
STATUTORY INSTRUMENTS

2024 No. 752

The M3 Junction 9 Development Consent Order 2024

PART 3

STREETS

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

14.—(1) 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 local highway authority in whose area the highway lies and, (subject to paragraph (6)) unless otherwise agreed in writing with the local highway authority, the highway including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(2) 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 local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts, bunding, or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is constructed, altered or diverted under this Order, the constructed, altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the footpath, cycle track or bridleway including any culverts, bunding, or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion

(4) 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.

(5) 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 and in connection with that de-trunking must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(1) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27) and section 57 of, and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(6) 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 a trunk road, the highway surface (being those elements over the waterproofing membrane) must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(7) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over another highway which is not a special road or trunk road, both the highway surface and the structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) 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.

(9) For the purposes of a defence under paragraph (8), 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 that the competent person had carried out those instructions.