Written submission from Network Rail

Call for Evidence Response: Rural Affairs, Climate Change & the Environment Committee – Land Reform (Scotland) Bill

Network Rail is pleased to be able to provide a response to the Rural Affairs, Climate Change and the Environment Committee’s (RACCE) inquiry into the Scottish Government’s proposed Land Reform (Scotland) Bill.

Network Rail’s evidence focuses on two elements – safety and the cost implications of the proposed legislation. We hope that this response will provide the Committee with an overview of the challenges faced by the rail industry with regards to the Government’s land reform legislation and its potential impact on the network.

Safety Implications

Level crossings were part of a network built around 180 years ago when there were fewer and slower trains, no cars and the pace of life was much slower. Railways that are built today such as the Borders line do not have any level crossings. We believe that the most effective way of reducing level crossing risk is to eliminate the crossing completely, where we cannot do this we look at options to make the crossing safer.

While Network Rail supports the Scottish Government’s aspiration that public land should be managed for the greatest overall benefit balancing a number of differing and sometimes conflicting public needs, we believe that any legislation must explicitly address the question of safety. The rail network in Scotland operates 24 hours a day, seven days a week and Network Rail has a legal obligation under primary legislation to operate, maintain and renew/repair the rail network, which are reserved and not devolved matters. Under the terms of our licence and primary legislation, Network Rail is tasked with safety obligations.

The proposals envisage that access would be extended at some 495 private crossings in Scotland, which are currently restricted for the sole use of specified users. If implemented the proposals would mean that there would be unfettered public access at these currently restricted crossings which would result in a significant increase in risk as well as a shift in the management of safety at those crossings and in the associated network. During the last financial year eight pedestrians were struck and killed by trains on level crossings; in contrast, no passenger has died on the UK network since the Grayrigg incident in February 2007 at a time when passenger journeys have reached 1.65bn per annum.

Under current level crossing usage conditions, Scotland has 2.6% of the national risk, with a fatality risk of 0.21 lives per year. The main risk to people at level crossings arise from unfamiliarity with the railway, especially the fact that trains travel at significantly higher speeds than road vehicles which pedestrians typically are more accustomed to when crossing. As a consequence, and combined with the fact that trains have no ability to take evasive action, as well as a much protracted braking distance, unfamiliar pedestrians can fatally underestimate how much crossing time they may require to cross safely in front of an approaching train. Currently all authorised users of private level crossings are briefed on a regular basis on the correct operation of their particular crossing and they are required under
statue to ensure that visitors and any other invited guests are briefed and fully understand the correct operation of that level crossing. 69% of level crossings in Scotland are classed as ‘user worked crossings’ and are not open to the public and are only accessible for registered users, who understand the crossing and their obligations. The proposed legislation and the resultant change to usage conditions would permit access to people not currently allowed to use the crossing, thereby increasing to 7% the number of people who would be exposed to fatal accidents.

Level crossing risk is controlled by risk assessment which takes account of authorised use and the appropriate safety mitigations required. The Government’s proposals, if enacted, would require Network Rail to undertake a full reappraisal of the safety assessment at each of these level crossings to take account of any increased risk associated with the legislation. Given the unpredictability of possible use, in very simple terms we would need to assume the highest level of risk and provide enhanced protection to ensure parity with provision on a public highway, namely the introduction of an automatic indicator for the passing of a train. The cost of this is disproportionate to the perceived benefit from enhanced access and additional funding for this vital safety work would need to be identified.

As currently drafted, we believe that the proposed legislation does not reference the need to ensure enhanced access does not introduce new risks or increase or change currently controlled risks, which could compromise safety on Scotland’s rail network. As part of this we would note the legislation lacks compulsory purchase powers for the benefit of Network Rail to enable us to acquire additional land to site safety equipment on. Failure to include such a provision is likely to increase the costs associated with the proposal in order to acquire the necessary land rights. We would also observe that in order to mitigate the risk, pending completion of necessary intervention works, it may be necessary to introduce other measures such as speed restrictions which could extend the journey time of trains, particularly on rural routes where the preponderance of these crossings are located. For example the line between Aberdeen to Inverness has 39 private crossings, if enhanced protection were provided at each of these crossings the current timetable would be unworkable.

Cost Implications

The Office of Rail Regulation (ORR) has tasked Network Rail with reducing risk at its level crossings. The proposed legislation in its current form would increase risk if funding was not provided for the necessary risk mitigation measures.

Network Rail receives funding for a five year period. The current funding period started on 1st April 2014 and runs until 31st March 2019. We would note that there is no funding within the current financial settlement for the provision of enhanced safety measures at these 495 private user crossings.

To understand the cost implications of such enhancements, improved safety measures would cost between £250,000 and £500,000 per level crossing depending on location and interface with the existing signalling system and does not include land costs. This process would be complicated further by the fact that Network Rail does not have any compulsory purchase power as mentioned above. This could mean that in some locations, Network Rail would be unable to install the necessary
enhanced safety enhancements and protections and would have to rely on permanent speed restrictions, which would be less effective and would have more effect on passengers using the railway.

Each crossing throughout the network is different, with unique issues and needs to take account of site specific factors. Given this it is therefore impossible to confirm:

- How much it would cost to close such crossings;
- What the appropriate safety measures are;
- The costs of fitting the appropriate safety measures;
- The costs associated with land acquisition or
- The costs to construct any alternative accesses.

At these 495 private user crossings, responsibility resides with the authorised user to ensure that all additional users cross appropriately. Under the draft proposals, the legislation would transfer responsibility to Network Rail. Network Rail was reclassified in September 2014 and is an arm’s length body of the Department for Trade and Industry and subject to the obligation of Managing Public Money and is not funded to meet the costs associated with these proposals.

Network Rail therefore considers that the proposals require detailed consideration by the Rural Affairs, Environment and Climate Change Committee of the safety and associated cost implications, including, without limitation, possible extension of compulsory purchase powers.

Planning applicants looking to take advantage of legislation for building development linked to forestry/agricultural land management should demonstrate the need and sustainability to the Planning Departments and local community, showing that the application is not solely based on a desire to increase land value or for personal gain.

The appointment of an independent party in order to carry out a feasibility study could achieve this objectivity.

**Sporting rates**

Any landowner deriving any income from shooting on their land should have an obligation to pay sporting rates.

**Deer Management**

The current deadline of 2016 for the formulation and presentation of Deer Management Plans should be brought forward in order to ensure the proper balance of culling and conserving biodiversity of any given area. The current voluntary Deer Management Code of Practice (2012) has not encouraged enough land managers to present their plans.
Engagement of Deer Panels with local communities, and a legal requirement to produce plans, would be an essential component in Management transparency.

Landowners who choose not to deploy deer fencing because they intend to raise revenue from stalking should be considered as running a sporting estate whether or not they maintain a herd and provide supplementary winter feed.

**Core Path and open access**

Core paths should satisfy the basic needs of local people. These needs encompass a wide range of outdoor activities, including horse riding mountaineering and walking with or without dogs.

Clarification of access points and a formation of core path networks and clear signage should form part of the Reform Bill.