
STATUTORY INSTRUMENTS

2022 No. 573

The M25 Junction 28 Development Consent Order 2022

PART 3

STREETS

Construction and maintenance of new, altered or diverted streets and other structures

11.—(1) Any highway (other than a trunk road or special road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, the highway including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway [^{F1}must be] completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not, and is not intended to be a highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street [^{F2}authority] and, unless otherwise agreed in writing, 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.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, must be maintained by and at the expense of the undertaker.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is 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 or structure to which the action relates was not dangerous to traffic.

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

- (a) the character of the street or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure 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 or structure;

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause danger to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure 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 or structure 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 or structure and that the competent person had carried out those instructions.

Textual Amendments

- F1** Words in art. 11(2) substituted (7.2.2024) by [The M25 Junction 28 Development Consent \(Correction\) Order 2024 \(S.I. 2024/129\)](#), art. 1, [Sch.](#)
- F2** Word in art. 11(3) substituted (7.2.2024) by [The M25 Junction 28 Development Consent \(Correction\) Order 2024 \(S.I. 2024/129\)](#), art. 1, [Sch.](#)

Commencement Information

- I1** Art. 11 in force at 6.6.2022, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The M25 Junction 28 Development Consent Order 2022, Section 11.