

## **The Secretary of State as highway authority in relation to the strategic roads network – the duty to maintain the highway**

Section 41 of the Highways Act 1980 contains the duty to maintain the highway, and, by section 41A, a duty to ensure, so far as reasonably practicable, that safe passage along a highway is not endangered by snow or ice.

Section 41 is a duty owed to those using the highway. It is not a guarantee that the highway will be safe. However, the highway has to be maintained in such a state of repair that it is reasonably passable for the ordinary traffic of the neighbourhood without danger caused by its physical condition. The standard of repair of the highway must reflect the type and level of use that is made of it.

The duty in s41 has to be read in the context of s58 of the Highways Act which provides a special defence if it can be proved that the highway authority took such care as in all the circumstances was reasonably required to secure that the part of the highway in question was not dangerous to traffic.

The particular duty contained in section 41A relating to snow and ice is, again, not an absolute duty; it is not always possible to clear snow and ice. But it does require the highway authority to devise a plan in accordance with best practice using sufficient quantities of salt to address the foreseeable risks.