HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

2nd Report of Session 2023–24

Drawn to the special attention of the House:

Draft Wine (Revocation and Consequential Provision) Regulations 2023

Includes information paragraphs on:

Private Crossings (Signs and Barriers) Regulations 2023

Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023

Dangerous Dogs (Designated Types) (England and Wales) Order 2023

Childcare (Childminder Agencies) (Cancellation etc.) (Amendment) Regulations 2023

Ordered to be printed 14 November 2023 and published 16 November 2023

Published by the Authority of the House of Lords

HL Paper 7

Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 17 July 2023, are set out on the website but are, in summary:

To report on draft instruments and memoranda laid before Parliament under section 23(1) of the European Union (Withdrawal) Act 2018 and sections 11, 12 and 14 of the Retained EU Law (Revocation and Reform) Act 2023.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Lord De Mauley
Baroness Harris of Richmond
Lord Hunt of Wirral (Chair)
Lord Hutton of Furness
Baroness Lea of Lymm
Lord Powell of Bayswater
Baroness Randerson
Baroness Ritchie of Downpatrick
Lord Rowlands
Lord Russell of Liverpool
Lord Thomas of Cwmgiedd

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Chris Smith (Adviser), Jane White (Adviser) and Riona Millar (Committee Operations Officer).

Further Information

Further information about the Committee is available at https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/

The progress of statutory instruments can be followed at https://statutoryinstruments.parliament.uk/

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Second Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Wine (Revocation and Consequential Provision) Regulations 2023

Date laid: 25 October 2023

Parliamentary procedure: affirmative

These draft Regulations propose to revoke certain production and marketing standards in relation to wine and by-products of winemaking in England which are currently set out in retained EU law. The changes include allowing the blending of imported wines, the use of hybrid grape varieties and the production and sale of low alcoholpiquette which is made from the by-products of winemaking. We note that concerns were raised during consultation about the impact of some of the proposed changes on the quality of wine and consumer confidence. While the changes may deliver new opportunities for businesses and more choice for consumers as suggested by the Department for Environment, Food and Rural Affairs (Defra), ***it will be important that all products are labelled clearly so that consumers can make an informed choice of what they are buying.***

We also note that, as a result of this instrument, businesses in England will be operating under different rules from businesses in Scotland and Wales. Northern Ireland will remain subject to EU law. This raises questions about the operation of the UK's internal market. Defra plans to lay a further instrument to reform the legislation relating to wine more generally which it says will produce alignment between England and Wales, but not Scotland, as well as an instrument to support the ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). ***We regret that the Department did not refer to these future reform plans and to a lack of support for this instrument by the Scottish and Welsh Governments in the Explanatory Memorandum, and we remain deeply concerned about the lack of a uniform approach and level playing field across Great Britain.The House may wish to press the Minister on these issues.***

These draft Regulations are drawn to the special attention of the House on the ground that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.

1. These draft Regulations propose to revoke certain production and marketing standards in relation to wine and by-products of winemaking in England which are currently set out in retained EU law (REUL).

2. The Department for Environment, Food and Rural Affairs (Defra) states that the proposed reforms form part of the Government's Smarter Regulation Programme "which reviews and reforms regulation following EU exit with the objective of supporting economic growth and to reduce the cost of living". According to Defra, the proposed changes will "remove barriers, support innovation and simplify regulations to help support growth in our wine trade and production industry, giving them the freedom to meet new and evolving demands, while also maintaining the high standards that consumers have come to expect".

3. Amongst other changes, this instrument proposes to:

- Remove the requirement that wine must show the prefix 'importer' or 'imported by' before the business address. This would make the business address the address of the Food Business Operator (FBO) who is responsible for the food information on the bottle, aligning wine law with general food law.
- Allow wines with a Protected Designation of Origin (PDO) to be produced from any permitted grape variety or hybrid variety rather than just from the species *vitis vinifera*, as required under current REUL. Defra says that because hybrid grape varieties are more disease and climate resistant, the new rules will help to reduce pesticide use and achieve greater crop consistency in poor climatic years.
- Allow the production and sale of low-alcohol piquette which is made from the by-products of winemaking. According to Defra, this will give wine producers "scope to monetise what would otherwise be a waste product from the wine production process" and also respond to the growing popularity of reduced alcohol 'cooler' type products, allowing "vineyards and wineries scope to improve their profitability and offer consumers greater choice".
- Allow the blending (coupage) of wine that is imported into Great Britain (GB), which, according to Defra, will "give rise to better consistency, less waste and support more innovation in the industry".
- Remove historical requirements for foil caps and mushroom-shaped stoppers to be used in the marketing of certain sparkling wine. According to Defra, this will make the production of sparkling wine more competitive, make recycling of bottles easier and allow the use of innovative stoppers that retain fizz for longer.
- Remove EU rules concerning the reservation of certain bottle shapes for certain EU wines. The Department says that because GB has no protected bottle shapes, there is no need to retain this requirement.
- Removing certification arrangements which currently require wines that do not have a Geographical Indication (GI) to be certified in order to show a variety and vintage. This will allow producers to use vintage and variety on labels without having to go through the certification arrangements.

Concerns about quality and consumer confidence

4. According to Defra, "many" of the responses to the public consultation on the changes were "supportive". We note, however, that concerns were raised about the impact of some the changes on quality and consumer confidence. For example, while 27 respondents felt that allowing coupage of imported wine would have a positive impact, 45 respondents, including fine wine businesses and domestic producers, indicated that this would have a negative effect and expressed concern that labelling would not be clear enough to

indicate the origin of the grapes used.[1] Similarly, while 36 respondents welcomed allowing the use of hybrid grape varieties for PDO wines, other responses raised concerns around consumer confidence and indicated that there would be a risk from lower quality wine which could damage the reputation of domestic wines.

5. We asked the Department how consumer interests will be protected once hybrid grape varieties can be used and the blending of imported wines is allowed, and whether there will be clear labelling for consumers. Defra responded:

> "The coupage (blending) of wine is a practice that has been used for centuries to improve the quality of wine. Giving our importers and bottlers scope to blend wines will boost UK jobs and help them bring better and new products onto the market. The provenance (origin) of wines used in the blend will continue to appear on the label so the consumer will remain fully informed about what they are buying.
>
> The use of hybrid grape varieties is similarly not new. Their greater resilience to both disease and climate variability is well documented. Seyval Blanc is one such hybrid variety that is grown successfully in the UK and a sparkling wine using 100% Seyval Blanc won a gold medal in this year's WineGB Awards, which underlines their quality potential.
>
> The UK is one of the largest importers of wine and has one of the most globally competitive and dynamic wine markets. UK consumers benefit from a huge range of wines at all prices. This competition helps to ensure the consumer gets the wine they want at a price they can afford. Uncompetitive or poor-quality wines would be unlikely to survive in this market. […] [W]e do not believe that quality will suffer."

6. In relation to the use of hybrid grape varieties and the export of such wines, Defra explained that:

> "The changes to allow hybrid grape varieties will give producers scope to use a broader range of varieties and harness the benefits of greater natural disease and climate resistance that hybrid grape varieties possess. It will be up to them as to whether they see incorporating these varieties is consistent with their PDO specification, but like the EU which has introduced identical provisions, we want to give our producers the choice. We do not see that allowing hybrid varieties would impede exports of domestically produced wines."

7. While the proposed changes may deliver new opportunities for businesses and more choice for consumers in England, **it will be important that all products are labelled clearly, so that consumers can make an informed choice of what they are buying.**

Public health

8. We raised with the Department the potential public health impact of allowing the production and sale of piquette which will lead to cheaper, less alcoholic

1 Department for Environment, Food & Rural Affairs, 'Consultation on smarter regulation: wine reforms Summary and Government response' (13 October 2023): https://assets.publishing.service.gov.uk/media/652963c96972600014ccf812/REUL-wine-consultation-summary-of-responses.pdf [accessed 13 November 2023].

drinks being put on the market. We asked whether the risk of young people being introduced to alcohol consumption in this way had been considered. Defra told us that:

> "Piquette is produced from grape pomace. It is not a wine but can be fermented into a niche lower alcohol 'cooler' type product. Permitting its production will give producers scope to add more value from their grape harvest. While we recognise the potential here, we are also realistic, and do not believe that piquette is likely to become a mainstream drink anytime soon, we see that piquette would be another choice for consumers but not lead to an increase in consumption. Public health concerns have been considered for all changes and we have concluded that these proposals do not increase public health risks."

Impact on the UK internal market and plans for further reform

9. The proposed changes apply to England only, apart from those regarding the use of hybrid grape varieties which relate to the domestic intellectual property system for protecting GIs and are therefore reserved and apply to England, Wales and Scotland. EU law continues to apply in Northern Ireland.

10. We note that changing standards in England only may impact on the UK's internal market. For example, once producers in England can lawfully blend imported wines for sale in England, they will also be allowed, in line with the principles under the UK Internal Market Act 2020, to place these blended wines on the market in the whole of GB, while Welsh and Scottish producers will remain subject to retained EU standards and will therefore not be allowed to blend imported wines.

11. We asked the Department whether a co-ordinated approach would have been preferable to maintain uniformity of rules and a level playing field across GB. Defra responded:

> "Defra and the Welsh Government ran a joint consultation on wine reform, but the Welsh Government subsequently decided that it did not want the provisions of the Wine (Revocation and Consequential Provision) Regulations 2023 relating to devolved matters to apply to Wales or to make its own mirror Regulations. Similarly, Scottish Government decided that it did not want the provisions of the Wine (Revocation and Consequential Provision) Regulations 2023 on devolved matters to apply in Scotland. Defra officials will continue to regularly engage with all devolved Governments on wine reforms.
>
> Nevertheless, Defra is in the throes of working on another SI which would revoke and consolidate a lot of the legislation relating to wine and would carry forward the reforms made in the Wine (Revocation and Consequential Provision) Regulations 2023. The Welsh Government have indicated that it wants the consolidated provisions of that SI to apply to Wales. This would result in alignment between England and Wales, including the position on blending of wine. Subject to the views of the Welsh Government, we hope to be able to launch a joint consultation on the reform and consolidation SI by summer 2024.
>
> […] Scotland has noted that, unless necessary, e.g. to implement provisions in international trade agreements, its political view is that

> they generally do not wish to diverge from EU law. They will be making parallel regulations to some regulations that we are about to lay in Parliament for England (the Wine (Amendment) (England) Regulations 2024) which will change wine law to enable the UK to ratify the CPTPP [Comprehensive and Progressive Agreement for Trans-Pacific Partnership] agreement and will also make changes relating to wine-making practices which mirror recent changes made to EU law."

12. Asked for additional information about its plans for further reform, Defra explained that the current draft Regulations are the first of three instruments dealing with legislation on wine:

> "The second SI is the Wine (Amendment) (England) Regulations 2024. It is being made under the Agriculture Act 2020 and will implement the CPTPP provision relating to ice wine by amending Regulation 2019/33 and will also update wine-making practices in Regulation 2019/934. Scotland and Wales are making equivalent instruments to the same timescale. In relation to the English SI, we expect to lay that before Parliament shortly. It is intended that the instruments will come into force on 15th July 2024 to fit in with the coming into force of the UK's accession to CPTPP. The law in England, Scotland and Wales in relation to ice wine and the reform of wine-making practices will align."
>
> The third SI will use powers in the [Retained EU Law (Revocation and Reform) Act 2023] to revoke wine REUL and consolidate/replace it with one SI with the intention of making further reforms and making wine law more accessible. The exact coverage of that SI is being determined. It will contain devolved provisions in relation to England and Wales and will incorporate the reforms made to devolved legislation by the Wine (Revocation and Consequential Provision) Regulations 2023 […]. It is expected to come into force in early 2025. [UK Internal Market] will apply in relation to wines affected by the reforms moving from England and Wales to be marketed in Scotland."

13. We note that the Department plans to lay a further instrument to reform the legislation relating to wine more generally which will produce some alignment between England and Wales, but not Scotland. **We remain deeply concerned, however, about the lack of a uniform approach and level playing field across GB and about the way in which the Department has introduced and promoted this instrument: Defra failed to explain in the Explanatory Memorandum the opposition of both the Welsh and Scottish Governments to the proposed changes, it has made no assessment of the possible confusion these changes may cause within the GB internal wine market, it did not mention future proposals to establish an agreed GB legislative framework as part of the ratification of the CPTPP, and it has not offered any conclusive evidence to justify proceeding with this instrument at this time when it intends to make further changes and consolidate wine legislation in early 2025. The House may wish to press the Minister on these issues.**

INSTRUMENTS OF INTEREST

Private Crossings (Signs and Barriers) Regulations 2023 (SI 2023/1112)

14. These Regulations replace regulations from 1996 with updated requirements for the signs and barriers to be placed at the 3,000 private crossings on railways and tramways in Great Britain. The schedule shows a range of designs, from simple notices to ones involving lights and phones, which are deployed according to the risks assessed.

15. The need for revision was prompted by recommendations from the Rail Accident Investigation Branch, following incidents in 2015 and 2017. Although the development period has been longer than ideal, it has been used to consult with experts in how humans react to signs, to test the designs and in extensive public consultation. **We are pleased to note that the Department for Transport has given careful consideration to those responses** and, as a result, is working on legislation to prescribe equivalent signs in Welsh.

16. Although the Explanatory Memorandum (EM) is clear on the background to the legislation and the changes being made, it did not provide sufficient information on the scale of the problem, the implementation plan or on the cost of replacing the signs. Costs will apply to heritage railway charities as well as mainline operators. Supplementary information on all those points is included in Appendix 1 to this Report but, **to ensure that the information is available to all readers, we recommend that the EM is revised to include it.**

Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023 (SI 2023/1131)

17. Amongst other changes, this instrument amends retained EU law on plant health to:

- Introduce measures against the import of some plants to prevent certain harmful pests and diseases entering Great Britain (GB).
- Revise the import requirements for certain goods, including potato tubers, to ensure that they are aligned fully with the risk posed by these goods and to prevent harmful pests and diseases being introduced into GB.
- Incorporate existing trade easements, including derogations retained from the EU, which apply to certain wood from Canada and the United States, and which have recently expired or are due to expire soon.
- Change the regulatory status of some pests following a technical review of their current risk to GB biosecurity.
- Remove the requirement to give prior notification to the competent authority of the arrival in GB of certain fruit and vegetables from the

EU, Liechtenstein and Switzerland[2] as these goods are now categorised as low risk. According to the Department for Environment, Food and Rural Affairs (Defra), this will reduce the administrative burden and cost to traders.

18. We have received a submission from the Democratic Unionist Party which, amongst other issues, expresses concerns about the instrument's impact on Northern Ireland's place in the UK. While we do not wish to offer comment on these concerns, we have published the submission and Defra's response in full on our website. We have also published a submission by Mr Jim Allister MLA (Traditional Unionist Voice) which criticises the instrument.[3]

Dangerous Dogs (Designated Types) (England and Wales) Order 2023 (SI 2023/1164)

19. This instrument adds the type of dog known as the XL Bully to the list of types of dog that are banned under the Dangerous Dogs Act 1991 ("the 1991 Act"). The Department for Environment, Food and Rural Affairs (Defra) says that while estimating the XL Bully population is difficult, it believes that there are currently around 10,000 such dogs in England and Wales. According to Defra, the ban responds to a "concerning rise in serious attacks and fatalities, which appear to be driven by this type of dog".

20. The Department explains that once the ban comes into force on 31 December 2023 all owners of XL Bully dogs in England and Wales must keep their dogs on a lead and muzzled when in a public space. The ban will be enforced by the police. It will be an offence to breed from an XL Bully dog; sell, advertise, give away or rehome such a dog, or abandon it or allow it to stray. From 1 February 2024, it will also be a criminal offence to own an XL Bully dog unless the owner has an exemption certificate. Such certificates can only be granted if certain conditions are met which will be set out in a further instrument. A compensation scheme will be set up for the payment of £200 to owners of XL Bully dogs who arrange for them to be destroyed on or before 31 January 2024. Rescue and rehoming organisations will be able to claim a £100 contribution towards any euthanasia cost. Guidance has been published to help identify XL Bully dogs[4] and to help owners prepare for the ban.[5]

---

2 The Department for Environment, Food & Rural Affairs says that while Norway and Iceland are in the European Economic Area (EEA), the EEA agreement does not cover phytosanitary import controls, and neither countries are included in the EU-Swiss agreement on agriculture. The EU-Swiss agreement gives both Switzerland and Liechtenstein access to the EU single market based on alignment with the EU phytosanitary regime and means that both Switzerland and Liechtenstein can be treated as an EU member state for GB phytosanitary requirements. This does not apply to Norway or Iceland.

3 SLSC, 'Scrutiny evidence': https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/.

4 Department for Environment, Food & Rural Affairs, 'Guidance: Official definition of an XL Bully dog' (31 October 2023): https://www.gov.uk/government/publications/official-definition-of-an-xl-bully-dog [accessed 10 November 2023].

5 Department for Environment, Food & Rural Affairs, 'Guidance: Prepare for the ban on XL Bully dogs' (31 October 2023): https://www.gov.uk/guidance/prepare-for-the-ban-on-xl-bully-dogs [accessed 10 November 2023].

Childcare (Childminder Agencies) (Cancellation etc.) (Amendment) Regulations 2023 (SI 2023/1167)

21. Individuals providing childminding services are required to be registered, either directly with the Office for Standards in Education (Ofsted), or with a childminding agency that is itself registered with Ofsted. These Regulations allow childminders registered with an agency that voluntarily terminates its Ofsted registration to continue to provide services for the following six months. Currently, such childminders' registrations would lapse along with that of the agency, and they would have to stop providing services immediately.

22. The Regulations are in response to the country's largest agency, Rutland Early Years, announcing its closure as of 30 November 2023. The aim is to ensure continuity of provision and to help in delivering the free early years entitlement places required by legislation. The six-month period is intended to allow childminders to re-register with Ofsted or another agency. The Department for Education (DfE) told us that Ofsted will write to all childcare providers currently registered with Rutland to set out the position and providers' options, with answers to likely questions. This communication will make clear that if providers do not re-register by 1 June 2024, they will become unregistered. DfE said that Ofsted would also "contact providers regularly during the six month period, not only to remind them that they need to take action if they have not yet done so, but also to stay informed of providers' intentions".

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to annulment

SI 2023/1112	Private Crossings (Signs and Barriers) Regulations 2023
SI 2023/1117	Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2023
SI 2023/1131	Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023
SI 2023/1151	Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) (Amendment) Regulations 2023
SI 2023/1152	Armed Forces (Disposal of Property) Regulations 2023
SI 2023/1163	Care Quality Commission (Additional Functions) (Amendment) Regulations 2023
SI 2023/1164	Dangerous Dogs (Designated Types) (England and Wales) Order 2023
SI 2023/1167	Childcare (Childminder Agencies) (Cancellation etc.) (Amendment) Regulations 2023

APPENDIX 1: PRIVATE CROSSINGS (SIGNS AND BARRIERS) REGULATIONS 2023 (SI 2023/1112)

Supplementary information from the Department for Transport

Wales

Q1: When (more precisely) will the equivalent Welsh Regulations appear?

This work is in the planning stage, so an exact date is not yet known, but due to the amount of work that is needed to be undertaken on these (including consultation), it is envisaged that late 2024 is now realistic. Following the finalisation of the English language SI, we are now in a position to allocate resources to the Welsh Regs, which should facilitate progress and expect firm plans to be developed by the end of the year.

Q2: Why the delay? Is it just translation or do other factors apply?

The legislation for these signs is not devolved and we originally intended to continue to legislate for signs in English only. However, reflecting on the outcomes of the consultation, Ministers decided to give operators the option of using Welsh signs. To avoid delaying the safety benefits the rollout of the new signs would bring, Ministers decided to lay regulations setting the English language signs now, and then develop regulations setting Welsh signs to be laid at a later date. In terms of work required, the Welsh signs must be translated and we need to ensure that the translation works to convey the instructions clearly and consistently so that Welsh speakers will understand the instructions properly, meaning we will need to trial these in a live environment and evaluate their effectiveness, and then consult publicly.

Q3: Will such signs be dual language - since part of the reason for the changes are demographic changes - and tourists/lorry drivers may not speak Welsh?

Individual signs will be monolingual. The signs as designed are quite large already and adding another language to them could make them difficult to decipher for users as well as being difficult to physically place. Instead, the standardised English messages will be translated into Welsh for display on separate signs where appropriate. This will allow operators to undertake a risk assessment to gauge if the Welsh signs should be placed alongside the English language ones, or whether solely Welsh (or English) signs are placed. Ultimately, it will give operators the freedom to make that decision based on local factors that ensure users remain safe. However, there is still work to do to understand the possible impact of potentially having two signs in different languages, for example possible information overload that might need to be mitigated, and hence in part the 2024 date for the Welsh signs so this can be tested in a live environment.

Implementation

Q4: What is DfT's broad implementation plan since the EM says no five-year review is necessary as the changeover will take until at least 2029?

Consistent with the safety obligations on operators, they are responsible for taking the lead in delivering safety obligations like these. However, they are accountable to the independent safety regulator – the Office of Rail and Road (ORR) – which has a vigorous process of monitoring safety issues in rail. We have asked NR [National

Rail] and heritage operators to rollout by the end of 2029 as this coincides with the end of a well-established regulatory control period (called CP7 – 2024-29) and for which NR has been funded to deliver this on their estate by the Department. The Department will ask for updates on numbers of crossings updated at regular intervals between now and 2029. We have developed this timetable in consultation with the operators and ORR, and they are content that whilst challenging, this is a suitable target date for transition.

Q5: Section 52 of the Transport and Works Act 1992 allows the operator of a railway or tramway that is crossed by a private road or private path to cause or permit the placement near the crossing of crossing signs or barriers that are prescribed in regulations made by the Secretary of State: "or permit" suggests that the duty can be delegated to someone else - the landowner? Who would resolve any dispute between the two?

In practice Network Rail (or another rail operator e.g. heritage) tend to put the signs up rather than landowners. The Act and the Regulations are both aimed at "railway [or tramway] operators" and it is for them to undertake the necessary risk assessments and arrange for the signs to be placed. A landowner could put up signs on their own land though this would sensibly be done in discussion with NR and those signs would need to be either those in regulations or authorised by the Secretary of State. The legal obligation around the use of the correct sign would remain with the crossing operator. "Or permit" would cover a contractor or a landowner putting up signs on behalf of the operator. If there were a dispute between NR and a contractor, we'd expect that to be resolved according to that contract.

Q6: What is the penalty if they do not upgrade the sign? "Allows" suggests that compliance is optional.

Generally, we would expect ORR to encourage level crossing managers to adopt the new signage whenever the opportunity arises. Whilst there is no specific penalty for non-compliance due to the structure of the founding primary legislation (ie the TWA 1992), the industry takes safety and safety related issues extremely seriously and has an exceptionally high level of safety compliance. There is a strong incentive for operators to place the signs as they will not want to impact the strong safety record of the sector. In the extreme case that signs were not placed, or incorrect signs put up, the SoS could issue a Direction. It is worth being aware that the older 1996 signs will remain legal if they were in situ on the day the legislation comes into force, only needing to be updated when they are replaced. It is also worth noting that the signs themselves aren't mandatory at private level crossings. If a risk assessment says that a sign is needed, then only signs specified in the regulations can be used. If the risk assessment indicates none are needed, then none need to be placed.

Q7: What about steam railway charities etc will they be required to pay for suitable signage? How will they be informed of the revised requirements?

Yes, heritage railways must also replace the signs and therefore pay for their introduction – consistent with normal and well-established industry practice that all operators have responsibility for meeting safety requirements. Heritage railways have been consulted throughout the process of developing the signs and have an adjustment period (until 2029) to introduce signs, enabling for them to plan for the cost.

Costs

Q8: What is the approximate range of costs for installing these signs (cheapest to most complex)?

£2,000 for a simple installation, to £4,000 for a more complex one (these costs include signs, resource/contractors and materials.

Q9: Who is going to determine which type needs to be placed at which crossing point? Will there be an extra consultancy cost for that?

It is for the operator to determine using their usual risk assessment. They use guidance issued by the ORR to aid them in this and the Department is considering further guidance to support them.

Q10: The Committee has made it very clear that it is not acceptable to just say the costs are not up to the IA threshold and nothing more. Especially as there are clearly going to be costs on business and probably charities, the EM should include a brief outline of the scale of costs and who will be affected - the EM does after all say that there are 3,000 of these to be addressed.

The majority of the costs will be borne by public sector entities, specifically Network Rail, who are responsible for approximately 75% of private level crossings on the network (2,240 out of 3,000). We calculate that the cost to Network Rail will be between £835,333 and £1,670,666 per year until 2029, which is reflected in its funding settlement (of over £41bn) for 2024-29. The costs to Heritage operators, private entities, which tend to be small or micro businesses due to the low number of employees (they have larger numbers of volunteers) and manage around 760 private level crossings, are expected to be between £253,000 and £506,000 per year to 2029 (the split of this sum between different heritage operators is not known – some will carry a larger share, others minimal). As mentioned previously, an adjustment period (until 2029) has been factored in to introduce signs, enabling heritage railways to plan for the cost. We will keep in close contact with them to identify any barriers to implementation.

Review

Q11: The EM states that more people are using such crossings. can you please provide figures for the accident rates at such crossings 2012–2022 against which the outcome of these regs can be measured?

Please see Table 1. This high-level raw data for private user worked crossings has been provided by Network Rail, using the industry reporting tool, SMIS (Safety Management Intelligence System).

Table 1: Level crossing data

Year	Accidental Fatalities	Collisions	Near misses
2012	3	4	141
2013	1	3	172
2014	3	2	170
2015	0	0	157
2016	1	1	136

Year	Accidental Fatalities	Collisions	Near misses
2017	2	1	126
2018	0	0	143
2019	0	0	151
2020	0	1	97
2021	0	0	130
2022	1	0	85
Total	11	12	1,508

Source: *Network Rail*

Q12: If there is no formal five-year review, what information will be made public to indicate whether the changes have been successful?

The frequency of RAIB reports into accidents and near misses at these types of crossing will serve as a very public metric of whether the new designs have been successful in their stated aim. Also, the data from the rail industry's safety reporting tool (SMIS) will be used to see if frequency of near misses and accidents has reduced. We are clear that the ORR – as the well-established and expert safety regulator – will keep safety at level crossings under close and active review, including its annual reports on rail safety, on an ongoing basis, which will demonstrate if there are remaining safety issues.

7 November 2023

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at https://members.parliament.uk/members/lords/interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 14 November 2023 and included in this report, Members declared no interests.

Attendance:

The meeting was attended by Baroness Harris of Richmond, Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Lord de Mauley, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Rowlands and Lord Russell of Liverpool.