

# STATES OF JERSEY



## **DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) LAW 201-**

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**Lodged au Greffe on 5th October 2018  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Motor Vehicles (Removal from Private Land) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Connétable L. Norman of St. Clement**

*Minister for Home Affairs*

Dated: 3rd October 2018

## REPORT

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### Introduction

Motor vehicles that have been parked or abandoned on private land without permission can be a source of great frustration for private landowners. These vehicles cause inconvenience for people parking at their homes, create costs for businesses, and place obstacles in the way of emergency services. However, at present, private landowners have few remedies to deal with the problem.

If a homeowner, for example, wants to stop someone from parking a car in front of their driveway, that person must pursue a civil action through the Royal Court. This is not a simple remedy. It has the potential to create significant costs for private landowners and does not offer immediate relief from the problem.

In some cases, private landowners have turned to wheel clamping to solve the problem. However, the legality of this practice is uncertain, and there are concerns about how it is enforced by wheel clamp operatives. The Minister for Home Affairs is, therefore, proposing to ban wheel clamping.

Private landowners do, nonetheless, require an effective and proportionate way of seeking relief from vehicles that are causing a persistent nuisance, a danger, or an obstruction on their land.

The Draft Motor Vehicles (Removal from Private Land) (Jersey) Law 201- is intended to provide a solution. The draft Law provides a statutory framework for the introduction, by Regulations, of a number of different processes by which private landowners will be able to manage vehicles that have been parked or abandoned on their land without permission to be there.

The draft Law provides a framework for the introduction of Regulations to –

- Make vehicle immobilisation and interference on private land an unlawful practice.
- Provide alternative mechanisms by which private landowners will be able to remove vehicles from their land when they are not authorised to be there, including:
  - Where signage is displayed (or not displayed as the case may be).
  - Where a vehicle is causing persistent nuisance.
  - Where a vehicle is creating a hazard that has the potential to hinder emergency services.
- Provide safeguards in respect of the removal and disposal of vehicles, and the conditions that must be satisfied before doing so.
- Create a register of approved vehicle removal operators and the application process.

These processes will be brought forward under the Draft Motor Vehicles (Removal from Private Land) (Jersey) Regulations 201- if this Law is adopted by the States Assembly. The draft Regulations are attached as **Appendix 2** to this report.

The draft Law also includes provision for the introduction of a system of civil penalties. This would allow private landowners to levy parking charges on the owners of vehicles that have been left on their land without permission. The introduction of a

system of civil penalties is not included in the draft Regulations which the Minister is planning to bring forward should the Law be adopted.

However, subject to consultation on the principle of a system of civil penalties and how they might work in practice, it is envisaged that additional Regulations could be brought forward in the future to introduce a system of civil penalties.

A detailed description of the provisions included in the draft Law are set out in section 3.

The draft Law does not affect the removal of motor vehicles from land in public ownership, which is covered by the provisions of the [Road Traffic \(Jersey\) Law 1956](#). The draft legislation has been developed in consultation with the Department for Growth, Housing and Environment, which has confirmed it is satisfied with the proposals, based on their experience of dealing with the issue on public land.

Consultation has also taken place with the Comité des Connétables and the Comité des Chefs de Police, given the interest that the Parishes have in this issue. Discussion with the Parishes has highlighted the difficulties that many private landowners experience in dealing with motor vehicles that have been abandoned on private land without permission (such as in pub car-parks). The introduction of legislation to deal with the problem has, therefore, been well-received.

The Minister is grateful for the comments and observations that have been received on the draft legislation so far. Further consultation will take place with interested parties regarding the draft Regulations before they are brought forward, which will help to ensure that the processes set out in the legislation are fair, proportionate and work in practice.

### **Background to the proposals**

In October 2009, the States Assembly voted in favour of making the practice of wheel clamping on private land illegal unless authorised by law ([P.119/2009](#)). The Proposition, which was adopted [as amended](#), was lodged by former Deputy P.V.F. Le Claire of St. Helier, and requested the Minister for Home Affairs to develop and bring forward draft legislation to give effect to this decision.

The Minister for Home Affairs at the time, former Senator B.I. Le Marquand, was supportive of the Proposition, having expressed the opinion that the practice of wheel clamping was unlawful since: *“it constituted an interference with the rights of the owner or user of the vehicle concerned”*<sup>1</sup>.

Wheel clamping is the practice of immobilising a motor vehicle and thus preventing it from being moved. In its most common form, wheel clamping involves the attachment of a clamp to the wheel of a vehicle to penalise a person for parking on land without authorisation. A landowner may then demand a fee in return for removing the clamp and releasing the vehicle to its owner.

While there has been no definitive judgement by the Royal Court in respect of the legality of wheel clamping on private land, legal opinion suggests that it is an illegal practice in Jersey. This opinion is supported by the case of *Gosselin v. Attorney General* [1990 JLR102].

The case involved the conviction of a wheel clamp operator in the Magistrate’s Court for an offence of tampering with a vehicle contrary to Article 29(2) of the Road Traffic (Jersey) Law 1956. Whilst the conviction was overturned on appeal in the Royal Court, the appeal was successful on the basis that the vehicle was not in a road

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<sup>1</sup> Comments of the Minister for Home Affairs to [P.119/2009 ‘Wheel Clamping: introduction of legislation’](#)

or public place provided for the parking of vehicles in accordance with the terms of Article 29 of the Law.

The Royal Court, therefore, took the view that a private car park was not covered by the terms of Article 29. However, the Court had already found that the accused had *prima facie* committed the offence of tampering contrary to Article 29, since he had touched the wheel either himself or with an immobilisation device.

Moreover, the act had not been done with lawful authority, because the wheel clamping operative was under no legal duty to resort to a “self-help” remedy such as wheel clamping.

When a person leaves a vehicle without permission on land occupied by another person, he/she will commit the tort of trespass. Trespass is a civil wrong that is actionable through the Court and the occupier could, as a result, be entitled to damages. Wheel clamping would, therefore, amount to a suggestion that a landowner may take the law into his/her own hands and demand damages from the trespasser without having pursued the legal remedy available through the Court<sup>2</sup>.

Legal precedent in Scotland has also established that wheel clamping is not lawful. In the case of *Black v. Carmichael* [1992] SCCR709, wheel clamping was ruled to be theft and extortion. The ruling was the result of a Common Law definition of ‘*theft*’ which, under Scottish Law, does not require the intention to permanently deprive a person of their property, but it may be on a short-term basis instead. Whilst this has never been tested locally, the Jersey Customary Law definition of theft does not, as in Scotland, require the intention to permanently deprive a person of his/her property.

Accordingly, together with the Gosselin case, the *Black v. Carmichael* case would likely provide a persuasive argument for a Jersey Court to rule that wheel clamping is an unlawful practice.

The Minister for Home Affairs, therefore, believes that vehicle immobilisation is an unfair and disproportionate practice, which should be made unlawful where there is no legal authority to do so. This follows the example from England and Wales where the [Protection of Freedoms Act 2012](#) criminalised certain wheel clamping activities on private land without lawful authority.

#### Andium Homes and the Ports of Jersey triennial Regulations

In order to provide private landowners with mechanisms to deal with unauthorised vehicles left on their land, it is the Minister’s intention to provide private landowners with powers to remove vehicles that have been parked, abandoned or otherwise left without permission on their land.

There is precedent in respect of legislative provision for the removal of vehicles from private land through the [Removal of Vehicles \(Private Land\) \(Jersey\) Regulations 2016](#).

When ownership of the States of Jersey social housing portfolio transferred to Andium Homes in July 2014, the powers that the former Housing Department had under the [Road Traffic \(Removal of Vehicles\) \(Jersey\) Order 1963](#), which enables the removal of vehicles from public land, ceased in respect of all land owned, leased and managed by Andium Homes.

This was also the case in respect of land assets transferred to the Ports of Jersey when it was incorporated on 1st October 2015 for all land not covered by the [Aerodromes \(Jersey\) Regulations 1965](#) and the [Harbours \(Jersey\) Regulations 1962](#).

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<sup>2</sup> Response of H.M. Attorney General to Deputy M. Tadier of St. Brelade, 14th June 2016.

The 2016 Regulations give both Andium Homes and the Ports of Jersey powers to move or remove vehicles parked on their land that are causing or are likely to cause a security risk, danger, nuisance or obstruction, and to dispose of any such vehicle if it is not claimed by its owner. The triennial Regulations, which last for 3 years only, came into force on 21st June 2016 and will remain in force until 21st June 2019.

It was stated during the States debate on the 2016 Regulations that legislation would be developed in the intervening period to provide all private landowners with a legal mechanism to deal with vehicles left on their land without permission. This legislation would also encompass Andium Homes and the Ports of Jersey, in addition to all other private landowners in Jersey.

Accordingly, the Minister has lodged the Draft Motor Vehicles (Removal from Private Land) (Jersey) Law 201-

### **Proposals**

The draft Law provides the statutory framework by which the Minister for Home Affairs will bring forward subsequent Regulations to introduce various processes that enable the removal of motor vehicles from private land when they are not authorised to be there. The draft Law also includes Regulation-making powers to make vehicle immobilisation and interference an unlawful practice, and powers to introduce a system of civil penalties.

The draft Law will apply to “*private land*”, which is defined as meaning any road, driveway, parking place, footway, or other place on land that is not land belonging to, or under the administration of, any public or parochial authority, which is already covered by the Road Traffic (Jersey) Law 1956.

The Regulation-making powers included in the draft Law cover the following matters:

#### **1. Power to prohibit motor vehicle immobilization, interference or removal**

Article 2 will enable the States to make Regulations prohibiting a private landowner from carrying out any action that might interfere or immobilise another person’s vehicle or any part of it.

If the draft Law is adopted by the Assembly, the Minister will bring forward Regulations to make it an offence for a person, without lawful authority, to prevent or inhibit the removal of a vehicle that has been left on private land from being removed by the person entitled to remove it, including in circumstances where a person –

- immobilises a vehicle by attaching to it, or to part of it, an immobilising device – typically a wheel clamp – or placing an immobilisation near a vehicle;
- restricts the movement of a vehicle (for example, using another vehicle to prevent it from being driven away);
- moves a vehicle (by towing it away) unless with lawful authority.

There will be circumstances where it will not be deemed an offence to prevent or inhibit a vehicle from being removed by the person entitled to remove it – for example, where the movement of a vehicle is restricted by the presence of a fixed barrier provided that the barrier was present when the vehicle was initially parked there.

#### **2. Power to remove vehicles from private land**

Article 3 will enable the States to make Regulations that permit the removal of motor vehicles from private land. Regulations will cover matters such as –

- the circumstances under which a vehicle may be removed or must not be removed;
- the requirements to be satisfied before a vehicle may be removed;
- the requirements for the removal, storage, custody, recovery or disposal of a vehicle;
- the persons who may remove vehicles from private land;
- the circumstances when information may be released by the Inspector of Motor Traffic or a parochial authority regarding the registered keeper information of a vehicle;
- the procedure for notifying a person before or after the removal of a vehicle;
- the recovery of expenses reasonably incurred in the removal, storage, custody, recovery or disposal of a vehicle from private land.

Under the draft Regulations, it is proposed that different processes will apply depending on whether signage is displayed on the private land or not. In summary, the differences that would apply are as follows:

**Where signage is displayed:** a private landowner would be permitted to move or remove a vehicle that is not authorised to be on that land immediately. There is an implied understanding that the vehicle owner has read the signage and is aware that they are not authorised to park on the land.

This process would extend to all private landowners the process that applies to Andium Homes and Ports of Jersey to all private landowners currently.

**Where signage is not displayed:** a private landowner would not be permitted to move or remove a vehicle that is not authorised to be on that land until a specified period of time had passed. Only where a landowner had taken steps to notify a vehicle owner would they be permitted to remove a vehicle. There are 2 proposed exceptions –

- where the vehicle owner is present, and only with the assistance of a Police Officer;
- where a private landowner requires an immediate solution to the problem (such as where a vehicle is causing a security risk or obstruction to the emergency services), and only with authorisation from a Police Officer or parochial authority.

It is important to note that the removal of a vehicle from private land would not give a landowner immediate authority to dispose of a vehicle. It may, for example, be that a vehicle is claimed by its owner once it is removed. Only after a specified period of time has passed, and the landowner has taken steps to notify the owner, will they be able to dispose of a vehicle. The requirements of the proposed draft Regulations are set out in the flow diagram attached as **Appendix 3** to this report.

Under Article 3, the draft Regulations will also include provision to deal with circumstances where a vehicle might be parked frequently on private land in a way that is considered by the landowner to constitute a persistent nuisance. This may, for example, happen when a person leaves their vehicle for a few minutes each day on a privately-owned estate in someone else's designated parking space, in order to drop off and pick up their child from a nearby school.

Here, a landowner requires a remedy to seek relief from vehicles that might have only been left on their land for short period of time – so removing the vehicle is not a practical solution – but on a recurrent basis such that the vehicle causes a persistent nuisance to the landowner.



In these circumstances, it is proposed that a private landowner will be able to make an application to the Magistrate's Court to seek relief from any vehicle that is causing a persistent nuisance. If the landowner was able to demonstrate to the satisfaction of the Court that a vehicle was causing such a nuisance, then the Magistrate would be permitted to make an order that –

- imposes a charge on the owner of a vehicle;
- requires the owner of a vehicle to desist from leaving their vehicle on the land.

As noted, the draft Regulations have been discussed with a number of interested parties already and have been well-received, subject to some minor amendments and clarification. However, during the lodging period for this draft Law, further consultation will take place to make sure that the proposals work in practice.

### **3. Charges for unauthorised parking on private land**

Article 4 of the draft Law will enable the States, by Regulations, to make provision for the creation of a system whereby a private landowner, whether personally or through an agent, could impose a charge on the owner of a vehicle that has been parked on their land without permission.

This kind of charge would provide compensation for the damages a private landowner might incur as a result of the vehicle being left on their land – for example, where a person has left their vehicle in a supermarket car park for longer than a permitted period of time, thus preventing other people from using the parking space.

The Minister does not, at this juncture, propose to introduce such parking charges, and any system would need to be subject to public consultation. However, it is prudent to include provision in the draft Law so that legislation to introduce charges for parking on private land without permission could be brought forward at a later date should it be considered desirable. The draft Law makes provision for Regulations to prescribe the following matters –

- the circumstances when a charge may or must not be recovered;
- the maximum amount of any charge and discount that may be made for early payment;
- the display of signage, and notice and evidential requirements;
- the resolution of disputes and complaints in relation to the imposition of a charge;
- the means to recover any unpaid charges.

The parking charges under Article 4 of the Law would be additional charges to those that a private landowner may require as a condition of a person being authorized to park on land (i.e. they are an excess charge).

### **4. Register of motor vehicle removal operators**

Article 5 of the draft Law gives powers to the States to make provision for the keeping of a register of motor vehicle removal operators and to prohibit persons who are not registered as such from removing vehicles from private land.

The draft Regulations brought forward under this Article will specify requirements in relation to the process for applying to be a vehicle removal operator; the publication of a register of vehicle removal operators; the information a register must contain; and any fee that might be required as part of an application for registration.

In order to register as a removal operator, a person would need to satisfy the conditions specified by the Regulations. The requirement for a person to register as a

motor vehicle removal operator is being proposed to provide assurance that appropriate standards of conduct are adopted in the performance of this activity. The criteria could include, for example, conditions to ensure that an applicant –

- has sufficiently secure premises to store any vehicle removed from private land.
- possesses a vehicle that is suitable for the safe removal of a vehicle from private land
- maintains adequate insurance against any loss or damage.

### **Financial and manpower implications**

There are no resource implications associated with the adoption of the draft Law.

The processes for the removal of motor vehicles from private land will rely on private landowners using commercial removal operators in order to remove parked or abandoned vehicles from their land. As such, there will be cost for landowners involved with this process.

The costs connected with the removal, storage and disposal of vehicles are considered reasonable in order for private landowners to seek relief from vehicles that are parked or abandoned on their land without permission to be there.

In some cases, a private landowner may require the assistance of the Police or Parish Authorities in seeking the removal of a vehicle. There will be costs for these authorities involved in such cases, but it is envisaged that these can be covered within normal service provision, given the anticipated small number of cases where it will be necessary for authorities to be present.

### **Human Rights**

The notes on the human rights aspects of the draft Law in **Appendix 1** to this report have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on Draft Motor Vehicles (Removal from Private Land)  
(Jersey) Law 201-**

**Introduction**

1. These notes have been prepared in relation to the Draft Motor Vehicles (Removal from Private Land) (Jersey) Law 201- (the “Law”) by the Law Officers’ Department, for the purpose of confirming that the provisions of the Law are compatible with the rights of the European Convention on Human Rights (the “ECHR”).

**Advice**

2. As noted in the draft Law’s Explanatory Note: “[The] Law enables Regulations to be made by the States to provide a process by which motor vehicles that are left on private land, when not authorized by the landowner to be there, may be removed.”.
3. It should therefore be noted at the outset that any interference with ECHR rights that will arise from this Law, will only arise by virtue of the content of the Regulations which may be made under the Law. These Regulations may interfere with the right to the ‘protection of property’ under Article 1 of Protocol 1 of the ECHR, this being with respect to the owner of a motor vehicle and/or trailer which is parked on private land belonging to another, and which is being removed.
4. Therefore, at this stage, we need only review whether the powers provided by the Law are in principle, compatible with the ECHR (i.e. is a power to make Regulations with respect to the removal of a vehicle from private land capable of being exercised in a manner that is compliant with the ECHR?).
5. It is not necessary at this stage to address all the possible permutations for the exercise of this Regulation-making power. To do so would be speculative. Ultimately, it will be for the States to ensure that Regulations made under this Law are compliant in each instance, for fear of such Regulations being struck down for incompatibility under Article 4 of the Human Rights (Jersey) Law 2000.

**Protection of property**

6. The right to protection of property provided under Article 1 of Protocol 1 is as follows –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”.*

This right is subordinate however to the: *“right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest [...]”.*

7. The right to protection of property extends to protect individuals from arbitrary interference by the state with their existing possessions. It nevertheless recognises the right of the state to control the use of, and even to expropriate, the property of individuals, where doing so is in the public

interest. There are various forms of interference under Article 1 of Protocol 1 that may occur, but of interest under this advice is the interference of the vehicle owner's 'peaceful enjoyment by deprivation of property constituting control of the use of property'<sup>3</sup>. This will occur most notably where the vehicle is removed, and costs are associated with its return to the vehicle owner. It was noted in *Beyler v Italy*<sup>4</sup> that for the state to interfere in this manner, it must be: (1) in accordance with the law; (2) be in the public interest; and (3) be proportionate to an aim pursued.

8. As long as the Regulation-making powers are created in accordance with the provisions of the Law, and the powers purportedly exercised under the Regulations are in accordance with those Regulations, the first element of the test under *Beyler* will be complied with. However, the likelihood of Regulations made under the Law interfering with the Article 1 Protocol 1 right cannot be understated, and so care must be taken when reviewing the Regulations against the last two *Beyler* elements.

### **Interference must be in the public interest**

9. Article 1 of Protocol 1 provides that any interference must be in the 'general interest', whilst *Beyler* discusses the 'public interest'. No distinction has been drawn between references to 'public' and 'general' interest in ECHR case law, and where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a problem of general public concern, and in implementing measures designed to meet it.
10. The general interest identified in this instance is ensuring the enjoyment of a private landowner, where the owner's enjoyment of such land is being disturbed by another's motor vehicle or trailer which is parked on the private land without consent (the "**General Interest**"). It can be noted that the Law and its Regulations will provide for a remedy for disputes between as few as 2 private individuals, and won't necessarily benefit the Public at large in each instance. However, the ECtHR has confirmed that there isn't a need for the Public to benefit in general from a measure designed to further a general interest. In *James v UK*<sup>5</sup>, it was noted that measures to, "*enhance social justice within the community can properly be described as being 'in the public interest'*". The Law is therefore compliant with the public interest requirement.

### **Proportionality**

11. Probably the most sensitive aspect of the Law and its Regulations is the third element, proportionality. As noted, for the purposes of this advice we needn't explore the degree to which the Regulation-making powers can be exercised, only needing to review whether the ability to remove a motor vehicle or trailer from private land is in principle, proportionate. However, because the vires under the Regulation-making powers is wide, and the potential for Regulations becoming disproportionate is great, I would recommend that further advice is sought before draft Regulations are lodged *au Greffe*, in order to advise on their compatibility with the ECHR.
12. With regard to proportionality, any interference with the peaceful enjoyment of possessions must strike a fair balance between the means employed in

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<sup>3</sup> *Handyside v UK*, App. No. 5493/72

<sup>4</sup> App. No. 33202/96

<sup>5</sup> (1986) 8 E.H.R.R. 123

furtherance of the general interest identified, and the protection of an individual's fundamental rights. This means such interference cannot create an "excessive burden"<sup>6</sup>, but that is not to say that the availability of an alternative means of achieving an aim renders any contested legislation as unjustified, so long as the method chosen remains within the state's margin of appreciation<sup>7</sup>, and is "appropriate"<sup>8</sup> to the aim to be achieved. What's more, the ECtHR noted in *Oneryildiz v. Turkey*<sup>9</sup> that the right enshrined in Article 1 of Protocol 1, and the real and effective exercise of that right, does not depend merely on the state's duty not to interfere, but –

*"may require positive measures of protection. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent throughout the Convention. This obligation will inevitably arise, inter alia, where there is a direct link between the measures which an applicant may legitimately expect from the authorities and his enjoyment of his possessions."*

13. The General Interest in this case is an area of law which lends itself to positive measures of protection. Without the Law, landowners are left with no adequate legal remedy in instances of interference with a private individual's Article 1 Protocol 1 right. One can also imagine the measures that a landowner might go to in order to ensure that his rights are protected or continued, which could lead to disproportionate costs or illegal acts. The remedies provided under the Law are, therefore, in principle, proportionate. More needs to be said, however, about the exercise of the Regulation-making powers.

### **Regulations**

14. As noted, the Regulation-making powers have scope for a proportionate, as well as a disproportionate, interference with the Article 1 Protocol 1 right, specifically with regard to vehicle owners. We can, however, note the provisions of the Law; for instance, Articles 3(2) and 4(2), which provide guidance as to what considerations will be contained within the Regulations, which will help ensure a fair and proportionate approach to balancing the interests of both parties to a dispute. For instance, we can expect that: the Regulation-making power under Article 3 of the Law will be exercised in a manner which is consistent with the common law requirements on valid notice, as laid down in Lord Denning MR's judgement, *Thornton v Shoe Lane Parking Ltd*<sup>10</sup>, due to the notice requirements under Article 3(2); or that it will be a pre-condition for removal that there has been an actual contravention of legislation, rather than the reasonable belief by a parking attendant that there has been one, as is the case under the Road Traffic Regulation Act 1984 s.99(1)(a)<sup>11</sup>.

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<sup>6</sup> *Lithgow v UK* (1986) 8 E.H.R.R. 329

<sup>7</sup> *Mellacher v Austria* (1989) 12 E.H.R.R. 391

<sup>8</sup> *James v UK* (1986) 8 E.H.R.R. 123

<sup>9</sup> Application No. 48939/99

<sup>10</sup> [1970] EWCA Civ 2.

<sup>11</sup> and noted in *Shiva Ltd. v Transport for London* [2011] EWCA Civ 1189

15. Despite the guiding considerations provided under the Law, it is still advisable that any Regulations are provided to the Law Officers' Department for review in each instance, to ensure the proportionality test is met.

**Conclusion**

16. On the basis that the Law has been drafted further to the General Interest, and that the principal remedies that can be provided for by way of Regulations are proportionate, the Law can be confirmed as being ECHR compliant.



## DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) REGULATIONS 201-

### REPORT

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DRAFT – for consultation and subject to revision. Provisions under Article 4 of Law under consideration and not yet included.

#### Explanatory Note

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These Regulations make provision for the removal and disposal of motor vehicles from private land in the circumstances and in the manner described in the Regulations.

*Regulation 1* defines expressions used in these Regulations.

*Regulation 2* prohibits the immobilization of a motor vehicle by the attachment to the vehicle, or a part of it, of an immobilization device or the placing of such a device near the vehicle, or immobilizing it by any other means and provides that a person guilty of doing so is liable on conviction to a fine not exceeding level 3 on the standard scale.

*Regulation 3* provides for the removal of a motor vehicle from private land when the land has signage displayed that complies with the requirements set out in *Regulation 3* and where a motor vehicle has been permitted to remain at rest on, or appears to have been abandoned on that land and is not authorized to be there; or where the authorized person is of the opinion that the position or condition of the motor vehicle or the circumstances in which the motor vehicle has been left are such that it is causing or is likely to cause a nuisance, security risk, danger or obstruction to another person using that land. A motor vehicle must not be moved or removed from the private land under this *Regulation* other than by a designated motor vehicle removal operator. A person who moves or removes a vehicle contrary to this *Regulation* commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

*Regulation 4* provides for the removal of a motor vehicle from private land when no signage is displayed but where a motor vehicle has been permitted to remain at rest on the land, or appears to have been abandoned on that land and is not authorized to be there, or where the authorized person is of the opinion that the position or condition of the motor vehicle or the circumstances in which the motor vehicle has been left are such that it is causing or is likely to cause a nuisance, security risk, danger or obstruction to another person using that land. A motor vehicle must not be moved or removed from the private land under this *Regulation* other than by a designated motor vehicle removal operator. A person who moves or removes a vehicle contrary to this

Regulation commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

*Regulation 5* provides for the disposal of motor vehicles removed from private land, sets out the requirements to be satisfied for such a disposal and provides that a person who disposes of a motor vehicle in contravention of the requirements commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale. The landowner is also required to keep for not less than one year the original or copy of all records in connection with actions taken by the authorized person or custodian in respect of a motor vehicle under these Regulations and commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale for failing to do so.

*Regulation 6* enables the Magistrate's Court, on the application of an authorized person, to make an order permitting an authorized person to impose such charge upon a motor vehicle owner that the Magistrate may specify (not exceeding £500) and/or an order that the motor vehicle owner desist from parking or leaving the motor vehicle on the authorized person's land or permitting the motor vehicle to be parked or left on the land. Where an authorized person imposes a charge under this *Regulation*, the charge and any expenses reasonably incurred by the authorized person are recoverable as a civil debt from the motor vehicle owner.

*Regulation 7* requires the Inspector of Motor Traffic to maintain and publish a register of registered motor vehicle removal operators and a register of motor vehicle removal operators who are exempt from being registered. A person commits an offence if the person removes a motor vehicle from private land when the person is not registered or on the register of exempt motor vehicle operators and is liable on conviction to a fine not exceeding level 3 on the standard scale.

*Regulation 8* sets out the process for applications for registration and the process for reviewing and appealing a decision to refuse an application for registration, impose conditions or cancel a registration.

*Regulation 9* provides that nothing in these Regulations prevents a police officer, the Airport Director, the Harbour Master, a firefighter or any member of the Airport Rescue and Firefighting Service from exercising their powers under other laws to deal with the removal of motor vehicles.

*Regulation 10* describes the methods by which a notice or other document required or authorized by these Regulations to be given to or served on a person may be given or served on the person in question.

*Regulation 11* revokes the Removal of Vehicles (Private Land) (Jersey) Regulations 2016.

*Regulation 12* states that these Regulations may be cited as the Motor Vehicles (Removal from Private Land) (Jersey) Regulations 201- and provides for them to come into force [one month after the day on which the Motor Vehicles (Removal from Private Land) (Jersey) Law 201- is registered].

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, a fine of level 1 is £200, a fine of level 2 is £1,000 and a fine of level 3 is £10,000.





## DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) REGULATIONS 201-

### Arrangement

#### Regulation

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Jersey

## DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 2, 3, 5 and 7 of the Removal of Motor Vehicles (Private Land) (Jersey) Law 201-, have made the following Regulations –

**DRAFT – subject to revision**

### 1 Interpretation

(1) In these Regulations –

“authorized person” means –

- (a) the owner of private land (“landowner”) or a person authorized in writing by the owner of that private land to restrict the use or otherwise control the presence of motor vehicles on that land; and
- (b) in relation to a motor vehicle which is on any Ports of Jersey land, also means –
  - (i) the Harbour Master, or
  - (ii) the Airport Director;

“custodian” in relation to a motor vehicle means –

- (a) the designated motor vehicle removal operator responsible for the removal of a motor vehicle from private land; or,
- (b) in the case of a motor vehicle that remains on private land, the authorized person in relation to that land;

“designated motor vehicle removal operator” means a person, registered under Regulation 7 (or exempt from registration), who the landowner designates as the person responsible for the removal and safe custody of a motor vehicle removed from that landowner’s private land under these Regulations (and, for the avoidance of doubt the landowner may be the designated motor vehicle removal operator in relation to the landowner’s land);

“parking place” means a place allocated for the parking of a motor vehicle or a motor vehicle of any class or description;

“Ports of Jersey land” means –

- (a) land owned by Ports of Jersey Ltd (being the company established under Article 3 of the Air and Sea Ports (Incorporation) Jersey Law 2015); and
- (b) any other land that is leased to or otherwise managed by Ports of Jersey Ltd;

“public land” has the same meaning as in the Road Traffic (Jersey) Law 1956;

- (2) For the purpose of these Regulations, a motor vehicle that has broken down and has remained at rest for any period in any position on private land is to be treated as if it had been permitted to remain at rest in that position throughout that period.

## **2 Immobilization, interference etc. of vehicles prohibited**

- (1) A person commits an offence if the person, without lawful authority and with the intention of preventing or inhibiting the removal of a motor vehicle by a person otherwise entitled to remove it –
  - (a) immobilizes the motor vehicle by the attachment to the vehicle, or a part of it, of an immobilization device or the placing of such a device near the vehicle, or
  - (b) moves, or restricts the movement of, the motor vehicle by any means.
- (2) The express or implied consent (whether or not legally binding) of a person otherwise entitled to remove the vehicle to the immobilisation, movement or restriction concerned is not lawful authority for the purposes of paragraph (1).
- (3) For the purposes of paragraph (1), where the restriction of the movement of the vehicle is by means of a fixed barrier which was present (whether or not lowered into place or otherwise restricting movement) when the vehicle was placed on the private land, any express or implied consent (whether or not legally binding) of the vehicle owner to the restriction is lawful authority for the restriction.
- (4) A vehicle owner, or a person who is permitted by the vehicle owner to remove a motor vehicle cannot commit an offence under this Regulation in relation to that vehicle.
- (5) A person guilty of an offence under this Regulation is liable on conviction to a fine not exceeding level 3 on the standard scale.

## **3 Removal of motor vehicles from private land: signage displayed**

- (1) This Regulation applies where –
  - (a) a motor vehicle has been permitted to remain at rest on, or appears to have been abandoned on, private land;

- (b) the motor vehicle is not authorized to be on that private land or the authorized person is of the opinion that the position or condition of the motor vehicle or the circumstances in which the motor vehicle has been left are such that the motor vehicle is causing or is likely to cause a nuisance, security risk, danger or obstruction to another person using the private land; and
  - (c) the requirements of paragraph (2) are satisfied.
- (2) The requirements to be satisfied are –
- (a) in a case where the motor vehicle is on a part of the private land that the landowner permits to be used as a carpark –
    - (i) the parking place in which the motor vehicle has been left is clearly marked as a parking place that is allocated for use by a particular person or class of person or for the parking of a particular motor vehicle or class of motor vehicle;
    - (ii) the motor vehicle that has been left in the parking place is not authorized to be left there; and
    - (iii) there is a notice that is clearly visible from the parking place that –
      - (A) indicates that the parking place is allocated for use by a particular person or class of person or for the parking of a particular motor vehicle or class of motor vehicle,
      - (B) warns that any motor vehicle that is not authorized to be parked in the parking place is liable to be removed, and
      - (C) gives the telephone number of the custodian of any motor vehicle removed from parking places on that land; or
  - (b) in a case where a motor vehicle is on any other private land there is a notice visible from each vehicular access point onto the private land that –
    - (i) indicates that the land is private land;
    - (ii) warns that any motor vehicle that is found on that land is liable to be removed, and
    - (iii) gives the telephone number of the custodian of any motor vehicle removed from that land.
- (3) For the purposes of paragraph (2)(a), where a motor vehicle is parked in an area used as a carpark which has a clearly defined entrance and exit for motor vehicles (and whether or not access through that entrance or exit is controlled by a barrier), the requirements described in paragraph (2)(a)(i) and (iii) is satisfied if there is placed at each such entrance and exit a notice with the information described in paragraph (2)(a)(iii).
- (4) If the motor vehicle owner is present with a motor vehicle in respect of which paragraph (2)(a) or (b) applies, the authorized person may require

the motor vehicle owner immediately, or within such period as the authorised person may specify, to –

- (a) move the motor vehicle, or cause it to be moved to such other part of the private land, as the authorized person may specify; or
  - (b) remove the motor vehicle or cause it to be removed from the private land.
- (5) The authorized person, when requiring a motor vehicle to be moved or removed under paragraph (4), must, upon request of the motor vehicle owner, show the motor vehicle owner his or her authorization or, in the case of the authorized person being the landowner, must inform the motor vehicle owner of that fact.
- (6) If –
- (a) a motor vehicle owner fails to move or remove the motor vehicle or cause it to be moved or removed as reasonably required by an authorized person under paragraph (4);
  - (b) a police officer is present (or, in a case where the motor vehicle is on Ports of Jersey land, a police officer or the Airport Director or Harbour Master is present); and
  - (c) that police officer or the Airport Director or Harbour Master is satisfied that the authorized person has complied with paragraph (5),
- the police officer, Airport Director or Harbour Master, as the case may be, may permit the authorized person to take such steps as are reasonably required to move the motor vehicle to another part of the private land or remove it from the private land.
- (7) Despite paragraphs (6) and (9), a police officer may remove a motor vehicle or cause a motor vehicle to be removed from the private land, (and in the case of a motor vehicle being on Ports of Jersey land, a police officer or the Airport Director or Harbour Master may remove a motor vehicle, or cause a motor vehicle to be removed, from Ports of Jersey land) that the motor vehicle owner fails to move or remove under paragraph (4) and if the motor vehicle is removed by a police officer he or she must as soon as reasonably practicable, give custody of the motor vehicle to the designated motor vehicle removal operator in relation to the land from which it was removed.
- (8) Where a motor vehicle owner in respect of which paragraph (2)(a) or (b) applies is not present with the motor vehicle, an authorized person may take such steps as are reasonably required to –
- (a) move the motor vehicle to another part of the private land; or
  - (b) remove the motor vehicle from the private land.
- (9) A motor vehicle must not be moved or removed from the private land under this Regulation other than by a designated motor vehicle removal operator.
- (10) A person moving or removing a motor vehicle under this Regulation –

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- (a) may take such measures in relation to the motor vehicle as he or she thinks reasonably necessary to enable him or her to move or remove it and provide safe custody of it; and
  - (b) must notify as soon as reasonably practicable a police officer or the parochial authority in which the vehicle has been moved or removed and, in the case where it has been removed from the land, the place to which it has been moved.
- (11) Where a motor vehicle is taken into custody under this Regulation –
- (a) any expenses reasonably incurred by the custodian in connection with his or her removal or custody of the motor vehicle, is recoverable as a civil debt from the motor vehicle owner; and
  - (b) the motor vehicle may be retained by the custodian until the motor vehicle owner has paid any expenses referred to in subparagraph (a).
- (12) A person who moves or removes a vehicle in contravention of this Regulation commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

#### 4 Removal of motor vehicles from private land: no signage displayed

- (1) This Regulation applies where –
- (a) a motor vehicle been permitted to remain at rest on, or appears to have been abandoned on, private land;
  - (b) the motor vehicle is not authorized to be on that private land or the authorized person is of the opinion that the position or condition of the motor vehicle or the circumstances in which the motor vehicle has been left are such that the motor vehicle is causing or is likely to cause a nuisance, security risk, danger or obstruction to another person using the private land; and
  - (c) the requirements of Regulation 3(2)(a) or (b) are not satisfied.
- (2) If the motor vehicle owner is present with a motor vehicle in respect of which paragraph (1) applies, the authorized person may require the motor vehicle owner, immediately or within such period as the authorized person specifies, to –
- (a) move the motor vehicle, or cause it to be moved to another part of the private land specified by the authorized person; or
  - (b) remove the motor vehicle or cause it to be removed from the private land.
- (3) If a motor vehicle owner fails to move or remove the motor vehicle or cause it to be moved or removed as reasonably required by the authorized person under paragraph (2), a police officer may –
- (a) order the vehicle owner to remove the motor vehicle immediately or within such period as the authorized person may specify;
  - (b) give custody of the motor vehicle to the custodian; or
  - (c) take custody of the motor vehicle and arrange for its removal and safe custody.

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- (4) Subject to paragraph (5), where the motor vehicle owner is not present with the motor vehicle, the authorized person –
- (a) must not move the motor vehicle or remove it from the private land; and
  - (b) must not cause it to be moved, or removed from the private land, except as otherwise permitted by Regulation 5.
- (5) Where an authorized person is of the opinion that the position or condition of the motor vehicle or the circumstances in which the motor vehicle has been left are such that the motor vehicle is causing or is likely to cause a security risk, danger or obstruction to another person using the private land, the authorized person may request a police officer or an officer of the parochial authority in which the private land is situated to –
- (a) immediately move the motor vehicle, or cause it to be moved to another part of the private land where it will not cause a security risk, danger or obstruction to another person using that land; or
  - (b) immediately remove the motor vehicle or cause it to be removed from the private land and take custody of it,
- and if the police officer or officer of the parochial authority agrees with the opinion of the authorized person, the police officer or officer of the parochial authority, as the case may be, must take such action he or she considers necessary to move or remove the motor vehicle so that it no longer causes a security risk, danger or obstruction to another person using that land.
- (6) A person who moves or removes a vehicle in contravention of paragraph (4) commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.
- (7) Subject to paragraph (8), where a motor vehicle is moved or removed and taken into custody under this Regulation –
- (a) any expenses reasonably incurred by the authorized officer or custodian in connection with his or her removal or custody of the motor vehicle, is recoverable as a civil debt from the motor vehicle owner; and
  - (b) the motor vehicle may be retained by the custodian until the motor vehicle owner has paid any expenses referred to in subparagraph (a).
- (8) In a case where the motor vehicle has been taken into the custody of a police officer or an officer of a parochial authority, the Road Traffic (Removal of Vehicles) (Jersey) Order 1963 is to apply as if the motor vehicle had been removed from a road in accordance with that Order.
- (9) A person moving or removing a motor vehicle under this Regulation may take such measures in relation to the motor vehicle as he or she thinks reasonably necessary to enable him or her to move or remove it and for the custody of it.

**5 Disposal of motor vehicles removed from private land**

- (1) A motor vehicle that has been removed from private land must be kept by the custodian and must not be disposed of other than in accordance with this Regulation.
- (2) A motor vehicle that under Regulation 4(4) must not be removed from the private land (subject to Regulation 4(5)) must not be disposed of other than in accordance with this Regulation.
- (3) Where a custodian does not know the name and address of the motor vehicle owner, if the motor vehicle carries a registration mark assigned under the Motor Vehicle Registration (Jersey) Law 1993 the custodian may request the Inspector of Motor Traffic to give to the custodian the name and address of the person recorded in the register as the motor vehicle owner.
- (4) Upon request made under paragraph (3), the Inspector of Motor Traffic –
  - (a) subject to paragraph (5), must give to the custodian the information requested and such other particulars recorded in the register as are, in the opinion of the Inspector of Motor Traffic, relevant to the circumstances in which the request has been made; and
  - (b) may charge the custodian for giving any such information but any charge must not exceed the amount payable by a person under Article 19 of the Motor Vehicle Registration (General Provisions) (Jersey) Order 1993.
- (5) The Inspector of Motor Traffic may refuse to give the information requested under paragraph (3) if he or she reasonably believes that –
  - (a) the information is not required for a purpose connected to the removal or disposal of a motor vehicle left on private land pursuant to these Regulations;
  - (b) any charge due under paragraph (4)(b) has not been paid.
- (6) The custodian must serve a notice on the person believed to be the motor vehicle owner, stating –
  - (a) a sufficient description of the motor vehicle for it to be identified;
  - (b) the location of the motor vehicle and, in the case where it has been removed, the location from which it was removed;
  - (c) that it is the intention of the custodian to sell or otherwise dispose of the motor vehicle on or after a date specified in the notice, being not be less than 3 weeks from the date of the notice;
  - (d) that the custodian may recover from the motor vehicle owner the costs incurred in the removal and storage of the motor vehicle;
  - (e) the telephone number of the person who the motor vehicle owner should contact for the purpose of recovering the motor vehicle; and
  - (f) any other information that the custodian may consider to be relevant.
- (7) If a person to whom a notice is sent under paragraph (6) informs the custodian of the name and address of some other person who he or she alleges may be the motor vehicle owner, the custodian may send a notice



with the particulars contained in that paragraph to that other person and to any further person who the custodian may, in consequence of the sending of the notice to the said other person, be led to believe may be the motor vehicle owner.

- (8) If the custodian does not know the name and address of the motor vehicle owner or has otherwise been unsuccessful in serving a notice with the particulars described in paragraph (6)(a) to (f) on the motor vehicle owner, the custodian must insert a notice in the Jersey Gazette stating that it is the intention of the custodian to sell or otherwise dispose of the motor vehicle (which must be sufficiently described in the notice) on or after a specified date, being not less than 3 weeks from the date of the notice.
- (9) The motor vehicle may not be disposed of except where it appears that it has been abandoned, and it is deemed to have been abandoned if the motor vehicle owner has failed to claim it –
  - (a) before the end of the period of 3 weeks beginning with the date of service of the notice on the motor vehicle owner; or
  - (b) if a notice has not been served on the motor vehicle owner, before the end of the period of 3 weeks beginning with the date the notice is placed in the Jersey Gazette under paragraph (8).
- (10) A custodian may dispose of a motor vehicle that has been abandoned.
- (11) On the disposal of a motor vehicle by a custodian, the custodian may apply the proceeds of its disposal in or towards the satisfaction of any costs incurred by it in connection with the removal storage and disposal of the motor vehicle.
- (12) In the event of any costs incurred by the custodian in connection with the disposal of a motor vehicle not being satisfied under paragraph (11), the custodian may recover the costs so far as not satisfied as a civil debt from the person who was the last motor vehicle owner on the date it was removed from the private land, or, in a case where it was not removed, on the date on which it is disposed of under this Regulation.
- (13) After deducting the sum recoverable under paragraph (11), the balance (if any) of the proceeds of sale are payable within a period of one year from the date of the sale to any person to whom, but for such sale, the motor vehicle would have belonged and, in so far as any such balance is not claimed within the said period, it must be credited to the States.
- (14) The landowner must keep for not less than one year the original or copy of all records in connection with actions taken by the authorized person or custodian in respect of a motor vehicle under these Regulations.
- (15) A person who disposes of a vehicle in contravention of paragraph (1) or (2) commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.
- (16) A person who fails to comply with paragraph (14) commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale.

6 Nuisance motor vehicles

- (1) This Regulation applies where a motor vehicle is permitted to remain on private land in a manner which the authorized person considers constitutes a nuisance.
- (2) Where the authorized person of the private land does not know the name and address of the motor vehicle owner, if the motor vehicle carries a registration mark assigned under the Motor Vehicle Registration (Jersey) Law 1993 the authorized person may request the Inspector of Motor Traffic to give the name and address of the person recorded in the register as the motor vehicle owner.
- (3) Upon request made under paragraph (2), the Inspector of Motor Traffic –
  - (a) subject to paragraph (4), must give to the authorized person the information requested and such other particulars recorded in the register as are, in the opinion of the Inspector of Motor Traffic, relevant to the circumstances in which the request has been made; and
  - (b) may charge the authorized person for giving any such information but any charge must not exceed the amount payable by a person under Article 19 of the Motor Vehicle Registration (General Provisions) (Jersey) Order 1993.
- (4) The Inspector of Motor Traffic may refuse to give the information requested under paragraph (2) if he or she reasonably believes that –
  - (a) the information is not required for a purpose connected to identifying a motor vehicle owner who has permitted the motor vehicle to remain on private land in a manner that may constitute a nuisance;
  - (b) any charge due under paragraph (3)(b) has not been paid.
- (5) The authorized person must send a notice to the person believed to be the motor vehicle owner which contains –
  - (a) a sufficient description of the motor vehicle for it to be identified;
  - (b) the name and means of contact of the authorized person;
  - (c) the location at which the authorized person alleges the motor vehicle has been permitted to remain and the reason for the authorized person considering that the manner in which the motor vehicle is left or parked constitutes a nuisance;
  - (d) a warning that if the motor vehicle is found to be parked or left on the private land in future that an application may be made to the Magistrate's Court for an order –
    - (i) consenting to a charge not exceeding £500 being imposed by the landowner upon the motor vehicle owner, or
    - (ii) for the motor vehicle owner to desist parking or leaving the motor vehicle on the land or permitting the motor vehicle to be parked or left on that land;
  - (e) a statement to the effect that the vehicle owner may be heard and provide evidence to the Magistrate's Court not later than 21 days

- after the date of notice before an order is made by the Magistrate's Court; and
- (f) any other information that the authorized person considers to be relevant.
- (6) If a person to whom a notice is sent under paragraph (5) informs the authorized person of the name and address of some other person who he or she alleges may be the motor vehicle owner, the authorized person may send a notice with the particulars contained in that paragraph to that other person and to any further person who the authorized person may, in consequence of the sending of the notice to the said other person, be led to believe may be the motor vehicle owner.
- (7) The Magistrate, upon application of the authorized person, must make no order unless he or she is satisfied that –
- (a) the authorized person has a served notice of the application on the motor vehicle owner containing the matters described in paragraph (5)(a) to (e); and
  - (b) not less than 21 days from the giving of the notice has passed.
- (8) Subject to paragraph (9), the Magistrate may make an order –
- (a) consenting to the authorized person imposing such charge upon the motor vehicle owner that the Magistrate may specify (not exceeding £500); or
  - (b) that the motor vehicle owner desist from parking or leaving the motor vehicle on the land or permitting the motor vehicle to be parked or left on the land.
- (9) Where the Magistrate makes an order under paragraph (8), the motor vehicle owner may, within the period of 7 days from the date of the order, appeal against the order to the Royal Court, and, until the expiration of that period, or until the determination of the appeal, as the case may require, an order under paragraph (8)(b) has effect.
- (10) On any appeal under paragraph (9) the Royal Court may –
- (a) confirm, reverse or vary the decision of the Magistrate's Court;
  - (b) remit the matter with its opinion on the matter to the Magistrate's Court; or
  - (c) make such other order in the matter as it thinks just, and may by such order exercise any power which the Magistrate's Court might have exercised, and any order so made has the like effect and may be enforced in like manner as if it had been made by the Magistrate's Court.
- (11) Where an authorized person imposes a charge under this Regulation, the charge and any expenses reasonably incurred by the authorized person is recoverable as a civil debt from the motor vehicle owner.

## 7 Register of motor vehicle removal operators

- (1) The Inspector of Motor Traffic must maintain and publish a register of registered motor vehicle removal operators.

- (2) The Minister –
  - (a) may exempt a person or class of persons operating as motor vehicle operators from the requirement to be registered under paragraph (1); and
  - (b) must publish a list of any person or classes of persons operating as motor vehicle operators who are exempt from the requirement to register under paragraph (1).
- (3) The information to be entered in the register in respect of a motor vehicle removal operator is –
  - (a) the full name, address and telephone number of the motor vehicle removal operator;
  - (b) the premises at which any motor vehicle removed by that operator is to be kept;
  - (c) the storage and release fees of that operator.
- (4) A person commits an offence if the person removes a motor vehicle from private land pursuant to these Regulations when the person –
  - (a) is not registered under paragraph (1); and
  - (b) is not exempt from registration under paragraph (2)(a).
- (5) A person guilty of an offence under paragraph (4) is liable on conviction to a fine not exceeding level 3 on the standard scale.

#### 8 Application for registration as a motor vehicle removal operator

- (1) An application for registration as a motor vehicle removal operator must –
  - (a) be in the form published by the Inspector of Motor Traffic for that purpose;
  - (b) be accompanied by such information as the Inspector of Motor Traffic may require;
  - (c) be accompanied by such documentary evidence as may be specified by the Inspector of Motor Traffic as being necessary to substantiate the information;
  - (d) be accompanied by a fee of ~~f.XXX~~.
- (2) The Minister may by Order amend paragraph (1)(d) to provide for a different amount to be paid by way of fee.
- (3) Subject to paragraph (5), if upon receipt of an application under paragraph (1), the Inspector of Motor Traffic is satisfied that –
  - (a) the applicant has sufficiently secure premises to store any vehicle removed from private land;
  - (b) the applicant has a vehicle that is suitable for the safe removal of a vehicle from private land; and
  - (c) the applicant, if registered will have adequate insurance against any loss or damage to a vehicle removed by the applicant,the Inspector of Motor Traffic must register the applicant.

- (4) The Inspector of Motor Traffic may –
- (a) publish guidance or standard conditions that apply to any person registered under this Regulation;
  - (b) attach such conditions as he or she thinks fit to the registration of any person and
  - (c) may at any time vary such conditions.
- (5) The Inspector of Motor Traffic may refuse to grant an application for registration or, where registration has been granted, may cancel the registration, if –
- (a) the applicant or the registered person has not, on the occasion of the application or, as the case may be, at any time when requested to do so by the Inspector of Motor Traffic during the currency of the registration, furnished to the Inspector of Motor Traffic such information relating to himself or herself and to any circumstances likely to affect his or her method of operating as a motor vehicle removal operator as may be required;
  - (b) the applicant or the registered person or any person employed by, or associated with, the applicant or that person for the purposes of operating as a motor vehicle removal operator is no longer able to satisfy the Inspector of Motor Traffic of the matters described in paragraph (3)(a), (b) or (c); or
  - (c) it appears to the Inspector of Motor Traffic that, by reason of the applicant or the registered person, or any person employed by, or associated with, the applicant or the registered person for the purposes of his or her operating as a motor vehicle removal operator, having been convicted of an offence is no longer a fit and proper person to be registered.
- (6) Where the Inspector of Motor Traffic proposes to refuse an application for registration, grant such registration subject to conditions under paragraph (4) or cancel such registration under paragraph (5), he or she must give the person concerned written notice of –
- (a) the Inspector of Motor Traffic's intention to do so and the reasons for so doing; and
  - (b) the person's right to be heard in person or by a representative if he or she informs the Inspector of Motor Traffic in writing of his or her desire to do so within 14 days of the notice.
- (7) If the Inspector of Motor Traffic, after having given the person concerned an opportunity to be heard, decides to refuse the application, imposes conditions or cancels the registration, the Inspector of Motor Traffic must, if the person requires, deliver to him or her within 7 days of receiving such request written particulars of the reasons for his or her decision and the person's right of appeal.
- (8) A person aggrieved by such decision of the Inspector of Motor Traffic may, within 7 days from the date on which the person is notified of it under paragraph (7), by notice to the Minister, request the Minister to review the decision of the Inspector of Motor Traffic.

- (9) The Minister must review the decision of the Inspector of Motor traffic within 14 days from the date on which the Minister is notified under paragraph (8) and he or she, after reviewing the decision, may confirm, reverse or vary the Inspector of Motor Traffic's decision and notify his or her decision to the person aggrieved.
- (10) A person aggrieved by such decision of the Minister may, within 14 days from the date on which the person is notified of it under paragraph (9) appeal to the Inferior Number of the Royal Court and, on an appeal under this paragraph, the court may confirm, reverse or vary the Minister's decision.
- (11) Subject to paragraph (12), where the Inspector of Motor Traffic has cancelled the registration of any person such cancellation is not to take effect –
  - (a) until 14 days after the person concerned receives notification of the cancellation; or
  - (b) in the case where the person has requested a review under paragraph (8), until 14 days after the Minister notifies the person of his or her decision; or
  - (c) in the case where the person has appealed under paragraph (10), until the date on which his or his or her appeal has been dismissed.
- (12) Where the Minister considers that it is necessary in the public interest for the cancellation of a registration under this Regulation to have immediate effect, the Minister may apply to the Bailiff, a Jurat or, the Magistrate, who may make such order.

**9 Other powers of police officers etc.**

Nothing in these Regulations prevents –

- (a) a police officer from moving a motor vehicle on private land, or causing it to be moved, or removing or causing it to be removed, under any other power vested in him or her; or
- (b) the Airport Director or Harbour Master from moving or removing a motor vehicle on Ports of Jersey land under any other power vested in him or her; or
- (c) a firefighter or any member of the Airport Rescue and Firefighting Service from moving or breaking into a motor vehicle under the powers vested in him or her by Article 17 of the Fire and Rescue Service (Jersey) Law 2011.

**10 Service of notices**

- (1) A notice or other document required or authorized by these Regulations to be given to or served on a person may be given or served on the person in question –
  - (a) by delivering it to the person;
  - (b) by leaving it at the person's proper address;

- (c) by sending it by post to the person at that address; or
- (d) by sending it to the person at that address by facsimile, other electronic transmission, or by any other means by which the person may obtain or recreate the notice, direction or document in a form legible to the naked eye.

**11 Revocation**

The Removal of Vehicles (Private Land) (Jersey) Regulations 2016 are revoked.

**12 Citation and commencement**

These Regulations may be cited as the Motor Vehicles (Removal from Private Land) (Jersey) Regulations 201- and come into force one month after the day on which the Motor Vehicles (Removal from Private Land) (Jersey) Law 201- is registered.

**APPENDIX 3 TO REPORT**

**Process for the removal of vehicles from private land**

**THE FLOW-CHART IS ATTACHED AS A  
LANDSCAPE PAGE FOLLOWING THIS PAGE**



**(A) Abandoned vehicle on private land - no signage**

Landowner contacts DVS for vehicle ownership and contact information. Law to specify what information DVS requires.

Registered keeper information released to landowner at discretion of Inspector of Motor Vehicles.

Landowner sends notice to registered keeper via recorded delivery. Law to specify what information must be included in the notice.

If registered keeper information incorrect or not available, landowner places notice in the online Gazette.

After three weeks, landowner is able to remove and dispose of vehicle if unclaimed. The landowner must inform DVS, the relevant Parish and Police that the vehicle has been removed and/or disposed of.

Landowner can seek to recover costs as a civil claim.

Landowner to keep records for one year, and after one year can retain any surplus of income over costs from disposal. Law to specify that it is a legal offence to move or remove a vehicle unless in accordance with this procedure.

**(B) Abandoned vehicle on private land - marked out parking and signage**

Landowner permitted to remove vehicle to other area of land or vehicle pound and must keep the vehicle safely. If no other facility exists the vehicle must remain in situ. The landowner remains responsible for the safekeeping of the vehicle.

Landowner contacts DVS for vehicle ownership and contact information. The landowner must inform DVS, the relevant Parish and Police that the vehicle has been removed.

Registered keeper information released to landowner at discretion of Inspector of Motor Vehicles.

Landowner sends notice to registered keeper via recorded delivery. Law to specify what information must be included in the notice.

If registered keeper information incorrect or not available, landowner places notice in the online Gazette.

If the owner comes forward to claim the vehicle, landowner may recover costs of removal and storage before releasing the vehicle

After three weeks, landowner is able to remove and dispose of vehicle if unclaimed.

Landowner can recover costs as a civil claim.

Landowner to keep records for one year, and after one year can retain any surplus of income over costs of disposal.

**(C) Persistent nuisance behaviour**

Landowner contacts DVS for vehicle ownership and contact information.

Registered keeper information released to landowner at discretion of Inspector of Motor Vehicles.

Landowner sends notice to registered keeper via recorded delivery asking them to desist from nuisance behaviour or risk a sanction. Law to specify what information must be included in the notice.

If registered keeper information incorrect or not available, landowner places notice in the online Gazette.

Vehicle owner continues with nuisance behaviour but does not contest the notice. Landowner can apply to the Court for an order directing the registered keeper to desist from the nuisance behaviour, and apply for the application of a fixed sanction (e.g. fiscal penalty, the level of which is defined in law). The Magistrate may either deal with the matter in Chambers or refer the matter to the Court. The Order will be actioned by an officer of the Viscount's Department. Before determining the matter, the Court would be required to serve the registered keeper with a notice of intent.

Vehicle owner disputes the notice or continues with nuisance behaviour after fixed sanction applied. Landowner can apply to the Court for relief from persistent nuisance.

Court would be empowered to make an order it considers appropriate for the purpose of preventing a vehicle causing a persistent nuisance.

Appeals to the Royal Court

**(D) Obstacle with potential to hinder emergency services**

Landowner may contact the Police/Parish to seek immediate removal of the vehicle.

Vehicle may be removed and securely stored, or relocated to other area of site, by the Police/Parish who are not liable for any damage to the vehicle caused by the removal/relocation. Authority may levy a fee either on the landowner or registered keeper for removing the vehicle

Police have usual discretion in relation to words of advice or possible prosecution.

If vehicle re-located on site, landowner follows either process A or B to remove vehicle from their land (depending on whether there is signage in place or not).

If the vehicle is removed it must be stored and only disposed of after 3 weeks. The custodian must take steps to contact the registered keeper via notice or the Gazette (same process as Part 2 of the Road Traffic (Removal of Vehicles) (Jersey) Order 1963

**Existing legal powers**

Road Traffic (Removal of Vehicles) (Jersey) Order 1963 - makes provision for the removal of vehicles from public land

Fire and Rescue Service (Jersey) Law 2011 - Article 3 makes provision for moving or breaking into a vehicle or vessel without the consent of the owner where a firefighter or police officer believes a fire has broken out, or is about to break out

Aerodromes (Jersey) Regulations 1965 - gives the airport authority the right to remove a vehicle that it considers to be interfering with the normal working of the aerodrome

Harbours (Jersey) Regulations 1962 - the Harbour Master may give directions for the removal of vehicles from the harbour

## Explanatory Note

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This Law enables Regulations to be made by the States to provide a process by which motor vehicles that are left on private land, when not authorized by the land owner to be there, may be removed.

*Article 1* provides definitions of terms used in this Law.

*Article 2* gives power to the States make Regulations to prohibit the interference or removal of a motor vehicle on private land for any purpose, by any means, by any person or in any circumstance specified in the Regulations. By Article 2(2) the States may also prohibit the use of an immobilization device on a motor vehicle left on private land. An “immobilization device” is defined as a device or appliance designed or adapted for the purpose of preventing a motor vehicle from being driven or otherwise put in motion.

*Article 3* gives power to the States to make Regulations to permit the removal of motor vehicles from private land.

*Article 4* gives power to the States to make Regulations to permit an owner of private land to impose a parking charge, or an additional or excess charge, upon a motor vehicle owner in respect of a motor vehicle that is left on that owner’s land.

*Article 5* gives power to the States to make provision for the keeping of a register of motor vehicle removal operators and to prohibit persons who are not so registered from removing vehicles from private land.

*Article 6* permits Rules of Court under Article 29 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 and under Article 13 of the Royal Court (Jersey) Law 1948 to include powers to make Rules regulating practice and procedure for applications and appeals under this Law.

*Article 7* enables Regulations made under this Law to make different provision for different cases and contain such incidental, supplementary, transitional, transitory, consequential or savings provisions as appear to the States to be necessary or expedient and create offences and specify penalties for such offences, not exceeding a level 3 fine on the standard scale.

*Article 8* makes provision as to other persons who would be guilty of an offence committed by a body corporate, limited liability partnership or separate limited partnership.

*Article 9* provides that where a person charged with an offence under this Law accepts the decision of a Centenier having jurisdiction in the matter, the Centenier may impose a fine of an amount not exceeding level 1 on the standard scale. A fine imposed by a Centenier is paid for the benefit of the parish in which the offence was committed.

*Article 10* limits the liability in damages for acts done in the performance or purported performance of any power or duty conferred by or under this Law except where the act was done in bad faith or would prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

*Article 11* makes a consequential amendment to the Road Traffic (Jersey) Law 1956.

*Article 12* gives the title of this Law and provides for it to come into force 7 days after it is registered.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, a fine of level 1 is £200, a fine of level 2 is £1,000 and a fine of level 3 is £10,000.



Jersey

## **DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) LAW 201-**

### **Arrangement**

#### **Article**

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Jersey

## **DRAFT MOTOR VEHICLES (REMOVAL FROM PRIVATE LAND) (JERSEY) LAW 201-**

**A LAW** to permit the removal of motor vehicles from private land and connected matters.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

(1) In this Law, unless the context otherwise requires –

“Airport Director” means the person appointed as such under Article 2 of the Aerodromes (Administration) (Jersey) Law 1952<sup>1</sup>;

“Harbour Master” means the person who is appointed as such under Article 2 of the Harbours (Administration) (Jersey) Law 1961<sup>2</sup>;

“Inspector of Motor Traffic” means the Inspector of Motor Traffic appointed under Article 2 of the Motor Traffic (Jersey) Law 1935<sup>3</sup>;

“land owner” means the person for the time being having the enjoyment of that land, either as owner or usufructuary owner or in the exercise of rights of dower, franc veuvage, seignioralty or otherwise;

“Minister” means the Minister for Home Affairs;

“motor vehicle” has the same meaning as in Article 2 of the Road Traffic (Jersey) Law 1956<sup>4</sup>;

“motor vehicle owner” means the registered owner, driver or other person in control or in charge of that motor vehicle and, in relation to a motor vehicle that is the subject of a hiring agreement or hire-purchase agreement, includes the person in possession of that motor vehicle under that agreement;

“parking place” means a place allocated for the parking of a motor vehicle or a motor vehicle of any class or description;

“private land” means any road, driveway, parking place, footway or other place that is not land belonging to the public of Jersey or under the administration of any parochial authority;

“registered owner”, in relation to a motor vehicle, means the person for the time being entered in the register of motor vehicles described in Article 3 of the Motor Vehicle Registration (Jersey) Law 1993<sup>5</sup> as the owner of that vehicle;

“trailer” has the same meaning as in Article 1(1) of the Road Traffic (Jersey) Law 1956<sup>6</sup>.

- (2) In this Law, a reference to the removal of a motor vehicle from private land includes the removal of a motor vehicle or a trailer from one position to another on private land and the removal of any load carried by a motor vehicle or trailer.
- (3) The States may by Regulations amend paragraph (1).

## **2 Power to prohibit motor vehicle immobilization, interference or removal**

- (1) The States may by Regulations prohibit the interference or removal of a motor vehicle on private land for any purpose, by any means, by any person or in any circumstance specified in the Regulations.
- (2) The States may by Regulations also prohibit the attachment or other use of an immobilization device on a motor vehicle left on private land.
- (3) In this Article “immobilization device” means a device or appliance designed or adapted for the purpose of preventing a motor vehicle from being driven or otherwise put in motion.

## **3 Power to remove vehicles from private land**

- (1) The States may by Regulations make such provision as may appear to the States to be necessary or expedient to permit the removal of motor vehicles from private land.
- (2) Regulations made under paragraph (1) may include provision for any of the following –
  - (a) the circumstances in which a motor vehicle may be removed or must not be removed;
  - (b) requirements to be satisfied before a motor vehicle may be removed;
  - (c) requirements for the removal, storage, custody, recovery or disposal of a motor vehicle removed;
  - (d) the persons or classes of persons who may remove motor vehicles from private land;
  - (e) the circumstances in which the Inspector of Motor Traffic or a parochial authority must or may provide details of a registered keeper of a motor vehicle to a person specified in the Regulations or in circumstances specified in the Regulations;

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- (f) the procedure for notifying a person before or after the removal of a motor vehicle of the removal and of its storage, disposal or means of recovery of it;
  - (g) the recovery of expenses reasonably incurred in the removal, storage, custody, recovery or disposal of a motor vehicle removed from private land;
  - (h) the resolution of disputes or complaints in connection with the removal, storage, custody, recovery or disposal of a motor vehicle;
  - (i) any other provision connected to the exercise of the power under paragraph (1) or this paragraph.
- (3) In this Article a reference to disposal of a motor vehicle or trailer includes the sale, transfer or destruction of a motor vehicle or any load carried by the motor vehicle or trailer.

#### **4 Parking charges for unauthorized parking on private land**

- (1) The States may by Regulations make provision enabling a land owner, whether personally or through an agent, to impose a parking charge, or an additional or excess parking charge, upon a motor vehicle owner in respect of a motor vehicle or trailer that is left on that land owner's land.
- (2) Regulations under this Article may provide for any of the following –
  - (a) the maximum amount of parking charges, the discounting of a parking charge for early payment, any additional parking charge for late payment or any excess parking charge, that may imposed;
  - (b) the circumstances when a parking charge described in sub-paragraph (a) may, or must not, be recovered, including any requirement for a land owner to give notice that a parking charge is imposed when a motor vehicle or trailer is left on land specified in the notice;
  - (c) the persons who may impose a parking charge and the persons from whom a parking charge may, or must not, be recovered;
  - (d) the circumstances in which –
    - (i) the Inspector of Motor Traffic or a parochial authority must or may provide details of a registered keeper of a motor vehicle, or
    - (ii) the motor vehicle owner must or may provide details of any person to whom he or she has hired or lent a motor vehicle to a person specified in the Regulations or in circumstances specified in the Regulations;
  - (e) the conditions that must be satisfied before a person may impose or recover a parking charge including –
    - (i) the contents of any notice to be displayed or served in connection with a parking charge,
    - (ii) any evidence that may or must be produced in connection with a parking charge, and



- (ii) the means of bringing any notice to the attention of any motor vehicle owner;
- (f) the resolution of disputes or complaints in connection with the imposition or recovery of a parking charge;
- (g) the means of recovery of an unpaid parking charge or an additional or excess parking charge;
- (h) such other matters as the States consider to be necessary or expedient for the purposes of this Regulation.

## **5 Register of motor vehicle removal operators**

- (1) The States may by Regulations provide for the establishment and maintenance of a register of motor vehicle removal operators.
- (2) Regulations made under paragraph (1) may include provision for such matters as the States consider to be necessary or expedient for the purposes of the establishment and maintenance of such a register, including any of the following –
  - (a) the person who must maintain the register;
  - (b) the information that must be included in the register;
  - (c) the criteria for registration;
  - (d) fees for applications for registration, including any refund of fees;
  - (e) the grounds for accepting or refusing applications for registration;
  - (f) the attachment of conditions to the registration of a person;
  - (g) the processes for making or granting applications for registration, or for suspending or cancelling a person’s registration;
  - (h) the process for appealing against decisions made in respect of the granting of, or the refusal to grant, applications for registration, the imposition of any conditions, or the suspension or the cancellation of a registration;
  - (i) the duration or renewal of a registration;
  - (j) the giving of any notice in connection with a registration;
  - (k) the publication of the register or any part of it;
  - (l) restrictions or prohibitions on operating as a motor vehicle removal operator without being registered.
- (3) Regulations may permit or require the Minister to –
  - (a) publish the particulars that must be contained in an application for registration as a vehicle removal operator and any information that must accompany such application;
  - (b) prescribe the amount of any fee payable under the Regulations; or
  - (c) publish guidance or codes of practice to apply in relation to vehicle removal operators.
- (4) In this Article “publish” means publish in a manner that is likely to bring it to the attention of those affected.

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**6 Rules of Court**

The powers to make Rules of Court under Article 29 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949<sup>7</sup>, and under Article 13 of the Royal Court (Jersey) Law 1948<sup>8</sup>, includes powers to make Rules regulating the practice and procedure for applications and appeals under this Law.

**7 General provisions as to Regulations**

Regulations made under this Law may –

- (a) make different provision for different cases and contain such incidental, supplementary, transitional, transitory, consequential or savings provisions as appear to the States to be necessary or expedient; and
- (b) create offences, and specify penalties for such offences not exceeding a level 3 fine on the standard scale.

**8 General provisions as to offences**

- (1) Where an offence under Regulations made under this Law, committed by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
  - (b) any person purporting to act in any such capacity,the person is guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

**9 Power of Centenier to impose penalty**

- (1) Where a person charged with an offence under this Law accepts the decision of a Centenier having jurisdiction in the matter, the Centenier may impose a fine of an amount not exceeding level 1 on the standard scale.
- (2) A fine imposed under paragraph (1) is to be paid for the benefit of the parish in which the offence was committed.

**10 Limitation of liability**

- (1) None of the following is liable in damages for any act done in the performance or purported performance of any power or duty conferred by or under this Law –
  - (a) a police officer;

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- (b) a parochial authority;
  - (c) the Minister;
  - (d) any States employee who is, or is acting as, an officer, employee or agent of the States or of the Minister or performing any function on behalf of the States or of the Minister;
  - (e) the Harbour Master or any person who is, or is acting as, an officer, employee, or agent of the Harbour Master or performing any function on behalf of the Harbour Master;
  - (f) the Airport Director or any person who is, or is acting as, an officer, employee, or agent of the Harbour Master or performing any function on behalf of the Harbour Master.
- (2) Paragraph (1) does not apply –
- (a) if it is shown that the act was done in bad faith; nor
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>9</sup>.

## 11 Road Traffic (Jersey) Law 1956 amended

In Article 1(1) of the Road Traffic (Jersey) Law 1956<sup>10</sup>, for the definition “road” there shall be substituted the following definition –

“‘road’ means any public road, any other road to which the public has access, any of the roads on the Rue des Près Trading Estate, any bridge over which a road passes and any sea beach;”.

## 12 Citation and commencement

This Law may be cited as the Motor Vehicles (Removal from Private Land) (Jersey) Law 201- and comes into force 7 days after it is registered.

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- 1 *chapter 03.035*
  - 2 *chapter 19.060*
  - 3 *chapter 25.200*
  - 4 *chapter 25.550*
  - 5 *chapter 25.350*
  - 6 *chapter 25.550*
  - 7 *chapter 07.595*
  - 8 *chapter 07.770*
  - 9 *chapter 15.350*
  - 10 *chapter 25.550*