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STATUTORY INSTRUMENTS

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**1993 No. 3160**

**The Roads (Northern Ireland) Order 1993**

**PART II**

**CONSTRUCTION, MAINTENANCE AND CLASSIFICATION OF ROADS**

*Maintenance of roads*

**Duty to maintain roads**

**8.**—(1) The Department shall be under a duty to maintain all roads and for that purpose may provide such maintenance compounds as it thinks fit.

(2) In an action against the Department in respect of injury or damage resulting from its failure to maintain a road it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove—

- (a) that the Department had taken such care as in all the circumstances was reasonably required to secure that the part of the road to which the action relates was not dangerous for traffic; or
- (b) that the injury or damage—
  - (i) resulted from works (other than works by or on behalf of the Department) carried out on or under that part of the road to which the action relates; and
  - (ii) resulted from an event which occurred before the completion of the re-instatement or making good of that part of the road in accordance with any relevant requirement.

(3) For the purposes of a defence under paragraph (2)(a) the court shall in particular have regard to the following matters—

- (a) the character of the road, and the traffic which was reasonably expected to use it;
- (b) the standard of maintenance appropriate for a road of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the road;
- (d) whether the Department knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to users of the road;
- (e) where the Department could not reasonably have been expected to repair that part of the road before the cause of action arose, what warning notices of its condition had been displayed;

but, for the purposes of such a defence, it shall not be relevant to prove that the Department had arranged for a competent person to carry out or supervise the maintenance of the part of the road to which the action relates, unless it is also proved that the Department had given him proper instructions with regard to the maintenance of the road and that he had carried out the instructions.

(4) In paragraph (2)(b) “relevant requirement” means a requirement imposed by or under this Order or any other statutory provision or rule of law or by, or in connection with the issue of, any approval, consent, licence, notice or permission issued under this Order or any other statutory provision.