STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 2

WORKS PROVISIONS

Streets

Construction and maintenance of new, altered or diverted streets

14.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed between the promoter and the highway authority, be maintained by and at the expense of the promoter for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the promoter for a period of 12 months from its completion and after the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over a tramroad or carrying a tramroad over a street and except as provided in those paragraphs the promoter shall not be liable to maintain the surface of any street in, on, under or over which the scheduled works shall be constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

(4) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the promoter 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.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

(a) the character of the street including its use for a tramway, 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 promoter 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 promoter 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 that the promoter had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the promoter 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.