

Guidance on Agreed Process for s.118A/119A Level Crossing Order Applications

1. Background

- 1.1. On 29 March 2019, a [Memorandum of Understanding \(MoU\)](#) was entered into which aimed to improve working practices for Public Rights of Way (PRoW) level crossings on the rail network in England and Wales. The MoU is between:
 - Network Rail Infrastructure Limited (Network Rail);
 - the Association of Directors of Environment, Economy, Planning & Transport - Rights of Way Managers' Group (ADEPT); and
 - the Institute of Public Rights of Way and Access Management (IPROW).
- 1.2. The MoU set out the objectives and principles of working together and confirmed that agreed processes would follow in subsequent documents. This guidance note is one of those documents.
- 1.3. It gives clarity on the process and information Network Rail, ADEPT and IPROW expect will be followed and provided, for applications under the Highways Act 1980 (the 1980 Act), to close a level crossing and divert a PRoW away from crossing the railway at grade.
- 1.4. It is expected by the Department for Environment, Food and Rural Affairs and the Department for Transport that those preparing the applications at Network Rail, as well as those considering those applications at LHAs, will abide by the objectives and principles set out in the MoU and this guidance note.

2. Consistent approach, standards and timescales to process applications

- 2.1. The MoU already covers how Network Rail and Local Highway Authorities (LHAs) can best communicate with one another to discuss and progress proposals to amend the PRoW network. It is expected that where there are such proposals, which culminate in Network Rail requesting an order for level crossing closure be promoted under s.118A or s.119A of the 1980 Act, the process for engagement will be as set out in **Annex A**.
- 2.2. Network Rail, ADEPT and IPROW have established a standard scope of information required for an application to be properly considered. A checklist (as envisaged in section 4.1(b) of the MoU) has been jointly developed, based on best practice, and appears in **Annex B**.
- 2.3. It is the expectation of Network Rail, ADEPT and IPROW that the use of this process and checklist will drive higher standards in the quality of applications submitted and consistency in the process. LHAs are reminded that to efficiently progress an application, if information they require is not provided (or a local requirement is not set out in Annex B), they should request this as soon as possible, specifying with enough detail the additional information

needed (MoU, section 3.5). Network Rail should then confirm if the requested information can be provided, or if more detail is required to understand the request, and the estimated timescales to formally respond.

- 2.4. At the outset of the process, Network Rail and the LHA should discuss and agree a reasonable timescale, to progress each stage of the application process. Both parties should then use reasonable endeavours to work towards that indicative programme.

3. Escalation under s.120 of the Highways Act 1980

- 3.1. Section 4.6 of the MoU reserves the ability of Network Rail to escalate an application for an order to the Secretary of State for Environment, Food and Rural Affairs for determination under s.120(3A) of the 1980 Act if a LHA does not progress the application within 6 months. It should be remembered that such applications will be promoted on the basis of removing an assessed high safety risk to the public when using a level crossing.
- 3.2. Defra and DfT have produced [Guidance on S120 \(3\) and \(3A\) Highways Act 1980](#) (published on 19 August 2022) aimed at level crossing operators and local highways authorities, which outlines how the escalation route works and what will be required for an application to progress.
- 3.3. Network Rail, ADEPT and IPROW have agreed the process and checklist in this guidance note, with the aim of ensuring LHAs are in a better position to progress an application (under [the Rail Crossing Extinguishment and Diversion Orders Regulations 1993](#)), having available to them all the required information needed to make a determination. This should reduce the need to refer applications to the Secretary of State. If a referral is needed, the level of information given following this guidance should be sufficient to enable a determination to be made.

4. Miscellaneous

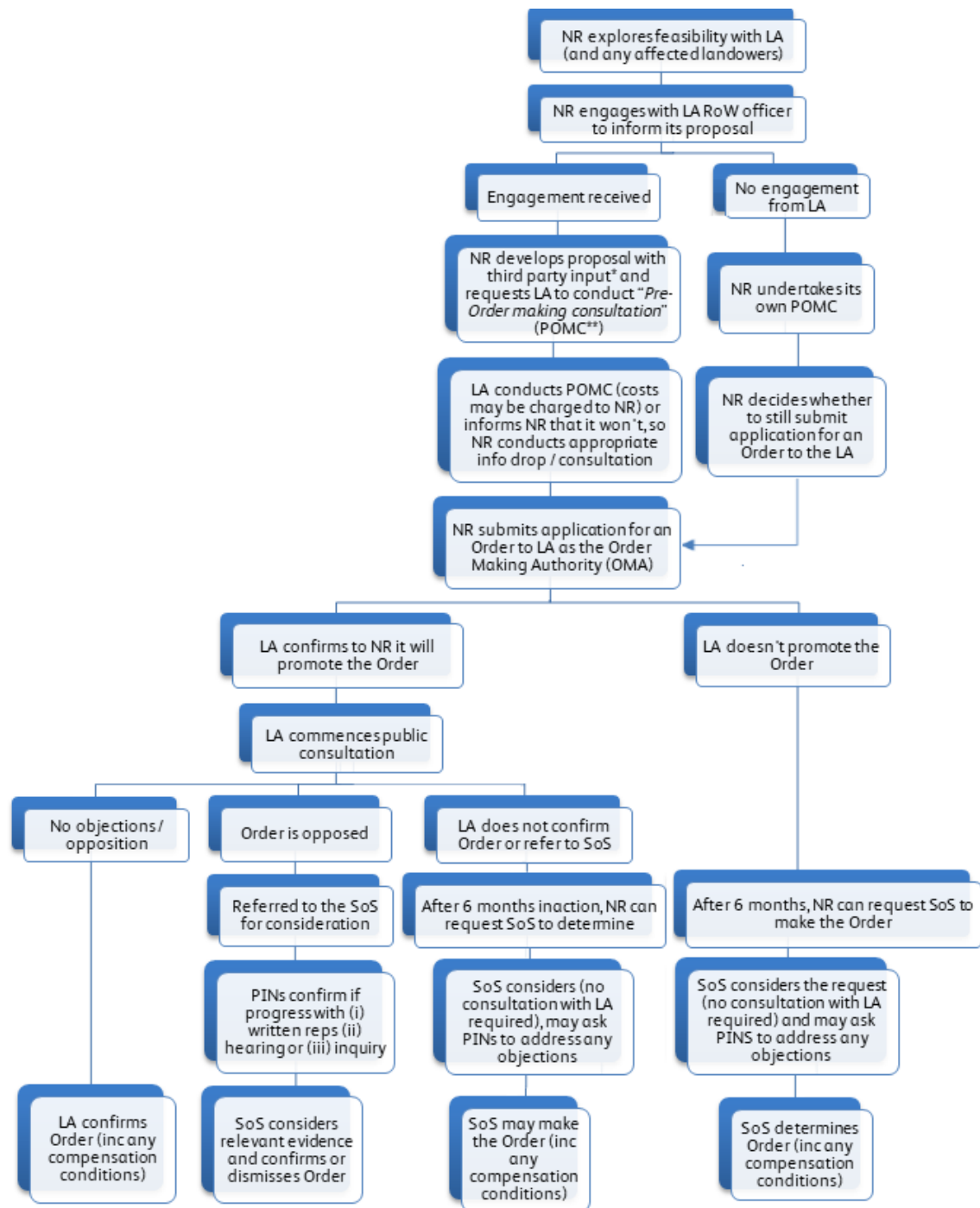
- 4.1. Any references in the MoU to Network Rail's project management tool, GRIP (Governance for Rail Investment Projects), should now be read as a reference to the PACE framework (Project Acceleration in a Controlled Environment) which is Network Rail's project delivery framework for enhancement projects.
- 4.2. This guidance note and its Annexes will be reviewed every 5 years, or such time agreed at any time between Network Rail, ADEPT and IPROW.
- 4.3. For any questions on the MoU or this guidance and its Annexes please contact the following:

ADEPT: secretariat@adeptnet.org.uk

IPROW: iprow@iprow.co.uk

Network Rail: LevelCrossings@networkrail.co.uk

Annex A: Process Flowchart for a s.118A/s.119A Application (the Highways Act 1980)



NR = Network Rail
 LA = Local Authority (ProW officer)
 Timescales set out are approximate

*includes obtaining formal views and consent of affected landowners

**POMC is with Parish or District Councils, user groups, landowners or business, affected utilities etc, to establish public perception towards the proposal and potential objections

Annex B: s.118A/119A Highways Act 1980 Application Requirements Checklist

This checklist arises from the joint working of Network Rail, ADEPT and IPROW under [their MoU agreed in 2019](#) on working practices for Public Rights of Way (PRoW) level crossings on the rail network in England and Wales. It is intended to clarify the scope of information required so that a local highway authority (LHA) has the details available to it to progress an application (under [the Rail Crossing Extinguishment and Diversion Orders Regulations 1993](#)). It also aims to drive consistency, in both approach and standards, for making and assessing these types of application.

It is expected by the Department for Environment, Food and Rural Affairs and the Department for Transport that those preparing the applications at Network Rail, as well as those considering those applications at the LHA, will abide by the objectives and principles set out in the MoU and the guidance note agreed by Network Rail, ADEPT and IPROW on the approach to level crossing closure applications. Whether the objectives and principles have been met or followed will be a consideration by the Department for Environment, Food and Rural Affairs when approaching applications escalated using the s.120 process [Escalating the closure or diversion of a level crossing applications under the Highways Act - GOV.UK](#).

Below are the details required in accordance with the regulations when Network Rail is requesting a LHA promote an Order under section 118A or 119A, as well as information that ADEPT and IPROW have identified as being useful to explain the context of, and considerations that have been investigated, for the application:

1. Fully completed application in accordance with [Schedule 1](#) of the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 or a like format, to include Written Statement of intent, confirming why the application is required (e.g. change in user demography, proposed line enhancement, proposed adjacent development, all importing unacceptable level of risk), the programme to progress the application (as agreed with the LHA) and a brief overview summary.
2. Order Map at a scale of not less than 1:2500, clearly showing:
 - areas of the path proposed to be stopped up,
 - area of new paths to be created or existing paths to be used as a diversionary route (119A only)
 - interconnecting paths in context of the general rights of way network, and
 - the anticipated route for all path users following closure (118A only).
 - The Proposed Order Map must correspond with the actual Order Map.
3. The most up to date version of the narrative risk assessment (NRA) (the form of risk assessment used by Network Rail for the railway environment) needs to be provided with the schedule 1 application, or another specific or updated risk assessment should be provided. This includes an assessment of the other safety measures that could be undertaken, how they would affect the risk to users of level crossings, and the cost to Network Rail of implementing such safety measures, to justify the perceived risk to public user of the crossing.
4. Making reference to the NRA, NR should describe and evidence in the application:
 - a. The risk level and why/how this has changed (e.g. following a serious incident or fatality, repeated acts of deliberate misuse, accidental human error, near misses reported, proposed line speed upgrade, etc.);

- b. Census details, breaking down into type of user including vulnerable or encumbered users, evidence of accidental human error or deliberate misuse in use of the crossing;
 - c. Safety measures previously undertaken, when and why, and why they are not suitable;
 - d. What other measures could have been considered, including feasibility for diversion by new or existing paths or highways, existing bridges/underpass, or feasibility for constructing new bridge, when and why they are not suitable. Cost alone should not be considered as a reason why they cannot be used;
 - e. Details should be explained in clear English, with technical terms described. It is recommended that emotive and undocumented statements are avoided.
5. Initial safety assessment of any proposed diversionary route or the alternative route for use by all path users followed by the provision of a Road Safety Audit (RSA) or confirmation Network Rail will request and fund the LHA to provide one if LHA deems an RSA is required.
6. Identification of the financial impact of the proposed diversion or alternative route, both in terms of creation and future maintenance, who it is envisaged will incur that financial liability, within managing public money guidance, regulatory and legal obligations; and any proposals by Network Rail on allocation of those impacts.
7. Confirmation of all owners and occupiers adjacent to the proposed area to be stopped up or diverted, indicated in the Order Map, including:
 - reference to whether they have an interest in the land and what that interest is (for example ownership, private rights, etc.),
 - whether or not consent is needed and if so, has it been granted, and
 - details of discussions held in relation to consent.
 - Within the 'supplementary information' provide full copies of all notification letters to parties affected by the proposals. A notification list or map, including areas of those initially consulted would help in this respect.
8. If an education facility for minors is affected by the proposal, confirmation of any letter of notification or safety talks given. Provide details of any responses received.
9. Details of all statutory undertakers' apparatus within or adjacent to the area of the proposed stopping up need to be confirmed and copies of any plans obtained confirming apparatus present and whether this is affected (Network Rail may need to meet the costs for relocation of apparatus, as this is a standard requirement for any Order).
10. Confirmation of any requirements the statutory undertakers may have and confirmation that Network Rail have secured (or are working to secure) these requirements, and that their consent has been obtained. Copies of all correspondence in relation to this.
11. Details are required in relation to the proposed specification of signs and barriers to be erected on closure and removal of a crossing. Confirmation is required that these will be erected on Network Rail land or, if on third party land, has the third party been consulted and consent given?
12. Details in relation to any objections received and all correspondence/ discussions which have been undertaken by Network Rail to date in relation to these.

13. All maps, plans and supplementary evidence referred to, must be listed and submitted with the application as supplementary evidence:

- Order Map,
- sign and barrier proposals,
- NRA (Network Rail's narrative risk assessment),
- Census Data (if separate from the NRA),
- Diversity & Inclusion Assessment (DIA) / Equality Act assessment (EqA)
- Details of any planning proposals, if planning consent is required,
- Coroners Regulation 28 Report, if a fatality has occurred,
- ORR recommendations,
- DfT TTRO details, copies of regulations or any best practice referenced.

Other useful references:

Order Application Forms:



S118A Rail Crossing
Extinguishment Order



S119A Rail Crossing
Diversion Order Appli

[s.118A of the Highways Act 1980](#)

[s.119A of the Highways Act 1980](#)

[s.120 of the Highways Act 1980](#)

[Defra Guidance Rights of Way Circular \(1/09\)](#)

[The Rail Crossing Extinguishment and Diversion Order Regulations 1993](#)