

Status:  Law In Force

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Transport and Works Act 1992 c. 42

Part II SAFETY OF RAILWAYS ETC

Chapter II OTHER SAFETY PROVISIONS

Rail crossings

This version in force from: **July 11, 2006** to **present**

  (version 4 of 4)  

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

- [England](#)
- [Scotland](#)
- [Wales](#)

England

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48.— Footpaths, bridleways and restricted byways over railways.

(1) This section applies where—

- a public right of way over a footpath, bridleway or restricted byway crosses a railway or tramway otherwise than by a tunnel or bridge,
- the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and
- 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.

(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, a county 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.

"*restricted byway*" has the same meaning as in [Part 2](#) of the Countryside and Rights of Way Act 2000.

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Scotland

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.

(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, [a county borough council,]¹ 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.

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Wales

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48.— Footpaths, bridleways and restricted byways over railways.

(1) This section applies where—

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(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.

(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, a county 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.
"*restricted byway*" has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000.
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Notes

1.

Words inserted within definition by Local Government (Wales) Act 1994 c. 19 [Sch.7\(I\) para.34\(3\)](#) (April 1, 1996)

2.

Amended by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006/1177 [Sch.1\(I\) para.1](#) (July 11, 2006: July 2, 2006 in relation to England; July 11, 2006 otherwise)

3.

Amended by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006/1177 [Sch.1\(I\) para.1](#) (July 2, 2006 in relation to England; July 11, 2006 otherwise)