



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

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	RSD Internal Guidance	RIG-2014-06	
New level crossings How ORR applies its policy of no new crossings unless there are exceptional circumstances			
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Summary	Guidance on how ORR applies its policy of “no new crossings unless there are exceptional circumstances”, including how cases for new crossings should be managed within ORR to ensure a consistent approach.		
Original consultation	Members of the Level Crossings Co-ordinating Group (LCCG) - John Gillespie, David Keay, Michelle Travers, Tracy Phillips, Ian Maxwell and Simon Smith – plus Giles Buckenham (legal).		
Subsequent consultation (reviews only)	2017 review: LCCG - J Gillespie, J Hamilton, D Keay, A Meredith, D Russell, M Travers, S Smith, S Turner, plus M Jones (policy) and T Cole (legal). 2018 review: LCCG - Michelle Travers, Martin Jones, Steve Turner, Adam Meredith, Simon Smith, Chris Warburton, plus Ian Skinner, Anna O'Connor, Tom Wake.		

Introduction

1. This RIG provides guidance on how ORR applies its “no new level crossings unless there are exceptional circumstances” policy and sets out a process that ORR inspectors should follow if they receive information concerning a proposed new crossing of any type. It covers mainline and heritage networks but does not apply to new crossings on tramways as such intersections are governed by road traffic signals.
2. New level crossings introduce particular risks to the railway; ORR, therefore, considers that there should generally be enhanced scrutiny of how proposers are complying with their health and safety duties (for example, around the suitable and sufficient assessment of risk). There may be cases where a proposer will have other steps to take before developing a level crossing, such as the amendment of a safety authorisation involving the necessary scrutiny and decisions from ORR, or safety verification. This aspect is not dealt with in this RIG.
3. Early engagement with proposers of new level crossings is important so that we can encourage alternatives to crossings to be fully explored and delivered wherever this is reasonably practicable. In cases where the proposal is part of an extension to a railway or completely new infrastructure it is likely that an Order under the Transport and Works Act 1992 (TWA) will be required. ORR will normally submit an opinion on the proposal as part of that TWA Order process. Earlier informal engagement enables us to work with the proposer and give our opinion and any further advice to inform the proposer’s consideration of a TWA submission. This RIG explains the process for such an opinion to be given efficiently and transparently via a new crossing panel.
4. In cases where there is no TWA process we, nonetheless, consider that it is important for the proposer to engage with ORR early on so that ORR may provide advice to help inform the proposer’s decision on whether a level crossing is the only reasonably practicable option. Where this happens, we will decide whether ORR should give an opinion on the proposal.
5. In summary **inspectors** should:
 - refrain from giving any opinion relating to proposed crossings so that the case may be considered by the panel;
 - familiarise themselves with ORR’s policy and approach to new or reinstated crossings as set out in this document;
 - alert the Head (Principal Inspector) of the Level Crossings Projects Team for Network Rail cases or the Head of the Heritage Team for heritage cases at the earliest opportunity to any discussions regarding new or reinstated level crossings and pass on all relevant information,

including that concerning the right-of-way (for the railway) and whether any TWA procedures have commenced;

- pass on to the panel any relevant previous knowledge of the crossing site or the proposer of the crossing.

ORR's panel will:

- convene to review and consider cases as needed;
- assess the information provided by the proposer (the requirements for which are set out in this document) and where appropriate give an opinion on whether the case is exceptional;
- consult anybody else the panel considers appropriate to help in informing any opinion or advice;
- work to the timescales set out in this document and give any opinion or advice to the proposer as soon as possible.

Background

6. ORR's policy is that new level crossings should only be considered appropriate in exceptional circumstances. This was set out in a 2007 level crossings policy statement (now removed from the ORR website) and more recently in [Chapter 4 of ORR's Strategy for Regulation of Health and Safety Risks](#)
7. This remains ORR's starting position when giving an opinion on a new level crossing because level crossings introduce risk to the railway and to those using the crossing, and we support the closure of level crossings as part of our drive to reduce risk on the railway. This is consistent with the principle of eliminating risk as the priority in a hierarchy of risk control.
8. Network Rail also has a general "no new crossings" policy. The heritage sector is encouraged to publish details of crossings on its network and any planned closures. The Highways Agency has a policy of no new accesses on the strategic road network other than in exceptional circumstances where it can be sufficiently demonstrated that there is a net benefit to the network.
9. Precedents for ORR supporting new crossings have been very limited to date but it is recognised that inspectors are increasingly facing enquiries or requests in this area and that a consistent interpretation of ORR's policy and a common approach to managing such cases is required. This RIG therefore sets out a process involving a panel to manage such cases – **see paragraphs 25 onwards.**

What is a "new" crossing?

10. New level crossings could be permanent or temporary, public or private, and include:

- a proposed crossing at a location where a crossing has not previously existed;
- the reinstatement of a crossing that is in place but has not been in active use for a period of time (which may or may not require authorisation to reinstate it); or
- the instigation of rights to a crossing - enshrined in the enabling Act for that railway - but that have not previously been instigated so no prior crossing exists.

The process set out in this RIG will apply to all of these examples.

11. A legal right-of-way to have a crossing must exist (for the railway operator). In some cases such rights-of-way/access may be enshrined in very old legislation, for example by virtue of:
 - the original enabling Act for the railway (often a Private Act);
 - an Order made under the Light Railways Act 1896;
 - Transfer Orders obtained from British Railways Board that transfer the relevant powers for crossings originally contained in the enabling Act for the railway;
 - in some rare cases, a right granted on the conveyance of land to the original railway company.
12. Such Orders may refer to rights to crossings at specified locations but may not include any covenants preventing additional crossings. Such statutory rights-of-way for the railway over the public highways cannot be extinguished merely through non-use for any length of time; they can only be extinguished by being repealed.
13. However, such a right does not necessarily provide an entitlement for a railway operator to *construct* or *operate* over a crossing and they may need to seek an Order under the TWA to obtain the necessary authorisations (including the transfer of relevant rights, powers or obligations to them, which are contained in an existing Act). Applications for TWA Orders must follow set procedures and these are explored in more detail at **paragraphs 15 to 20**.
14. The position on rights over and surrounding a crossing is not always straightforward and it is not ORR's role to make a determination on such rights. It is up to the proposer to satisfy themselves that they have the legal right to create a level crossing and to establish whether a TWA Order may be necessary. It is highly likely that the proposer will need to seek their own legal advice on such matters. As a starting point any proposer of a new crossing who makes contact with ORR should be asked to provide information on:
 - whether a piece of legislation provides the necessary right-of-way for the railway;

- whether the TWA procedures will be used; and
- whether the TWA procedures have been instigated and if so what stage they are at.

Transport and Works Act 1992 (TWA)

15. The TWA introduced an Order-making procedure for certain types of works including railways. A non-exhaustive list is provided in the Act and includes:
 - the construction, alteration, repair, maintenance, demolition and removal of railways, tramways, trolley vehicle systems and other transport systems.
16. The TWA Order-making procedure is generally used where an infrastructure project requires compulsory purchase powers or the creation, extinguishment or transfer of rights over land. Some projects would therefore be subject to it – for example a brand new piece of infrastructure or the re-opening of a disused branch line (including any new or pre-existing level crossings on it) - but for others it may not apply.
17. The procedure for applying for a TWA Order is set out in a variety of rules that provide for appropriate publicity to be given to the proposals and set out a timetable for the making of objections to the proposals. If objections are received, the Secretary of State, Welsh Assembly or Scottish Ministers consider the objections by means of a public local enquiry, a hearing or an exchange of written representations.
18. ORR is a consultee for any proposals to amend existing powers in relation to railways, as will be the relevant highway authority. The Department for Transport's guidance on the TWA Order-making process encourages the promoters of any railway schemes that may fall under the TWA to consult statutory consultees, including ORR, **before** applying for a TWA Order.
19. For projects covered by the TWA, ORR has the opportunity to put forward any concerns at an early stage and to *potentially* object to a TWA Order. A TWA Order would not obviate the need for suitable and sufficient protection arrangements for any level crossing (which may then be prescribed subsequently by way of a Level Crossing Order as made under the Level Crossings Act 1983).
20. In England, TWA Orders are made by the Secretary of State for Transport. As a result of devolution, applications for Orders relating to works solely in Wales are made to, and determined by, the National Assembly for Wales and Scotland now has its own TWA Order procedure under the Transport and Works (Scotland) Act 2007.
21. Further guidance on the TWA procedures can be found at [Transport and Works Act Orders A Brief Guide](#). The rules can be found at [The Transport and Works \(Applications and Objections Procedure\) \(England and Wales\) Rules 2006](#) (for England and Wales) and at [Guide to Transport and Works \(Scotland\) Act 2007](#) for Scotland.

Exceptional circumstances

22. ORR's policy is that new level crossings should only be considered appropriate in exceptional circumstances. There would only be exceptional circumstances where there is no reasonably practicable alternative to a crossing on the level at the location in question. We expect proposers to demonstrate that full consideration has been given to finding an alternative solution to avoid the need for a level crossing and that alternative options such as bridges, underpasses or road diversions have been fully explored and costed. We would consider an alternative to be reasonably practicable unless it can be demonstrated that the cost is grossly disproportionate when weighed against the safety benefits. To demonstrate this it will be necessary to develop suitable and sufficient risk assessments for each of the alternatives under consideration.
23. The consideration of reasonable practicability should take account of the nature of the railway operation and the particular circumstances of the location. For example, the speed and/or frequency of trains and level of crossing use, should be taken into account as these factors will be relevant to the weighing of cost against safety benefits. In all situations, we expect the design of any new level crossing to be one that reduces risks so far as is reasonably practicable and incorporates modern safety features. We also expect proposers to consider the whole-life costs of each option, i.e. the cost of operation and maintenance as well as initial design and installation, when weighing up the costs and benefits of each option.
24. ORR recognises that railway extension projects can bring significant benefits to local economies and communities and that the creation of a level crossing may be a key feature of such an extension. In some cases, the proposal to create a level crossing may need to be considered in the wider context of societal benefits that a new or extended railway might offer. However, it is not ORR's role to consider these wider economic and social benefits and this will usually be considered by the Secretary of State as part of a TWA Inquiry to which ORR will be a consultee.

Managing enquiries and proposals for new crossings

25. We expect that anybody who is proposing a new level crossing contacts ORR as soon as possible to discuss the matter - it is never too early to start talking, even in principle.
26. It is likely that any initial contact will be via a local inspector but the case should then be referred to the Head of the Level Crossings Projects Team (for Network Rail cases) or the Head of Heritage Team as soon as possible. Inspectors can advise on the process for new cases but should refrain from giving any opinion, advice or making decisions on the

particulars (including any merits) of any proposed crossing so that a consistent approach can be taken within ORR's Railway Safety Directorate (RSD) and across the mainline and heritage networks.

27. The Head of the Level Crossings Projects Team and where appropriate the Head of the Heritage Team will decide whether an ORR panel should be convened. The panel will be chaired by the Head of the Level Crossings Project Team (and will include the Head of the Heritage Team in heritage railway cases), a representative from the Legal Team and the relevant local inspector for each case, plus anyone else as appropriate to the case. This panel will come together to review and consider all cases as needed.
28. The information the panel needs **from the proposer** (inspectors themselves are not expected to gather or collate this information) includes:
 - the location of the proposed crossing including photographs and diagrams;
 - the reason for the crossing;
 - information about the proposer of the scheme for a new crossing, the proposed crossing operator and, if applicable, the proposed authorised user(s) of the crossing;
 - proposed timescales for (re)introducing any new crossing;
 - confirmation that there is a right-of-way and whether any relevant authorisations/Orders need to be sought through the TWA procedures;
 - information about the road and rail traffic at any proposed crossing including the results of censuses;
 - details of any liaison that has already taken place with other departments and agencies such as DfT, Highways Agency or local highway authorities, planning authorities and other local bodies and stakeholders plus a summary of the responses/views received;
 - a description of what other options have been considered such as bridges and underpasses and clear explanations setting out why these options are not reasonably practicable alternatives to a level crossing, backed up by evidence from risk assessments;
 - details on the features of the proposed crossing and what protective arrangements would be in place were it to go ahead based on a suitable and sufficient risk assessment (noting that it may be subject to a Level Crossing Order application further down the line);
 - any other information that the panel considers might be relevant or helpful.
29. The panel may choose to visit the site of any proposed crossing as part of its considerations. If the proposal relates to a user-worked crossing, the panel will endeavour to speak to the (proposed) authorised user(s) as part of this visit.

Process and timescales

30. Once convened the panel will liaise promptly on receipt of a new case and determine if it should give an opinion on whether the introduction of a new level crossing would be appropriate, applying the “new level crossings only in exceptional circumstances” policy. It will give this opinion if there is to be a TWA process or if there are other reasons why ORR should state its view in the particular case. The panel will only come together to consider the case on full receipt of all of the information set out at paragraph 28 above. The panel will either seek missing information directly or will ask the local inspector to obtain it from the applicant. Papers will be collated and filed by the Level Crossings Projects Team.
31. Once all the information is available, the panel will aim to convene within 28 days and will give any opinion as soon as possible afterwards. This may be subject to further legal advice or consideration and, if it forms part of a formal consultation under the TWA, will be communicated to DfT’s TWA Unit (or equivalent in Scotland and Wales).
32. ORR may also consult anybody else that it deems appropriate to help in informing its opinion and this may extend timescales.
33. A record will be kept of the case, supporting information and the outcome and stored in a Box file found at [New Level Crossing Cases](#)
34. The opinion of the panel will be imparted in writing by the Chair of the panel and circulated to members of RSD’s Directorate Management Team for onward cascade. In cases where we are giving an opinion as part of a TWA Order process we will publish the letter on our website.
35. Where ORR is subsequently consulted by DfT as part of a TWA process, ORR will review any previous opinion it has given to consider whether any further developments have an impact on that opinion before providing its consultation response to DfT.
36. If a proposer has any comments or concerns about the process these should be addressed in writing to Ian Prosser, Director, Railway Safety.

Other cases

37. It is possible that cases of new crossings will come to light where ORR has no previous knowledge of their existence. This may particularly apply to “accommodation” crossings where, for convenience, landowners are granted access to their land via a level crossing – permanently or temporarily (for example during a harvest period) - where it is divided by a railway.

38. We encourage prior engagement with ORR in all cases but, where such crossings are discovered, inspectors should request and review the risk assessment and consider our approach in line with the Enforcement Management Model.

Devolution issues

39. This policy applies to crossings in England, Scotland and Wales. In Scotland, references to the Transport and Works Act 1992 should be read as the Transport and Works (Scotland) Act 2007. We are not aware of any other relevant devolution matters.

Reviewing the policy and process

40. We will review the process as necessary in light of experience