# EXPLANATORY MEMORANDUM TO

# THE PRIVATE CROSSINGS (SIGNS AND BARRIERS) REGULATIONS 2023

# 2023 No. 1112

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The purpose of this instrument is to prescribe new signs that can be placed near private level crossings on railways or tramways in Great Britain, which are currently prescribed in the Private Crossings (Signs and Barriers) Regulations 1996 (S.I. 1996/1786) ("the 1996 Regulations"). The 1996 Regulations were made under section 52 of the Transport and Works Act 1992. This instrument revokes and replaces the 1996 Regulations to prescribe new signs in Schedule 1 that can be placed at private level crossings in Great Britain.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 An explanatory memorandum on this subject was first laid on 23 October 2023. An amended explanatory memorandum was subsequently laid to add additional information in response to questions raised by the House of Lords Secondary Legislation Scrutiny Committee concerning implementation of the new signage, associated costs linked to this programme, and future work planned to develop Welsh private level crossing signage. The additional information in response to questions relating to the roll out of the new signs can be found from paragraphs 7.4 to 7.6. There is additional information related to the costs of the roll out of new signs at paragraph 12.3 and additional information about the work relating to Welsh language signs at paragraph 10.3. Finally, changes have also been made to paragraph 14 about the proposals for monitoring the impact of the new Regulations.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

## 5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 Section 52(1) of the Transport and Works Act 1992 ("the Act") enables the Secretary of State to prescribe crossing signs and barriers in regulations that may be placed by the operator of a railway or tramway where the railway or tramway is crossed in any place by a private road or private path in Great Britain. The Act only covers crossings where the railway or tramway bisects a private road or private path. These crossings are referred to as "private level crossings". The 1996 Regulations were introduced to prescribe the type of signs and barriers that could be placed on or near private level crossings to establish consistency in the design, size and type of signs that are put in place, so that users had reliable instructions on how to use these private level crossings safely. These Regulations prescribe new signs and provide for the safe use of new technology which is used in gates and barriers. Signs that may be used at level crossings on public roads, footpaths, bridleways etc, are set out in the Traffic Signs Regulations and General Directions 2016 (S.I. 2016/362)[1].

## 7. Policy background

***What is being done and why?***

7.1 In the UK, there are approximately 3,000 private level crossings on the mainline railway, heritage railway and tram networks. Many of these private level crossings are "user worked" crossings where users must open and close the gates and cross the railway in a safe fashion. This contrasts with the situation on public roads, where there are lights and barriers or gates which are linked to the signalling systems, and which operate automatically to ensure users do not cross the railway or tramway when a train or tram is approaching. At a user worked crossing, the signs need to be clear and easily understood both by people who are familiar with that crossing and also, increasingly, by people who are unfamiliar with the crossing and who may not be aware of how to use it safely. In recent years, the number of users at private level crossings has increased and their profile has diversified owing, in part, to an increase in home deliveries, demographic changes and changes in land use. For example, the conversion of farmland to industrial units on sites served by private roads have increased the number and diversity of users, not all of whom are familiar with how to use private level crossings safely. These changes have increased users' reliance on clear and easily understandable signs to enable them to use these crossings safely. Overall, private level crossings convey an acute risk to pedestrians and motorists on the railways. Between 2012 and 2022, there have been on average nearly two fatalities and 137 near misses at private level crossings each year, which highlights the need for a greater focus on safety at these sites.

7.2 The purpose of this instrument is to implement a safety recommendation made to the Department for Transport by the Rail Accident Investigation Branch ("RAIB") following their investigation into a collision between a parcel delivery van and a passenger train at Frognal Farm private (user worked) crossing near Teynham in Kent on 23 October 2017 (Report 12/2018)[2]. The RAIB report identified that the design of

[1] The Traffic Signs Regulations and General Directions 2016 (legislation.gov.uk)

[2] Report 12/2018: Collision at Frognal Farm User Worked Crossing - GOV.UK (www.gov.uk). A hard copy of this report, and other RAIB reports, can be viewed in the library of the RAIB at The Wharf, Stores Road, Derby, UK, DE21 4BA.

the signs placed at the private level crossing, which had been prescribed in the 1996 Regulations, was confusing. As a result, the RAIB made a recommendation to the Department for Transport, Network Rail and the Office of Rail and Road ("ORR") to improve the signs at private level crossings to take into account the need to convey information and instructions clearly and unambiguously to diverse users. This is similar to a previous recommendation made by the RAIB published in their report investigating the collision between a train and tractor at Oakwood Farm private (user worked) crossing near Knaresborough in Yorkshire on 14 May 2015 (Report 07/2016)[3].

7.3 Since the recommendations were made, the Department for Transport, Network Rail and ORR have undertaken an extensive programme of work to review the signs in the 1996 Regulations and develop a new suite of signs that are more practical and clearer for different types of user, particularly those who are unfamiliar with private level crossings or who use them infrequently. The new signs have been developed in consultation with human factors experts, who advised on how people react to signs, what designs would best catch the attention of users, and how to ensure that users read and react appropriately to the instructions. After being tested at locations not on the live network, those new signs were authorised by the Secretary of State to be trialled at a small number of live Network Rail private level crossings on the mainline network. Once the designs were settled, the Department conducted two public consultations, firstly in April 2022 and again in April 2023 following feedback from consultees. The second consultation asked for comments on an amended suite of signs which reflected comments received in the earlier consultation.

7.4 We expect operators to roll out the new signs by the end of 2029 as this aligns with the end of the well-established regulatory control period (called Control Period 7 between 2024 and 2029) which Network Rail has been funded by the Department to deliver. Heritage railways and tram operators responsible for private level crossings will be expected to fund the roll out of new signs themselves. This is consistent with normal industry obligations for duty holders to be responsible for implementing their statutory safety duties in accordance with the law. The Department will ask for updates on numbers of crossings that have the new signs at regular intervals between now and 2029.

7.5 Whilst there is no specific penalty for non-compliance, due to the structure of the primary legislation that provides the power to make the 1996 Regulations (the Transport and Works Act 1992), there is a strong incentive for operators to place the new signs as part of demonstrating compliance with their safety obligations and supporting the rail industry's health and safety strategy[4]. In the extreme case that signs were not placed, or incorrect signs put up, the Secretary of State could issue a Direction under section 52 of the Transport and Works Act 1992 requiring the operator to place the new signs. It should be noted that the older signs placed under the 1996 Regulations will remain legal if they were in situ on the day the new Regulations come into force on 18 November 2023– and would only need to be updated when they are replaced. It is also worth noting that the signs themselves are not mandatory at private level crossings. If a risk assessment says that a sign is

[3] Report 07/2016: Collision between train and tractor at Oakwood Farm User Worked Crossing - GOV.UK (www.gov.uk)

[4] The rail industry's health and safety strategy can be found here: Leading Health and Safety on Britain's Railway (LHSBR) (rssb.co.uk)

needed, then only signs specified in the Regulations can be used. Alternatively, it is possible to ask the Secretary of State to authorise a different sign for use at a particular crossing if none of the prescribed signs are appropriate because of the characteristics of that crossing. If the risk assessment indicates no signs are needed, then no signs need to be placed.

7.6 The Transport and Works Act 1992 is written in such a way that a landowner could put up signs on their own land close to the private crossing, although this would sensibly be done in discussion with Network Rail which is responsible for the vast majority of private level crossings and has the expertise to advise on the placement of signs - and those signs would need to be either those in the Private Crossings Signs and Barriers Regulations 2023, or authorised by the Secretary of State. The legal obligation concerning use of the correct sign would remain with the crossing operator.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

7.7 The 1996 Regulations allowed the placing of signs and barriers if they met the specifications set out in the Schedules to those Regulations. The Act also allows operators to apply to the Secretary of State for an authorisation to place a sign or barrier of a different design to that stipulated in the Regulations.

*Why is it being changed?*

7.8 The design of the signs is being updated to make them more modern, more accessible and more readily understood by a diverse range of users. This is in response to RAIB reports which have identified the signs prescribed in the 1996 Regulations as confusing and outdated and as having been a contributory factor in accidents at crossings.

*What will it now do?*

7.9 This instrument revokes and replaces the 1996 Regulations. It specifies new and improved signs for use at private level crossings. This instrument also maintains the approach in the 1996 Regulations to prescribe requirements for gates and barriers. The authorisation process set out in the Act still applies to signs and barriers of different designs or characteristics to those set out in the new Regulations.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 There are no plans to consolidate this legislation.

## 10. Consultation outcome

10.1 The Department undertook two extensive consultations on the revised sign designs, where comments and questions were asked of a broad range of stakeholders on the efficacy of the signs. Stakeholders consulted included operators of private level crossings (Network Rail and heritage railway operators), landowners and other users of those crossings. The first consultation was held between April and June 2022 and

the second between April and May 2023. The April 2022 consultation stated the Government's intention to revoke the 1996 Regulations and replace them with a new set of regulations, which would prescribe a new set of signs. The consultation also proposed an approach to introducing the signs contained in the new Regulations, to ensure these are in place as soon as reasonably practicable, with operators expected to target the riskiest private level crossings first.

10.2 Many of the comments received to the first consultation were on the signs themselves. The Department spent 9 months working with Rail Safety and Standards Board (an independent body which develops standards and guidance for Great Britain's rail network), Network Rail and ORR to revise the signs to take on board those comments to help ensure their effectiveness in supporting rail safety. These changes reduced the total number of proposed signs and also made the signs clearer and easier to understand, as well as keeping a number of signs from the 1996 Regulations that stakeholders considered still remained useful. The revised proposals were then subject to a second consultation in April and May 2023. The outcome of both consultations was broadly positive, with the revised sign designs in the second consultation being welcomed by crossing operators and users alike. The consultation response was published on 20 October 2023.

10.3 During the first consultation we received several comments that Welsh language signs should also be prescribed for use at private level crossings in Wales. The signs are currently prescribed in English only as this is a reserved policy area. After considering those consultation responses, we have agreed to make a further set of Regulations to prescribe signs in Welsh for private level crossings in Wales. To avoid delaying the safety benefits from rolling out new signs, it has been decided that the Regulations containing the English language signs should be laid now. The decision has been taken to delay the introduction of signs in the Welsh language in Wales as more work is needed to ensure that the translation works to convey the instructions clearly and consistently, so that Welsh speakers will understand the instructions properly. Subject to this work being completed, the objective is for the Regulations prescribing Welsh language signs to be laid by the end of 2024. Individual signs will be monolingual. The signs as designed are quite large already and adding another language to them could make them difficult to decipher for users as well as being difficult to physically place. Instead, the standardised English messages will be translated into Welsh for display on separate signs where appropriate. Ultimately, it will give operators the freedom to make that decision based on the risk assessment, which will consider local factors that ensure users remain safe.

## 11. Guidance

11.1 The Department proposes to publish guidance relating to the signs in the Regulations, including information about which signs may be used at particular types of private level crossing. In addition, the Department will publish guidance on the process for getting signs authorised by the Secretary of State where no appropriate sign is prescribed by regulations. The Department will publish these as soon as is reasonably practicable.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the impacts will be de-minimis and below the £5m per annum threshold for a full impact assessment. However, the majority of the costs will be borne by public sector entities, specifically Network Rail, who are responsible for approximately 75% of private level crossings on the network (2,240 out of 3,000). We calculate that the cost to Network Rail will be between £835,333 and £1,670,666 per year until 2029, which is reflected in its funding settlement (of over £44bn) for 2024-2029. The costs to heritage operators, private entities which tend to be small or micro businesses due to the low number of employees (they have larger numbers of volunteers) and manage around 760 private level crossings, are expected to be between £253,000 and £506,000 per year to 2029. An adjustment period until 2029 has been factored in to introduce signs, enabling heritage railways to plan for the cost. We will keep in close contact with them to identify any barriers to implementation.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small business, in this case heritage railway operators, as the costs to these have been calculated as minimal.

## 14. Monitoring & review

14.1 The approach to the monitoring of this legislation is by considering the frequency of RAIB reports into accidents and near misses at these types of crossing which will show whether the new designs have been successful in their stated aim. Also, the data from the rail industry's safety reporting tool (SMIS) will be used to see if frequency of near misses and accidents has reduced. We will also consider feedback from crossing operators who may place the signs and from the strategic forum where these issues are discussed with a broader group of rail stakeholders, the Level Crossing Strategy Group, chaired by Network Rail.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State Huw Merriman MP has made the following statement.

> "I do not consider that a review clause is necessary in this case, for a number of reasons. Firstly, the burden on business is below £5m a year. Secondly, the effectiveness of the new signs will be considered on an ongoing basis by level crossing operators as part of their obligation to manage safety risks at level crossings. RAIB has already made recommendations about amendments to the signs and will do so again if it considers they were a contributory factor in an accident. Thirdly, there is a necessity to ensure some level of continuity in these signs to ensure that Network Rail and the heritage operators do not have to replace signs regularly. We have considered how long to give crossing operators to put up these new signs, replacing the older signs, with Network Rail prioritising the highest risk crossings first. We do not expect this changeover of signs on the mainline network to be complete until at least 2029, so a review of the signs after 5 years is not considered appropriate, as the signs will only just be rolled out at the majority of crossings."

## 15. Contact

15.1 Mark Norton at the Department for Transport Telephone: 07881 845407 or email: mark.norton@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jeremy Hotchkiss, Deputy Director for Rail Industry Standards and Capability, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Huw Merriman MP, Minister of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.