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STATUTORY INSTRUMENTS

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**2013 No. 533**

**The Network Rail (Seaham Level Crossing) Order 2013**

**PART 2**

**PROVISION OF CROSSING**

**Creation and maintenance of new public right of way and new footway**

4.—(1) The new public right of way and the new footway are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and after the expiry of that period by and at the expense of the highway authority.

(2) On completion of the new public right of way in accordance with paragraph (1) it is to be a cycle track within the meaning of section 329 of the Highways Act 1980<sup>(1)</sup> over which the public have a right of way on foot.

(3) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way or the new footway, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way or the new footway to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way or the new footway and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way or the new footway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new public right of way or the new footway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way or the new footway to which the action relates was likely to cause danger to users of the new public right of way or the new footway;
- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way or the new footway before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way or the new footway to which the action relates unless it is also proved that Network Rail had

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(1) 1980 c. 66.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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given the competent person proper instructions with regard to the maintenance of the new public right of way or the new footway and that the competent person had carried out those instructions.

(5) The new public right of way and the new footway are to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.