

Oliver Stewart
Senior Executive, RAIB Relationship and
Recommendation Handling

Telephone: 020 7282 3864

E-mail: oliver.stewart@orr.gsi.gov.uk



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Ms Carolyn Griffiths
Chief Inspector of Rail Accidents
Cullen House
Berkshire Copse Rd
Aldershot
Hampshire GU11 2HP

Dear Carolyn,

RAIB Report: Road vehicle incursion and subsequent collision with a train at Stowmarket Road, 30 November 2011

I write to provide an update¹ on the action taken in respect of recommendation 5 addressed to ORR in the above report, published on 21 November 2012.

The annex to this letter provides details of the action taken. The status of this recommendation is now 'Implemented'.

The new RVI agreement clarifies ORR's role as enforcing authority in situations where there is a road vehicle incursion risk and provides ORR with the certainty and confidence to take action where it feels this is appropriate where in the past it may have felt open to challenge had it taken such an approach.

We will publish this response on the ORR website on 22 May 2015.

Yours sincerely,

Oliver Stewart

¹ In accordance with Regulation 12(2)(b) of the Railways (Accident Investigation and Reporting) Regulations 2005

Recommendation 5

The purpose of this recommendation is to clarify which body has regulatory and enforcement responsibility concerning highway authorities' implementation of measures to reduce road vehicle incursion risk. Any changes to the existing arrangements will need to be reflected in amendments to the Memorandum of Understanding and will take into account relevant findings in the final report of the Law Commissions on level crossings and any subsequent changes to legislation.

The Office of Rail Regulation and the Health and Safety Executive should jointly review their current Memorandum of Understanding and amend it as necessary to define clearly the responsibilities of each party in relation to enforcing actions to mitigate the risk arising from road vehicle incursions onto the railway. The revised Memorandum of Understanding should take into account the findings of the Law Commissions on level crossings, when published, and include:

- a clear definition of the circumstances under which each party takes responsibility for enforcement; and
- a mechanism for resolving disputes over enforcement responsibility.

The Health and Safety Executive and the Office of Rail Regulation should jointly define a time-bound programme for the development and implementation of the review and consider actions that should be taken in the interim period if an amendment to current legislation is required to achieve the desired outcome (paragraph 142d).

Brief Summary on what was previously reported to RAIB

1. On 4 November 2013 ORR reported that ORR needed to work with DfT to decide how best to implement the Law Commission work in general and it was difficult to estimate which of the specific recommendations would be taken forward, how this would be done and to what timetable. Those requiring amendments to primary legislation, which this would, are unlikely to be progressed in this Parliament as there is no time. This position would not change until 2015/16. In the meantime ORR was continuing to explore with HSE, other potential ways of securing the clarity the RAIB recommendation is intended to promote.
2. On 4 April 2014 ORR confirmed with DfT, that it had discussed possible legislative changes aimed at introducing an enforcement flexibility provision whereby ORR and HSE could agree who would enforce in a given situation where there was uncertainty. ORR also confirmed that it had engaged with HSE on amending the MoU with them, but that it did not envisage that the intent of this recommendation can be addressed through a revision to the MoU.

Update

3. ORR and HSE have now entered into an agency agreement to clarify the enforcement responsibilities in respect of road vehicle incursion risk. The agreement confirms ORR's role as the enforcing authority in circumstances where there is a road vehicle incursion risk to the railway from a road. It provides ORR with the certainty and confidence to take action where it feels this is appropriate where in the past it may have felt open to challenge had it taken such an approach. HSE remains the enforcing authority for road vehicle incursion risk from adjacent premises where they are the enforcing authority, such as a factory or farm.
4. ORR and HSE have set out their responsibilities and working arrangements under the agency agreement in a revised MoU which was signed on 6 May 2015.

ORR decision

Status: Implemented.