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STATUTORY INSTRUMENTS

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**2014 No. 2441**

**The Clocaenog Forest Wind Farm Order 2014**

**PART 2**

**Principal powers**

**Construction and maintenance of new or altered streets**

**16.**—(1) Any street to be constructed under this Order is to be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street, when completed to the reasonable satisfaction of the street authority, and unless otherwise agreed, is to be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

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

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonably person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street 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 the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(5) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker may not by reason of any duty under that article to maintain

a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or

- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.