
STATUTORY INSTRUMENTS

2018 No. 446

The Network Rail (Hope Valley Capacity) Order 2018

PART 2

WORKS PROVISIONS

Streets

Construction and maintenance of altered streets

11.—(1) Where a street is altered under this Order, the altered part of the street must, when completed to the reasonable satisfaction of the street authority unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail 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.

(2) Paragraph (1) does not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail.

(3) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without affecting 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 street 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 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 reasonable person would have expected to find the street;
- (d) whether Network Rail 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; and
- (e) where Network Rail 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 Network Rail 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 Network Rail 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.