
STATUTORY INSTRUMENTS

1997 No. 487

HEALTH AND SAFETY
TRANSPORT

The Level Crossings Regulations 1997

<i>Made</i>	- - - -	<i>25th February 1997</i>
<i>Laid before Parliament</i>		<i>6th March 1997</i>
<i>Coming into force</i>		
<i>for the purposes of</i>		
<i>all regulations except</i>		
<i>paragraph (3) of</i>		
<i>regulation 2</i>		<i>1st April 1997</i>
<i>for the purpose of</i>		
<i>paragraph (3) of</i>		
<i>regulation 2</i>		<i>1st October 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 15(1), (2), (3)(a) and (6)(a) and (b) and section 82(3)(a) of the Health and Safety at Work etc. Act 1974⁽¹⁾ and of all other powers enabling him in that behalf, and for the purpose of giving effect without modifications to the proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the said Act of 1974 after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Level Crossings Regulations 1997 and shall come into force on 1st April 1997, except paragraph (3) of regulation 2 which shall come into force on 1st October 1997.

Repeals and savings

- 2.—(1) The following are hereby repealed—
- (a) section 66 of the British Transport Commission Act 1957⁽²⁾; and

(1) 1974 c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71), paragraphs 6 and 16 respectively; the general purposes of Part I referred to in section 15(1) were extended by section 117 of the Railways Act 1993 (c. 43).

(2) 1957 c. xxxiii.

(b) section 124 of the Transport Act 1968⁽³⁾(insofar as it applies to Scotland).

(2) The repeal of the sections mentioned in paragraph (1) above shall not affect the validity of any order made under those sections and in force immediately before 1st April 1997.

(3) Section 40 of the British Transport Commission Act 1954⁽⁴⁾is hereby repealed.

Compliance with orders under the Level Crossings Act 1983

3.—(1) While an order is in force under section 1 of the Level Crossings Act 1983⁽⁵⁾ in relation to a level crossing, whether or not that order was made before the coming into force of this regulation, the operator of the crossing shall ensure that the order is complied with.

(2) In any proceedings for an offence for a contravention of paragraph (1) above it shall be a defence for the person charged to prove—

(a) that the contravention was due to the act or default of another person not being one of his employees (hereinafter called “the other person”); and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the contravention.

(3) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (2) above unless, within a period ending seven clear days—

(a) before the hearing to determine mode of trial, where the proceedings are in England or Wales; or

(b) before the trial, where the proceedings are in Scotland,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(4) Where a contravention of paragraph (1) of this regulation by any person is due to the act or default of some other person, that other person shall be guilty of the offence which would, but for any defence under this regulation available to the first-mentioned person, be constituted by the act or default.

(5) In this regulation “level crossing” and “operator” have the same meanings as in section 1 of the Level Crossings Act 1983.

(6) In consequence of the preceding provisions of this regulation, section 1(3)(a) of the Level Crossings Act 1983 (operator’s duty to ensure order is complied with) shall cease to have effect.

Miscellaneous amendments to the Level Crossings Act 1983

4.—(1) Section 1 of the Level Crossings Act 1983 shall be amended in accordance with the following provisions of this regulation.

(2) After subsection (1) there shall be inserted the following subsection—

“(1A) Subsection (1) above applies whether or not the crossing is in use when the order is made; and if it is not in use when the order is made the order shall be made so as to come into force when it is in use.”.

(3) After subsection (4) there shall be added the following subsection—

(3) 1968 c. 73; section 124, in its application to England and Wales, was repealed by section 50 and 68(1) of, and Schedule 4 to, the Transport and Works Act 1992 (c. 42) and regulation 3 of S.I.1996/1609 provides for the saving of existing orders made under section 124.

(4) 1954 c. lv.

(5) 1983 c. 16; the definition of “operator” in section 1(11) was substituted by section 51 of the Transport and Works Act 1992 (c. 42).

“(4A) Nothing in subsection (3)(b) above affects any provision made by or under Part I of the Health and Safety at Work etc. Act 1974.”.

(4) For subsection (6) there shall be substituted the following subsections—

“(6) The Secretary of State may make an order under this section in respect of a level crossing on being requested to do so by the operator of the crossing or without any such request, but he shall not make such an order without any such request unless he has sent to the operator and to each local authority in whose area the level crossing is situated a copy of a draft of the order he proposes to make and a notice specifying the period (not being less than two months) within which the operator or local authority may make representations to him in respect of his proposal to make the order.

(6A) Where the Health and Safety Executive gives written notice to an operator of a crossing that in its opinion a request should be made to the Secretary of State to make an order under this section in respect of that crossing and the notice states the reasons for that opinion, the operator shall be under a duty to make such a request.”.

(5) For subsection (7) there shall be substituted the following subsection—

“(7) Where the operator of a crossing requests the Secretary of State to make an order under this section, the request shall be accompanied by a draft of the order which the operator is requesting the Secretary of State to make.”.

(6) For subsection (9) there shall be substituted the following subsection—

“(9) The Secretary of State shall consider any representations made to him pursuant to subsection (6) or (8) above if they have been made within the period specified in the notice referred to in the subsection concerned and may then, if he decides to make the order, make it in accordance with the draft sent to persons pursuant to the subsection concerned or with such modifications as he thinks fit.”.

(7) After subsection (10) there shall be added the following subsections—

“(10A) Any order made under section 124 of the Transport Act 1968 or section 66 of the British Transport Commission Act 1957 and in force immediately before 1st April 1997, including any requirements or conditions laid down under the order, shall have effect as if it had been made under this section.

(10B) In performing his functions under this Act the Secretary of State shall take account of any advice given to him with respect thereto by or on behalf of the Health and Safety Commission.”.

(8) In subsection (11) for the definition of “protective equipment” there shall be substituted the following definition—

““protective equipment” includes lights, traffic signs, manual, mechanical, automatic, electrical, telephonic or television equipment or other devices;”.

Signed by authority of the Secretary of State for Transport

25th February 1997

John Watts
Minister of State,
Department of Transport

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make provision with regard to the provision, maintenance and operation of level crossings.

2. Regulation 2 repeals section 40 of the British Transport Commission Act 1954, section 66 of the British Transport Commission Act 1957 and section 124 of the Transport Act 1968. It also makes a saving for orders which were made under the 1957 and 1968 Acts and in force immediately before 1st April 1997.

3. Regulation 3 makes it an offence for an operator of a level crossing, in relation to which an order has been made under section 1 of the Level Crossing Act 1983, not to comply with that order. It provides a defence for an operator who has taken all reasonable precautions and exercised all due diligence.

4. Regulation 4 makes amendments to section 1 of the Level Crossings Act 1983. These provide, amongst other things—

- (a) that the Secretary of State may make a level crossing order under section 1 of the Act with or without a request from the operator;
- (b) that the Health and Safety Executive may give written notice to an operator that in its opinion such a request should be made to the Secretary of State, in which case, the operator will be under a duty to make the request;
- (c) that any order made under section 66 of the British Transport Commission Act 1957 or section 124 of the Transport Act 1968 and in force immediately before 1st April 1997 is to have effect as if it were an order under section 1 of the Level Crossings Act 1983;
- (d) that in performing his functions under the Act, the Secretary of State is to take account of the advice of the Health and Safety Commission.