



## Revising the Railway Safety Regulations

### Introduction

The CLA is a membership organisation which represents rural land and business owners. The CLA represent 33,000 individual owners of private property in the countryside, from large to small, many of whom farm and own or manage many different kinds of rural business of all kinds. Between them they own and manage about half of the rural land in England and Wales.

Our members are all rural landowners and therefore most railway lines will pass through the rural areas between the cities. These railway lines often sever or form boundaries to our members land. These fences form an essential function of preventing trespass by humans onto the line, but also provide a barrier against farm livestock. These are integral to the safety of both the network and those that manage land adjacent. It is for these reasons that the CLA has an interest in this consultation

### CLA Response

Question 1: Railway Safety (Misc Provisions) Regulations 1997 – Regulation 3

Whilst the CLA is broadly in favour of removing unnecessary regulation, we do not support the removal or weakening of the provisions set out in Regulation 3, nor do we see it as unnecessary regulation. It is our view that this duty cannot be fully replaced by the HSWA 1974.

#### Regulation 3 reads:

**3. (1)** *So far as is reasonably practicable, a person in control of any infrastructure of a transport system to which this regulation applies shall ensure, where and to the extent necessary for safety, that unauthorised access to that infrastructure is prevented.*

**(2)** *In paragraph (1) “access” means access by any person not at work on the transport system or by any animal.....*

This gives a very clear guide that the railway operator is responsible for the fencing of the track against access by persons or animals – in most cases this will be reasonably practicable and the operator will have to provide the fencing.

Regulation 3 is important as it relates to trespass by animals specifically. Any large animal (sheep, cattle or deer) can do considerable damage or harm and could potentially derail trains and therefore it is important that this regulation is retained.

## HSWA 1974 reads

*3 General duties of employers and self-employed to persons other than their employees.*

*(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.....*

*(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.*

This would appear to be a much lesser threshold than Regulation 3. This section does not refer to Rail Safety at all, but just a general duty to protect employees (3.1) and also others.

This does not convey a presumption of need to fence a railway, but to reduce the risk to health or safety, nor does it convey a duty to fence against trespass by animals.

In additions the measures with Regulation 3 would have been reviewed in 1997 which is after the HSWA and therefore at that time, one can assume that were considered necessary and things are no different today.

## ROGS read

3.5 Furthermore, in the General Duties set out in Part 3 of ROGS, regulation 19 states that ‘A transport operator shall—

*(a) make a suitable and sufficient assessment of the risks to the safety of any persons for the purpose of identifying the measures he needs to take to ensure safe operation of the transport system in question insofar as this is affected by his operation; and*

*(b) implement the measures referred to in sub-paragraph (a).’*

Whilst the ROGS do refer to the safe operation of the transport system, these are qualified by the need to carry out a suitable and sufficient assessment. Again there is not duty to undertake fencing.

## Practical Experience

Fairly regularly the CLA receives complaints from members who have contacted Network Rail to complain of inadequate fencing – whether it is in a poor state of repair, insufficient needs for the agriculture, or erected poorly. The issue in all these cases is the time it takes Network Rail to resolve the issue, often several months. In some cases budgetary constraints are used as a reason, leaving the landowner unable to graze his land for months on end, or having to erect his own temporary fencing.



## **Conclusion**

The CLA therefore concludes that relying on the HSWA coupled with the ROGS would be an insufficient replacement to Regulation 3. It takes a duty to fence against trespass by persons and animals to the requirement just to assess risk.

Given the problems that many of our members have with trackside fencing maintenance the CLA does not believe that it is appropriate for there to be any lesser control of Network Rails fencing responsibility. Removal Regulation 3 would be a retrograde step and could only result in a less safe railway and make the management of land adjacent to the railway far more difficult

---

**For further information please contact:**

Andrew Shirley MRICS  
Chief Surveyor

**[www.cla.org.uk](http://www.cla.org.uk)**

CLA reference (for internal use only):

---