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STATUTORY INSTRUMENTS

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**2023 No. 834**

**The A303 (Amesbury to Berwick Down)  
Development Consent Order 2023**

**PART 2**

**WORKS PROVISIONS**

*Streets*

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

9.—(1) Subject to paragraphs (6), (7) and (8), 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 with 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) Subject to paragraphs (3), (6), (7) and (8), 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 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 or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(3) Subject to paragraphs (6), (7) and (8), where a footpath or bridleway is altered or diverted under this Order along a vehicular private means of access, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority and unless otherwise agreed in writing, be maintained (including any culverts or other structures laid under that part of the highway) by and at the expense of the person or persons with the benefit of the vehicular private means of access.

(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, 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.

- (5) Subject to paragraphs (6), (7) and (8), 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, 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.

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(1) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 3 to, the 1984 Act and section 57 of and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(6) In the case of any 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 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.

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

(8) In the case of a bridge constructed under this Order to carry a private right of way (whether or not it also carries a footpath or bridleway), the surface of the street and the structure of the bridge must be maintained by and at the expense of the undertaker.

(9) In any action against the undertaker in respect of loss or damage resulting from any failure by the undertaker 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 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.

(10) For the purposes of a defence under paragraph (9), 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.