



Highways Act 1980

1980 CHAPTER 66

PART IV

MAINTENANCE OF HIGHWAYS

Enforcement of liability for maintenance

58 Special defence in action against a highway authority for damages for non-repair of highway

- (1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority 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 for traffic.
- (2) For the purposes of a defence under subsection (1) above, the court shall 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 the highway authority 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;
 - (e) where the highway authority 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;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the

Status: This is the original version (as it was originally enacted).

maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

- (3) This section binds the Crown.
- (4) This section does not apply to damage resulting from breaking or opening or tunnelling or boring under a street by way of code-regulated works, being damage resulting from an event which occurred—
- (a) before the completion of the reinstatement or making good of the relevant part of the street in pursuance of the obligation imposed on the undertakers by section 7(2) of the Public Utilities Street Works Act 1950 ; or
 - (b) where the relevant part of the street is the subject of an election under Schedule 3 to that Act (which, with minor exceptions, limits the obligation of undertakers to the execution of interim restoration), during the period mentioned in paragraph 3(a) of that Schedule;

and expressions used in this subsection and that Act have the same meanings as in that Act.