



Transport and Works Act 1992

1992 CHAPTER 42

PART II

SAFETY OF RAILWAYS ETC

CHAPTER II

OTHER SAFETY PROVISIONS

General

41 Approval of works, plant and equipment

- (1) For the purpose of securing the safe operation of railways, tramways, trolley vehicle systems and prescribed systems of guided transport, the Secretary of State may make regulations requiring that his approval be obtained before—
 - (a) new works, plant or equipment are first brought into use, or
 - (b) works, plant or equipment are first brought into use after alterations have been made to them.
- (2) Regulations under this section—
 - (a) shall prescribe the cases in which approval is required and the procedure for obtaining it;
 - (b) may include provision as to the time when works, plant or equipment are to be treated as first brought into use, including provision for disregarding periods of testing and other periods of use before sufficient information is available for a decision to be made on an application for approval;
 - (c) may include provision prohibiting the giving of false information to the Secretary of State.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—

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- (a) to dispense (conditionally or unconditionally) with compliance with regulations that would otherwise apply, or
 - (b) to require compliance with regulations that would not otherwise apply, either in the case of any particular works, plant, equipment or alterations, or in the case of works, plant, equipment or alterations of such descriptions as he may determine.
- (4) Regulations under this section may provide that any person who without reasonable cause contravenes any specified provision of the regulations, or does so in specified circumstances, shall be guilty of an offence under this section.
- (5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—
“equipment” includes vehicles;
“prescribed systems of guided transport” means systems using a mode of guided transport prescribed by regulations under this section.
- (8) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

42 Inspectors

- (1) The functions of inspectors appointed under section 3 of the Regulation of Railways Act 1871 shall extend not only to railways (as defined by section 2 of that Act) but also to other railways and tramways, to trolley vehicle systems and to any system using a mode of guided transport prescribed by regulations under section 41 above; and in any enactment relating to those functions—
- (a) references to railways or matters relating to railways shall be construed accordingly, and
 - (b) references to a company working a railway shall have effect as references to an operator of a railway, tramway, trolley vehicle system or system using a mode of guided transport prescribed by such regulations.
- (2) In section 3 of the Regulation of Railways Act 1871, the proviso (which prohibits an inspector from interfering in the affairs of a company) shall cease to have effect.

43 Accidents etc

- (1) The Secretary of State may make regulations requiring the reporting to him of—
- (a) accidents involving death or personal injury, and
 - (b) circumstances involving a danger of death or personal injury,
- which occur in the operation of railways, tramways, trolley vehicle systems and systems using a mode of guided transport prescribed by the regulations.

- (2) Regulations under this section shall prescribe the cases in which reports are required, the persons required to make them, the time and manner in which they are to be made, and the particulars to be included in them.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
 - (a) to dispense with compliance with any provision of the regulations that would otherwise apply, or
 - (b) to require compliance with any provision that would not otherwise apply, in any case where he considers it appropriate to do so.
- (4) A person who, without reasonable excuse, fails to make a report as required by regulations under this section shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

44 Accidents etc: consequential amendments

- (1) Section 6 of the Regulation of Railways Act 1871 (which is superseded by section 43 above) shall cease to have effect.
- (2) In section 7 of that Act (inquiries into accidents etc)—
 - (a) for the words “this Act” (in the words preceding the paragraphs) there shall be substituted the words “regulations under section 43 of the Transport and Works Act 1992”;
 - (b) after paragraph (4) there shall be added—

“In this section any reference to an accident includes a reference to circumstances involving a danger of death or personal injury.”
- (3) In section 8 of that Act (appointment of assessor to coroner) for the words “of this Act” there shall be substituted the words “of regulations under section 43 of the Transport and Works Act 1992”.

45 Directions limiting speeds and loads

- (1) The Secretary of State may give a direction under this section to any person carrying on an undertaking which includes the provision of transport services on a railway, tramway or system using any other mode of guided transport.
- (2) A direction under this section may impose—
 - (a) maximum speeds at which vehicles in use on the system may travel, and
 - (b) maximum weights that may be transmitted to the rails (or other structures which support vehicles in use on the system) by any one pair of wheels, or by such other parts of the vehicles as may be specified in the direction.
- (3) Directions under this section may make different provision for different vehicles, different parts of the system, or otherwise for different circumstances.

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- (4) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.
- (5) If a direction under this section is contravened in the course of the provision of transport services by the person to whom the direction was given, that person shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

46 Directions requiring insurance

- (1) The Secretary of State may give a direction under this section to an operator of a railway, tramway, trolley vehicle system or system using any other mode of guided transport.
- (2) A direction under this section may require the person to whom it is given to ensure that there are at all times in force such policies of insurance against liability in respect of death or personal injury as comply with the requirements of the direction.
- (3) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.
- (4) If a direction under this section is contravened, the person to whom the direction was given shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Rail crossings

47 Stopping up and diversion of crossings

- (1) Schedule 2 to this Act (which amends the Highways Act 1980 so as to provide for the stopping up or diversion of footpaths and bridleways crossing railways and tramways) shall have effect.
- (2) Where a public right of way over a footpath or bridleway where it crosses a railway or tramway is extinguished by an order under sections 118 to 119A of the Highways Act 1980, any obligation (however imposed) to maintain the crossing for the benefit of the public shall cease to have effect.

48 Footpaths and bridleways over railways

- (1) This section applies where—
 - (a) a public right of way over a footpath or bridleway crosses a railway or tramway otherwise than by a tunnel or bridge,
 - (b) the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and
 - (c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.

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- (2) The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.
- (3) An order under this section may include particulars as to the tunnel or bridge which is to be provided or as to the improvements which are to be made.
- (4) The Secretary of State shall not make an order under this section after the end of the period of two years beginning with the day on which the closure or diversion application is made, and not less than two months before making an order he shall give written notice of his proposal to make the order to the operator and to each local authority in whose area the crossing (or any proposed new crossing) is situated.
- (5) A notice given under subsection (4) above must be accompanied by a draft of the proposed order under this section; and any order eventually made may include modifications of the draft.
- (6) An operator shall not be regarded as in breach of a duty imposed by an order under this section if he has used his best endeavours to comply with the order.
- (7) Where an operator is required by an order under this section to provide or improve a bridge or tunnel, but is unable to do so because he does not have the powers or rights (including rights over land) needed for the purpose, he shall not be taken to have used his best endeavours to comply with the order unless he has used his best endeavours to obtain those powers or rights (whether by means of an order under section 1 above or otherwise).
- (8) In this section—
 - “bridleway” has the same meaning as in the Highways Act 1980;
 - “closure or diversion application” means—
 - (a) an application made under section 6 above, or
 - (b) a request made in accordance with section 120(3A)(b) of the Highways Act 1980,for an order by virtue of which a public right of way would be extinguished or diverted;
 - “footpath” has the same meaning as in the Highways Act 1980;
 - “local authority” means a county council, a district council, a London borough council, the Common Council of the City of London, a parish or community council and a parish meeting of a parish not having a separate parish council;
 - “operator”, in relation to a railway or tramway, means any person carrying on an undertaking which includes maintaining the permanent way.

49 Securing of gates and barriers

- (1) Section 75 of the Railways Clauses Consolidation Act 1845 and section 68 of the Railways Clauses Consolidation (Scotland) Act 1845 (which make it an offence for any person to fail to fasten gates) shall be amended as follows.
- (2) After the word “gate” there shall be inserted the words “or to lower any barrier”.

- (3) For the words “not exceeding” onwards there shall be substituted the words “not exceeding level 3 on the standard scale.”

50 Orders under Transport Act 1968

—Section 124 of the Transport Act 1968 (which gives the Secretary of State power to impose obligations in respect of level crossings), in its application in England and Wales, shall cease to have effect.

51 Amendment of Level Crossings Act 1983.

—In section 1 of the Level Crossings Act 1983 (safety arrangements at level crossings) in subsection (11), for the definition of “operator” there shall be substituted—

“ “operator”, in relation to a crossing, means any person carrying on an undertaking which includes maintaining the permanent way;”.

Signs and barriers at private crossings

52 Placing of signs and barriers

- (1) Subject to any directions under subsection (2) below, the operator of a railway or tramway which is crossed in any place by a private road or path may cause or permit crossing signs or barriers of a character—
- (a) prescribed in regulations made by the Secretary of State, or
 - (b) otherwise authorised by him,
- to be placed on or near the road or path near the crossing.
- (2) The Secretary of State may give directions to the operator of a railway or tramway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing.
- (3) For the purposes of this section—
- (a) the size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and
 - (b) the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it,
- shall be regarded as part of the sign’s character.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under this section may make different provision for different cases.

53 Rights to enter land

- (1) The operator of a railway or tramway shall not enter or do anything on any land for the purpose of exercising his powers under section 52(1) above except—
- (a) with the consent of every owner of the land, or

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- (b) in accordance with an authorisation given by the Secretary of State under subsection (4) below.
- (2) Where the operator of a railway or tramway proposes to enter or do anything on any land for the purpose of exercising his powers under section 52(1) above but has not obtained the consent of every owner of the land to his proposals (after making reasonable efforts to do so), he shall serve on every owner whose consent he has not obtained a notice giving details of the proposals and stating that—
- (a) he is referring the proposals to the Secretary of State for a decision as to whether or not they should be carried out, and
 - (b) in making that decision, the Secretary of State will consider any written representations made to him by the owner within the period of forty-two days beginning with the date of the notice.
- (3) Where subsection (2) above applies, the operator shall—
- (a) submit a copy of every notice served by him under that subsection to the Secretary of State, and
 - (b) provide the Secretary of State with such further information about the proposals as he may require.
- (4) Where proposals are referred to the Secretary of State under this section, he shall after the expiry of the period of forty-two days beginning with the date of the latest notice served under subsection (2) above and after considering any representations made to him in accordance with that subsection—
- (a) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Secretary of State may specify), or
 - (b) direct him not to carry out the proposals,
- and shall serve notice of his decision on every owner served with a notice under subsection (2) above.
- (5) Any authorisation under subsection (4) above may be given subject to such conditions as the Secretary of State may specify, including conditions that compensation shall be payable by the operator.
- (6) Any dispute as to the amount of any compensation payable by virtue of subsection (5) above shall be referred to and determined by the Lands Tribunal or, in relation to land in Scotland, the Lands Tribunal for Scotland.
- (7) The operator of a railway or tramway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of—
- (a) complying with any directions given under section 52(2) above, or
 - (b) maintaining a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway.
- (8) The Secretary of State may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising his powers under section 54(1) below.
- (9) In this section “owner”—
- (a) in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month;

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- (b) in relation to any land in Scotland, means a person who, under the Land Clauses Acts, would be entitled to sell and convey land to the promoters of an undertaking and includes also a person who is or would be entitled to receive the rent of the land under a tenancy, other than a tenancy for a month or any period less than a month.

54 Default powers of Secretary of State

- (1) If the operator of a railway or tramway fails—
- (a) to comply with a direction given under section 52(2) above, or
 - (b) to maintain a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway,
- the Secretary of State may himself carry out the work required by the direction or necessary to maintain the crossing sign or barrier.
- (2) Any expenses incurred by the Secretary of State in doing so shall be recoverable by him from the operator.
- (3) A direction given under section 52(2) above—
- (a) if relating to a private road or path in England and Wales, shall be enforceable on the application of the Secretary of State by an order of mandamus;
 - (b) if relating to a private road or path in Scotland, shall be enforceable by order of the Court of Session on an application by the Lord Advocate under section 45 of the Court of Session Act 1988.

55 Offence of failing to comply with sign

- (1) A person who fails to comply with any requirement, restriction or prohibition conveyed by a crossing sign lawfully placed on or near a private road or path near a place where it crosses a railway or tramway shall be guilty of an offence.
- (2) In any proceedings for an offence under this section, a crossing sign on or near a private road or path near a place where it crosses a railway or tramway shall be taken to have been lawfully placed there unless the contrary is proved.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

56 Interpretation of sections 52 to 55

- (1) In sections 52 to 55 above (and this section)—
- “barrier” includes gate;
- “cross” means cross otherwise than by tunnel or bridge;
- “crossing sign”, in relation to a private road or path and any place where it crosses a railway or tramway, means—
- (a) any object or device (whether fixed or portable), or
 - (b) any line or mark on the road or path,
- for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing;
- “fail” includes refuse;
- “lawfully placed” means placed in accordance with sections 52 to 54 above;

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“maintain” includes repair and replace;
“place” includes erect and (in relation to a sign) display;
“private road or path” means any length of road or path to which the public does not have access.

- (2) In the case of a railway or tramway which has more than one operator, the powers conferred by sections 52 to 54 above shall only be exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way.