
STATUTORY INSTRUMENTS

2022 No. 1406

**The Network Rail (Cambridge South
Infrastructure Enhancements) Order 2022**

PART 2

WORKS PROVISIONS

Streets

Construction and maintenance of new or altered highways

12.—(1) Any highway (including a shared footpath/cycleway) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed in writing between Network Rail and the highway authority in whose area the highway lies, must be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority in whose area the highway lies, unless otherwise agreed in writing with the highway authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a highway over or under any railway of Network Rail.

(4) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a highway 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 highway to which the action relates was not dangerous to traffic.

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

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

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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 highway 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 highway and that the competent person had carried out those instructions.