as proof of consultation.
- (c) Confirm the expected commissioning date of the level crossing in the consultation emails or letters. If the commissioning date changes from the date given in the consultation, we need to be informed as soon as possible

so that we can change the coming-into-force date on the order before it is made, as the level crossing always needs to comply with its order.

- (d) As the two-month consultation period is the statutory minimum specified in the Level Crossings Act 1983, if an operator starts formal consultation too late and the level crossing commissioning date falls before it expires, there can be no exception to the minimum two-month period. Commissioning will be at the operator's risk if an order is ultimately issued with clauses that they had not anticipated.
- (e) Email to us, in addition to the formal email or letter and final draft order, the final versions of the risk assessment, ground plan, any consultation representations received, and any other relevant documents not previously sent to us.
- (f) Ensure that the local traffic authority has the final version of the ground plan.
- (g) Obtain and email us any required traffic sign authorisations.

Step 3 key considerations for the local traffic authority

- (h) Review the operator's submission and comment to us within the consultation period.

Step 3 key considerations for ORR

- (i) We will check that the final draft order:
 - includes all the essential elements of the relevant template order;
 - reflects the design specified in, what the operator confirms to be, the very latest version of the ground plan;
 - reflects earlier discussions and agreements.
- (j) We will consider any representations received during the formal consultation period and provide written responses with reasons for our decisions.
- (k) We will amend the draft order if necessary and discuss any major changes with the operator and/or local traffic authority before recommending that the order be signed.

Step 4

ORR makes the order (if appropriate).

- 5.13 We will sign the order to come into force on the date the level crossing is commissioned.
- 5.14 We will send the operator and local traffic authority a signed copy of the order by email for their records.

Step 5

The operator confirms the requirements of the order have been delivered.

- 5.15 The operator should confirm to us that the protection arrangements are in place at the level crossing and its approaches as specified in its order.
- 5.16 This should be done by email within a month of commissioning and ideally include photographs and/or videos of the new arrangements at the level crossing and its approaches.

Post-commissioning inspection

- 5.17 We will not routinely inspect the level crossing after a new order is made. It is the operator's and local traffic authority's responsibility to ensure that the level crossing complies with its order.
- 5.18 We will carry out inspections on a sampling basis to check the protection arrangements are in place after a new order has been made. We will also carry out an inspection if we consider it necessary, for example if the level crossing has any particular issues.
- 5.19 It is a criminal offence under section 33(1)(c) of the Health and Safety at Work etc. Act 1974 to fail to comply with the provisions of a level crossing order as required by Regulation 3 of the Level Crossings Regulations 1997.



6. Ongoing delivery of the level crossing order, maintenance and monitoring

Ongoing delivery of the order, maintenance and monitoring of the level crossing.

- 6.1 There is a continuing obligation on the operator and local traffic authority to maintain the protective equipment specified in the order and to operate that equipment in accordance with the order.
- 6.2 The mechanisms by which this requirement is delivered are likely to be developed at a local level, so that the needs of the operator, local traffic authority and any other stakeholders are met. We support the development of a joint plan to provide a structured and long-term approach to collaboration and management of the level crossing and its approaches. There needs to be a review process incorporated into the joint plan to evaluate whether it is delivering as intended and to enable improvements to be identified and implemented.
- 6.3 The following are likely to require consideration:
- How asset information is exchanged and managed.
 - How the visibility of traffic signs and road markings both within and beyond the stop lines will be maintained (including, but not limited to, clear visibility, such as ensuring vegetation does not obscure sight lines) by agreeing who has responsibility for what and how access will be obtained.
 - How proposed changes, whether temporary or permanent, that affect the level crossing are communicated and agreed. For example, the introduction of diversionary routes or the installation of new traffic signs, road markings or other road equipment.
 - How the local traffic authority consults the operator before they place or require traffic signs or road equipment, other than those specified in the order, in the vicinity of the level crossing. This is to make sure that any potential impact on the level crossing is considered.

- How any proposed local planning and land-use changes are communicated.
- What information on the road and rail risks will be shared, and how it will be reviewed and acted upon, for example:
 - Records of incidents at or near the level crossing.
 - Data from the periodic monitoring of road traffic (including pedestrians) volumes and characteristics at or near the level crossing.





© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk

