

STATES OF JERSEY



DRAFT HARBOURS (PROTECTION OF CABLES IN TERRITORIAL WATERS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 13th October 2010
by the Minister for Economic Development**

STATES GREFFE



Jersey

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REPORT

Background

These Regulations are required to give a degree of legal protection to the undersea cables that now supply almost all of Jersey's electricity. They prohibit fishing or anchoring in the vicinity of the cables. This prohibition is for the safety of ships and crews as well as to ensure the cables are not damaged. As part of the enforcement and advisory regime, the exclusion area remains marked clearly on all relevant charts.

The existing Regulations are triennial and expire on 13th December 2010. The States made changes in late 2007 (effective 29th February 2008) to the Harbours (Administration) (Jersey) Law 1961 and in doing so provided the vires for these to be made as permanent Regulations.

Research and the possibility of permanent legislation

Prior to the coming into force of the existing Regulations, discussions took place with legal advisers, personnel from the JEC and in the Channel Island Energy Group. Permanent legislation, involving an amendment to the Shipping (Jersey) Law 2002, could be brought in to replace the triennial process.

As now, such legislation would only be able to regulate shipping within territorial limits. However, partial protection is considered better than none. The view remains that the Island is now so very clearly dependent on the link with France that a higher level of protection than mere advisory notes is necessary.

On the advice of the Law Officers it has been confirmed that Regulation 4 of the Harbours (Administration) (Jersey) Law 1961, mentioned above, is fit for purpose for passing Regulations of this sort. As a result, the process of three-year renewal does not have to be repeated indefinitely.

Consultation with fishermen: Undersea cable links to Guernsey

The issue of extension of the protection to cover the Jersey-to-Guernsey link has been previously raised with the fishing community and the States Sea Fisheries Adviser. Discussion revealed strong opposition because of the effect prohibition could have on current fishing practices in the vicinity of the link.

Unfortunately, it is precisely the prevalence of fishing in the area of the Guernsey-Jersey link that makes cable damage and an increased safety risk a real possibility. This remains a concern of the Channel Island Energy Group and will continue to be monitored closely.

For the time being at least, the Island's strategic needs are met by protection of the French link alone.

Future amendments to the Regulations

The current sea area consisting of the cable protection zone is from Archirondel Bay to the boundary of the Island's territorial waters in a north-easterly direction crossing south of the Les Ecréhous. The coordinates are set out in the schedule.

If there were a future need to amend the coordinates or if new cables were to be laid that might require protection, the Regulations can be amended by up-dating the schedule without difficulty and presented to the States for debate. Any propose significant change would also trigger consultation with the fishing community and the States Sea Fisheries Adviser in advance.

Liability, enforcement and policing

Liability for infraction has been clarified where responsibility may lie with a manager or director of the owning company and in such cases proof of consent or connivance is required.

The policing policy has been to react to any infringement that may occur. Enforcement would be pursued through the courts if persuasive action and due warning were ineffective. To date there have been no prosecutions and the Regulations appear to have been effective as a deterrent.

Financial and human resource implications

These Regulations continue an established regime and no new resources are required.

Explanatory Note

These Regulations replace the Electricity Link with France (Protection of Submarine Cable) (Jersey) Regulations 2007 on their expiry, and put analogous provisions on a permanent footing.

Regulation 1 defines “fishing vessel” and “master” and refers readers to Regulation 2 for the meaning of “prohibited activity”.

Regulation 2 creates an offence of carrying out a prohibited activity, which means anchoring a vessel or other object, dredging or trawling in a cable protection zone (specified in the Schedule).

Regulation 3 creates a related offence committed by a master, when a prohibited activity is carried out, but only if it is from a fishing vessel. The master is guilty, without any defence of due diligence, even if it is someone else on the vessel who actually carries out the activity.

Regulation 4 creates further related offences committed by other people, when a prohibited activity is carried out from a fishing vessel. The charterer or owner of the vessel is guilty if they did not exercise all due diligence to prevent the activity. These Regulations differ from the existing triennial Regulations in that it is for the prosecution to prove failure of due diligence by charterers and owners (instead of being for the defence to prove due diligence), and in that, where the charterer or owner is a body corporate or limited liability partnership, standard provision is made for liability of directors and similar persons.

Regulation 5 sets the penalty for all the offences at up to 3 months imprisonment or an unlimited fine or both.

Regulation 6 names the Regulations and provides for them to come into force on 14th December 2010. That is when the Electricity Link with France (Protection of Submarine Cable) (Jersey) Regulations 2007 expire.

The *Schedule* specifies the cable protection zone as the territorial sea within 1,000 metres on each side of a line following the submarine electricity cable towards France.



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Arrangement

Regulation

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 4 of the Harbours (Administration) (Jersey) Law 1961¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“fishing vessel” means any vessel of whatever size, and in whatever way propelled, being used, or intended for use, for or in connection with fishing for fish or shellfish;

“master” includes a skipper or any other person who is for the time being in command or charge of a vessel;

“prohibited activity” has the meaning assigned by Regulation 2.

2 Offence of anchoring, dredging or trawling in a cable protection zone

- (1) A person commits an offence if he or she carries out a prohibited activity.
- (2) Each of the activities listed in paragraph (3) is a prohibited activity, if carried out in a cable protection zone specified in the Schedule.
- (3) The activities are –
 - (a) anchoring a vessel or other object;
 - (b) dredging;
 - (c) trawling.

3 Liability of master for prohibited activity from a fishing vessel

A person commits an offence if he or she is the master of a fishing vessel when a prohibited activity is carried out from the vessel.

4 Liability of others for prohibited activity from a fishing vessel

- (1) A person falling within paragraph (2) commits an offence if the person fails to exercise all due diligence to prevent a prohibited activity which is carried out from a fishing vessel.
- (2) A person falls within this paragraph if, when the prohibited activity is carried out, the person is not the master of the vessel but is –
 - (a) the charterer of the vessel; or
 - (b) if the vessel is not under charter, the owner of the vessel.
- (3) Paragraph (4) applies if an offence under paragraph (1) committed by a body corporate or by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of –
 - (a) a person who is a director, manager, secretary or other similar officer of the body corporate, or a partner of the partnership; or
 - (b) a person purporting to act in any such capacity.
- (4) That person –
 - (a) is also guilty of the offence under paragraph (1); and
 - (b) is liable in the same manner as the body corporate or the partnership to the penalty provided for the offence.
- (5) If the affairs of a body corporate are managed by its members, paragraphs (3) and (4) apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

5 Penalties for offence

A person guilty of an offence under these Regulations is liable to imprisonment for a term of 3 months and a fine.

6 Citation and commencement

These Regulations may be cited as the Harbours (Protection of Cables in Territorial Waters) (Jersey) Regulations 201- and come into force on 14th December 2010.

SCHEDULE

(Regulation 2(2))

CABLE PROTECTION ZONE

1 Interpretation

In this Schedule coordinates giving the position of a point are defined on WGS 1984.

2 Cable protection zone for cable to France

The cable protection zone in respect of the submarine electricity cable to France is those parts of the sea that –

- (a) form part of the territorial sea adjacent to Jersey; and
- (b) fall within 1,000 metres on each side of the line set out in paragraph 3.

3 Line for submarine electricity cable to France

The line referred to in paragraph 2(b) is a line consisting of a series of loxodromic lines joining, in the sequence given, the following points –

Point	Position	
1	49°12.746'N	2° 1.300'W
2	49°12.603'N	2° 1.097'W
3	49°12.461'N	2° 0.689'W
4	49°12.413'N	2° 0.321'W
5	49°13.148'N	1°55.348'W
6	49°14.131'N	1°50.860'W
7	49°15.550'N	1°45.816'W
8	49°16.696'N	1°43.792'W
9	49°16.791'N	1°43.214'W
10	49°16.865'N	1°42.984'W
11	49°16.889'N	1°42.818'W
12	49°16.893'N	1°42.605'W
13	49°16.953'N	1°42.231'W
14	49°16.992'N	1°42.118'W
15	49°17.076'N	1°41.852'W
16	49°17.146'N	1°41.530'W
17	49°17.168'N	1°41.505'W
18	49°17.391'N	1°41.677W
19	49°17.415'N	1°41.696'W
20	49°17.471'N	1°41.702'W
21	49°17.598'N	1°41.770'W

¹ *chapter 19.060*