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STATUTORY INSTRUMENTS

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**2022 No. 934**

**The A428 Black Cat to Caxton Gibbet  
Development Consent Order 2022**

**PART 3**

**STREETS**

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

**12.**—(1) Subject to paragraphs (9) to (13), any highway (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant local highway authority.

(2) The reasonable satisfaction of the relevant local highway authority under paragraph (1) is to be signified by the issue by the local highway authority of a certificate to that effect.

(3) Unless otherwise agreed in writing with the relevant local highway authority, the highway within the boundary specified in the certificate issued under paragraph (2) (including any culverts or other structures laid under it) must be maintained by and at the expense of the relevant local highway authority from the date of issue of the certificate.

(4) Subject to paragraphs (9) to (13), where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the relevant local highway authority.

(5) The reasonable satisfaction of the local highway authority under paragraph (4) is to be signified by the issue by the local highway authority of a certificate to that effect.

(6) Unless otherwise agreed in writing with the relevant local highway authority, that part of the highway within the boundary specified in the certificate issued under paragraph (4) (including any culverts or other structures laid under it) must be maintained by and at the expense of the relevant local highway authority from date of issue of the certificate.

(7) Where a highway is de-trunked under this Order—

(a) section 265(1) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and

(b) any alterations to that highway undertaken under powers conferred by this Order prior to or in connection with that de-trunking must, unless otherwise agreed in writing with the relevant local highway authority, be maintained by and at the expense of the relevant local highway authority from the date of de-trunking.

(8) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the relevant local highway authority and the remainder of the bridge, including the waterproofing membrane and any culverts or other structures laid under it, must be maintained by and at the expense of the undertaker.

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(1) Section 265 was amended by section 1(6) of, and paragraph 52 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(9) In the case of a bridge constructed under this Order to carry a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane) and the remainder of the bridge must be maintained by and at the expense of the undertaker.

(10) In the case of a bridge constructed under this Order to carry a private right of way over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(11) In the case of a bridge constructed under this Order to carry a public right of way, the surface of the bridge (being those elements over the waterproofing membrane) must be maintained by and at the expense of the relevant local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(12) In the case of a bridge constructed under this Order to carry a shared public right of way and private access track over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(13) Where a street which is not and is not intended to be a public 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 authority and unless otherwise agreed in writing with the street authority, 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.

(14) 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 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 to which the action relates was not dangerous to traffic.

(15) For the purposes of a defence under paragraph (14), 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 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; and
- (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 the competent person had carried out those instructions.