

STATES OF JERSEY



DRAINAGE LAW: SERVICE OF NOTICES ON OWNERS

**Lodged au Greffe on 9th April 2008
by Senator B.E. Shenton**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Transport and Technical Services to rescind his Ministerial Decision made on 27th November 2007 in which he agreed to vary the policy on the service of notices under the Drainage (Jersey) Law 2005 and agreed that he would, from the date of the Ministerial Decision, consider serving a Notice on third party landowners for the benefit of private developers to enable those developers to lay sewers across the third party land if there was a demonstrable public gain, namely where a developer was able and willing to fund the connection of other surrounding properties to the public sewer network.

SENATOR B.E. SHENTON

REPORT

This proposition is brought, in part, in order to ascertain whether Ministerial Government has the necessary procedures in place to allow the public a fair, and inexpensive, appeal against a Ministerial Decision that adversely affects them. It also asks questions with regard to the information available to the public to back up the decision. In this case the information available to the public on the relevant website was somewhat different and less illuminating, to that available to me as a politician. Indeed, because the back-up papers were marked confidential I had to get permission from the Minister for Transport and Technical Services to publish them – a permission which could have been withheld.

The proposition is brought in the interests of democracy and healthy debate. Members won't have to take sides. The issues raised can be examined by the Privileges and Procedures Committee and used to update or change the system as necessary. The public can learn about the powers vested to a Minister through the Ministerial process. The vote, however, will be on whether private property developers should have the principles of the Drainage Law extended to their own benefit. Deputy de Faye and I have differing views on this, and I would like the Assembly to decide.

A fundamental issue is whether it can properly be said to be for the public benefit for the Minister to exercise these powers under the Drainage Law in circumstances where the neighbouring landowners are perfectly happy with their current drainage arrangements and those drainage arrangements are perfectly adequate for their current properties. Furthermore, the questions of future maintenance and the States liability to pay compensation following legal claims under the Drainage Law have not been answered.

How would you feel if a Minister passed a Ministerial Decision that allowed a private property developer to lay pipes through your land without your permission?

How would you feel if the Ministerial Decision was structured in such a way that you would receive no payment for going through your land and no compensation for inconvenience caused?

How would you feel if you and your neighbours were not consulted in any way about this and only found out through a third party?

How would you feel if you found out that you had no right of appeal as you only found out about it after the appeal date had passed?

How would you feel if the property developer stood to make a significant sum by obliterating your view and reducing the value of not only your own property, but also that of your neighbours?

Pretty fed up – I would think.

The saga began last year when I was contacted by residents of [Road name] objecting to the demolition and re-building of [Property A]. [Property A] was purchased by property developer [Mr. X].

The proposed development was opposed on the following grounds –

1. The site is in the Countryside Zone and we believe that a development of this size is contrary to the approved Island Plan policy;
2. The development is far too large and will involve a congested form of development on a restricted site and detract from the existing open character and appearance of the site and surrounding area;
3. We understand that part of [Road name] is designated a Low Density Area and therefore the proposal

would be inappropriate and detrimental to the neighbourhood;


4. The design and size of the proposed building will be overpowering and totally out of character in this area and will be a dominant feature situated as it is on the hilltop overlooking [Village name]'s harbour, clearly visible from there and the approach roads to [Village name]. It is considerably larger than the existing property it will replace;
5. The site is very small and will be almost entirely taken up by the house and its associated decking and swimming pool and is a grossly insensitive over-development of the site;
6. We are greatly concerned about the effect the demolition and rebuilding of [Property A] will have on a narrow access road, which has already proved to be extremely vulnerable, and could be liable to further collapse by the use, over a considerable period of time, of heavy vehicles and plant which would have to be used for the purpose of the demolition and rebuild, the weight of which could greatly exceed the weight limit which the road can take. The access road to the estate is now limited to 10 tons due to previous subsidence. This again would limit the size of vehicles accessing the site. We believe concrete lorries weigh in excess of 20 tons;
7. The design for "[Property A]" is steel-framed and will therefore require heavy lifting cranes, the weight of which we believe will exceed the 10 ton limit;
8. The site does not have sufficient parking for the large number of tradesmen's vehicles inevitably required for developments of this scale, and there is nowhere in the vicinity to accommodate them;
9. **Tied tanks dealing with the foul sewerage and swimming pool backwash for a five-bedroomed, five-bathroomed house will require emptying on a weekly basis, which would put yet more pressure on the access road;**
10. **The owner of the property does not have a right of way along the access road beyond his boundary. There is insufficient space for these vehicles to turn on the property and they would therefore have to use roadway over which he has no right of access in order to be able to exit the estate;**
11. The property directly below [Property A]— originally called "[Property B]" on [Name] Hill has been demolished block by block due to subsidence, which we believe was caused by the excavation of the site and the removal of vegetation and trees on the hillside. We believe that more trees have been removed directly in front of [Property A], which will further aggravate the problem;
12. The plans are somewhat misleading, in that the photographs produced taking in the view across [Village name] were taken prior to the removal of the trees as mentioned above. In actual fact the property is now fully visible from all parts of [Village name]. We enclose "before" and "after" photographs to illustrate this point;
13. If these plans are approved we believe a precedent would be set for future development, thus completely changing the character of the quiet estate.

The lack of mains drains (point number 9) was, in my opinion, the main stumbling block. Without mains drains it would be difficult, I believe, to pass a property of this size.

In order to overcome this, the developer persuaded the Minister for Transport and Technical Services to pass the following Ministerial Decision –

Drainage Law Policy in Respect of Private Developments – Additional Information (MD-T-2007-0092)

Introduction A decision made (23/11/2007) regarding: Drainage Law Policy in Respect of Private Developments – Additional Information



Decision Summary
Transport and Technical Services
Ministerial Decision

Decision Reference: MD-T-2007-0092			
Decision Summary Title (File Name):	Drainage Law Policy In Respect of Private Developments – Additional Information	Date of Decision Summary:	1 st November 2007
Decision Summary Author:	Steve Fisher Senior Manager, Engineering Design and Technical Records	Decision Summary: Public or Exempt? <i>(State clauses from Code of Practice booklet)</i>	Public
Type of Report: Oral or Written?	Written	Person Giving Oral Report:	N/A
Written Report Title (File Name):	Drainage Law Policy in Respect of Private Developments – Additional Information	Date of Written Report:	1 st November 2007
Written Report Author:	Steve Fisher Senior Manager, Engineering Design and Technical Records	Written Report : Public or Exempt? <i>(State clauses from Code of Practice booklet)</i>	Exempt 3.2.1 (a) (i)
Subject: Drainage Law Policy in Respect of Private Developments – Additional Information			
Decision(s): The Minister confirmed an amendment to the current policy of not using the Drainage (Jersey) Law 2005 to serve notice on third party landowners for the benefit of private developers, to enable developers to lay sewers across third party land. In future, the Minister will consider serving Notice if there is a demonstrable Public gain i.e where a developer is able and willing to fund the connection of other surrounding properties to the Public sewer network. Where the developer would be the sole beneficiary, the current policy will be maintained.			
Reason(s) for Decision: Amending the policy would provide a demonstrable public gain in certain situations but otherwise, would not allow developers to circumvent their moral obligation towards third party land owners.			
Resource Implications: No resource implications.			
Action required: Senior Manager Engineering Design and Technical Records to write to Developers confirming that the current policy has been amended by the Minister and that the Minister will now consider serving a Notice on adjacent landowners under the Drainage (Jersey) Law 2005 if a Public gain can be demonstrated.			
Signature:		Position:	
Date Signed:		Date of Decision (If different from Date Signed):	

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The above is the total information available on the website for view by the public at:
<http://www.gov.je/StatesGreffe/MinisterialDecision/TransportTechnicalServices/2007/drainagelawpolicy.htm>
 When I requested the back-up papers to the Ministerial Decision I received the following additional papers.

TRANSPORT AND TECHNICAL SERVICES

DRAINAGE LAW POLICY IN RESEPECT OF PRIVATE DEVELOPMENTS - ADDITIONAL INFORMATION

Exempt Code 3.2.1 (a) (i)

Purpose of the Report

To determine a departmental policy in respect of serving a legal Notice under the Drainage (Jersey) Law 2005 on behalf of a private developer.

Background

The Minister recently considered a Ministerial Report recommending that the Department maintain a long standing policy whereby the Minister will not serve a Notice for the laying of Public sewers under the Drainage (Jersey) Law 2005 on third party land owners, for the benefit of developers.

The issue has arisen as a result of a specific request by the developer of the property [Property A], [Road name] [Parish name], to refer to the Minister for a re-consideration of this policy, following the application of the policy in respect of [Property A] by Departmental Officers.

The Minister rejected the recommendation of the original report (MD-T-2007-0092) on the basis that; 'Planning constraints that require tight tanks are onerous and, where achievable, the Transport and Technical Services Department should encourage the installation of mains drainage'. The Minister also requested further information on the specifics of the [Property A] development.

Discussion

At [Property A], [Road name], [Parish name], the developer, [Mr. X], has applied to demolish the existing house and build a new five-bedroom dwelling.

This re-development falls under Island Plan Policy NR2 which states that 'New development proposals that rely on septic tanks, soakaways or private sewage treatment plants as a means of waste disposal will not normally be permitted'.

Therefore, [Mr. X] has the option of connecting privately to the Public sewer network on the main hill to the south, or installing a 'tight tank'.

[Mr. X] has a workable solution for the use of a tight tank but has been investigating the possibility of making a private connection to the Public sewer network. To achieve this connection, [Mr. X] has to install a small package pumping station on his property and lay a rising main southwards along the estate road.

This road is owned by the individual property owners on the estate who each own the section of road in front of their property. For [Mr. X] to lay a rising main along this road, he will need to reach agreement with four property owners for permission to lay the rising main in their part of the estate road. From information recently received from the developers' agents, [XYZ] Architects, it is understood that two of these landowners are refusing to give this permission.

It has been confirmed that both of the properties that are refusing permission are themselves connected to the Public sewer network via a private sewer that connects both properties as well as three others on the estate. In addition, [XYZ] Architects have also stated that the two properties, as well as one of the other three properties, are also refusing to allow [Property A] any connection on to this private drainage system.

According to [Mr. Y] of [XYZ] Architects, the reasons for refusal are:

‘that it would gain our client planning permission to build a four bed house in replacement of a three bed house’, and

‘that they (the landowner) have had problems connecting to foul drainage in the past and did not see why they should be helpful to our Client in this instance’.

[Mr. Y (Architect)] has stated that his client wishes to lay a gravity sewer northwards, at his own expense, from his new pumping station to provide a connection to the six other properties in the estate that are not currently connected to the Public sewer network. However, it is unclear as to how many of these properties would wish to avail themselves of this opportunity, although it is believed that at least one property will.

The issues outlined above are not uncommon, and usually they are resolved by some form of financial recompense being made to the landowners by the developer. However, it is not clear whether on this occasion an offer of financial recompense has been made, or whether it would be accepted even if offered.

In the past, developers have approached the Department to request that the Minister/Committee use his/its powers under the Drainage Law (and before that the Sewerage Law) to serve a Notice on the adjacent landowners so that the developer can lay his sewers. The effect of the Minister serving Notice would be that the sewer would be Public, adjacent landowners could not object to its laying, and they would only receive compensation if:

‘a person has an interest in land that is reduced in value in consequence of the exercise’ or

‘a person sustains damage by being disturbed in the enjoyment of any right in land in consequence of the exercise’.

More often than not, it would transpire that these requests by the developer are made because the developer is unwilling to pay any (or insufficient) compensation to adjacent landowners, and therefore wishes to use the Drainage Law to obviate the need to make a financial settlement, or he has identified that laying a sewer across adjacent land would be less costly for him than some other workable solution.

In either case, the developer is attempting to use Public powers under the Drainage Law to effect a financial saving for himself, to the detriment of adjacent landowners, such that the developer is the sole beneficiary.

A recent example of this was the Jambart Lane Housing development in St. Clement. In this particular case, the developer had a workable, although expensive, solution for foul sewage disposal in the form of a pumping station. There was an alternative, cheaper solution in the form of a gravity connection at the south end of the site, but this relied on the agreement of one elderly householder whose gardens the sewer had to cross, and the owners of a small private road.

After an initial contact with the landowners that failed to reach any agreement, the developer approached the department to serve Notice on their behalf. When this was refused, the developer approached the landowners again and ultimately reached agreement to lay the private sewer. However, this was not without some distress to the elderly gentleman who was told by the developer during initial negotiations, totally incorrectly, that he would be served with a Notice if he didn’t agree to the sewer being laid in his garden.

For this reason, Committees under the previous form of government have maintained a policy whereby it will not serve a Notice on adjacent landowners for the benefit of developers unless there is benefit in the proposed sewer system being Public and it can be demonstrated by the Developer that adjacent landowners are in agreement for the work to be carried out on their land.

However, given that in the case of [Property A], the developer is prepared to provide connections for six further properties, there would appear to be a Public gain if the Minister used powers under the Drainage (Jersey) Law 2005 to allow [Property A] to be connected, although this would have to be on the condition that connections to the boundary of the six other properties on the estate is made at the time.

The Minister's comments on the previous report stated that the Minister may wish to review the policy of not serving Notice on adjacent landowners on behalf of private developers. To prevent the Law being used to allow the developer to circumvent paying compensation to adjacent landowners for the developers' sole benefit, and to avoid the type of distressful situation that occurred at Jambart Lane, with the associated negative media coverage that would likely follow, it is strongly recommended that this policy, applied as a general principle, should not be changed.

However, there may well be instances, such as in the case of [Property A] above, where there would be a Public benefit in surrounding houses being connected.

Therefore, it is recommended that the existing policy of not serving Notice on behalf of developers be maintained in instances where the developer is the sole beneficiary.

However, where a developer is able to connect other surrounding properties, is prepared to fund the cost of so doing, and can therefore demonstrate that there will be a Public gain, consideration should be given to serving a Notice on his behalf, although it is also recommended that approval in these instances be at the discretion of the Minister.

Conclusion

Following rejection of the recommendations of a previous report, the Minister requested further information on the proposed development at [Property A], [Road name], [Parish name], where a developer has made a request that the Minister serve a legal Notice on adjacent landowners under the Drainage (Jersey) Law 2005 to enable the developer to connect his development to the main sewer network.

Two properties on the estate, which are already connected to the Public system, are refusing permission for [Property A] to cross their land to connect.

The developer is prepared to fund the cost of providing foul sewer connections for six other properties on the estate that are not currently connected to the Public foul sewer network.

There is considered to be a Public gain if the Minister served a Notice in this particular case. It is also considered that the Minister should have discretion in future cases of a similar nature, i.e., where the developer is prepared to connect other properties.

However, it is considered that the existing policy of not serving Notice for the benefit of a developer who will be the sole beneficiary should remain in place.

Recommendation

The Minister is recommended to serve a Notice on adjacent landowners on behalf of the developer of [Property A], as there is a demonstrable Public gain, on condition that the developer provides foul sewer connections to the boundary for the six other unconnected properties on the Estate.

The Minister is further recommended to reconfirm the current policy of not using its' powers under the Drainage Law (2005) to serve notice on third party land owners for the benefit of developers or private individuals, where the developer or private individual is the sole beneficiary, but where there is a demonstrable Public gain in terms of additional properties being connected, the decision on whether to serve Notice should be at the Ministers discretion.

Reason(s) for Decision

The developer of [Property A] is providing a demonstrable public gain by offering to connect a further six properties to the foul sewer Public network.

Changing the existing policy of not serving notice on behalf of developers where the developer is the sole beneficiary, would allow developers to circumvent their moral obligation to pay compensation to adjacent

landowners for the use of their land.

Action Required

The Manager, Engineering Design and Technical Records to write to [Mr. Y (Architect)] confirming that the Minister will serve a Notice on the relevant landowners under the Drainage (Jersey) Law 2005, to allow [Property A] to connect to the Public foul sewer network, on condition that the developer provides foul sewer connections to the remaining six other unconnected properties on the Estate.

1 November 2007

The following letter from one of the nearby property owners succinctly outlines the objections to the passing of this Ministerial Decision;

[Property A], [Road name], St. Brelade **Application Reference P2007/[xxxx]**

-

- The act of serving Notice under Article 10 has predominantly been when constructing foul sewer extensions across fields in the country Parishes.
- Powers under the Drainage Law have never been invoked for the benefit of just one property owner.
- Amendment to the policy under MD-T-2007-0092 was at the specific request of the developer.

Your decision to invoke Article 10 was made on the basis of a report prepared by [Manager, Engineering Design and Technical Records], which relied heavily on information supplied by [XYZ] Architects acting on behalf of their client, the developer. The information supplied by [XYZ] Architects is biased and inaccurate.

Contrary to the report, [Mr. X] does not have a workable solution for the use of a tight tank. His proposed design does not allow enough turn round space for tankers to access and leave his property without trespass. He has no right of way beyond his boundary. Neither does he have Planning permission.

Could you please answer the following:

- Why was a decision made based solely upon information from the property owner;
- According to the report, "it is unclear as to how many of these properties would wish to avail themselves of this opportunity". Why did you not ask?
- The report says "it is not clear whether on this occasion an offer of financial recompense has been made." Why did you not ask?
- The report makes it clear that the law is not intended to be used by a developer who is unwilling to pay any compensation to adjacent landowners and wishes to obviate the need to do so, or finds this means to be less costly than some other workable solution. It clearly says that in either case, the developer is attempting to use Public powers under the Drainage Law to effect a financial saving. How can it be acceptable for a developer to circumvent his moral obligation to pay compensation to adjacent landowners because of a possible future public benefit?
- Why was [Mr. X] not obliged to at least try to reach some settlement with his neighbours?
- How often, and under what circumstances, has this law been invoked prior to planning permission being obtained?
- How often, and under what circumstances, has this law been invoked when the developer does not have another workable solution to his drainage problems?

- The act of serving Notice has previously been predominantly when constructing foul sewer extensions across fields in the country Parishes. I would assume that disruption would be minimal under those circumstances. How can you justify the disruption which will inevitably be caused in this particular case?
- Since these particular circumstances are clearly very different to other instances when Notice has been served, why was there not any consultation with the landowners?
- Will this proposition proceed if [Mr. X] fails to gain Planning permission?
- It is interesting to note the comments about the Jambart Lane Housing development with regard to the distress caused to an elderly neighbour. Why have you not considered the distress your decision may cause to a number of [Mr. X's] elderly neighbours?
- Previous Committees have maintained a policy to not serve notice unless there is benefit in the proposed sewer system being Public **and** the adjacent landowners are in agreement. The grounds given for your decision – that of public benefit – to change this policy are absurd. The previous policy already insisted on public benefit. Your decision allows developers to invoke this law, without any agreement with landowners and without any compensation. How can you justify that?

[Mr. X] does not have Planning permission to develop “[Property A]” and we believe that permission hinges on a connection to mains drains. The existing property has a perfectly workable drainage system for its size. [Mr. X] does not need mains drains unless he gets permission to develop. By invoking this law prior to his gaining permission to develop, you will inevitably greatly improve his chances of obtaining permission and making a hefty profit. Is that what the law is for?

The papers supporting the Ministerial Decision were marked ‘confidential’ and were therefore not for public view. The Minister kindly acceded to the removal of the confidentiality clause on the provision that reference to the identity of the developer and location of the property was removed. I agreed to this request with some reservations given that the Ministerial Decision *was passed, according to the supporting papers, to specifically aid this particular property developer.*

I have many other documents regarding this development and some planning concerns. However this document is about the Ministerial Decision only. The current procedures for the public to appeal against a Ministerial Decision are not clear and I believe that this MD is a heavy-handed abuse of Government power against the rights of an individual. In my opinion my land is my land.

Furthermore, the action under the Drainage Law may be slightly flawed. As far as I can see there is no statutory appeal mechanism against the service of a drainage notice under Article 10 of the Drainage Law if the Minister serves a notice of the intention to lay public sewers under private land.

However, the landowners can claim compensation from the Minister under Article 38 if “a person that has an interest in the land that is reduced in value in consequence of the exercise by the Minister.”

This does not look like a great deal for the States. The Property Developer makes a fortune (probably tax free) and the States picks up the liability. The Minister should not be saying ‘how high’ when a property developer says ‘jump’.

Furthermore the Law clearly states:

“The powers of the Minister or of an authorized person under this Law shall not be exercised in respect of any Crown land unless the Lieutenant-Governor consents or they are so exercised in a case of emergency.”

So the Law is only detrimental to the private property owners of Jersey and it gives the impression that it was passed for the benefit of the States, the Crown, and property developers.

The Drainage Law is attached to the back of this proposition as an Appendix and can also be viewed on the Jersey Legal Information Board website at:

http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f22%2f22.080_DrainageLaw2005_RevisedEdition_1January2006.htm

No doubt a lawyer would be able to advise whether there could be any judicial review possible. A landowner would be able to apply for a hearing by a Complaints Board but this would not in itself stop the process although the Minister may be willing to defer works pending the conclusion of the hearing if one was granted. The Complaints Board can only request the Minister to reconsider his decision.

Faced with a lack of a straightforward appeal process we are left with this proposition.

This proposition asks the Assembly to decide whether the Ministerial Decision was the right decision –

“The Minister confirmed an amendment to the current policy of not using the Drainage (Jersey) Law 2005 to serve notice on third party landowners for the benefit of private developers, to enable developers to lay sewers across third party land. In future, the Minister will consider serving Notice if there is a demonstrable Public gain i.e. where a developer is able and willing to fund the connection of other surrounding properties to the Public sewer network.”

It is up to Government to decide.

I believe that there are no financial or manpower implications arising from this proposition.



Jersey

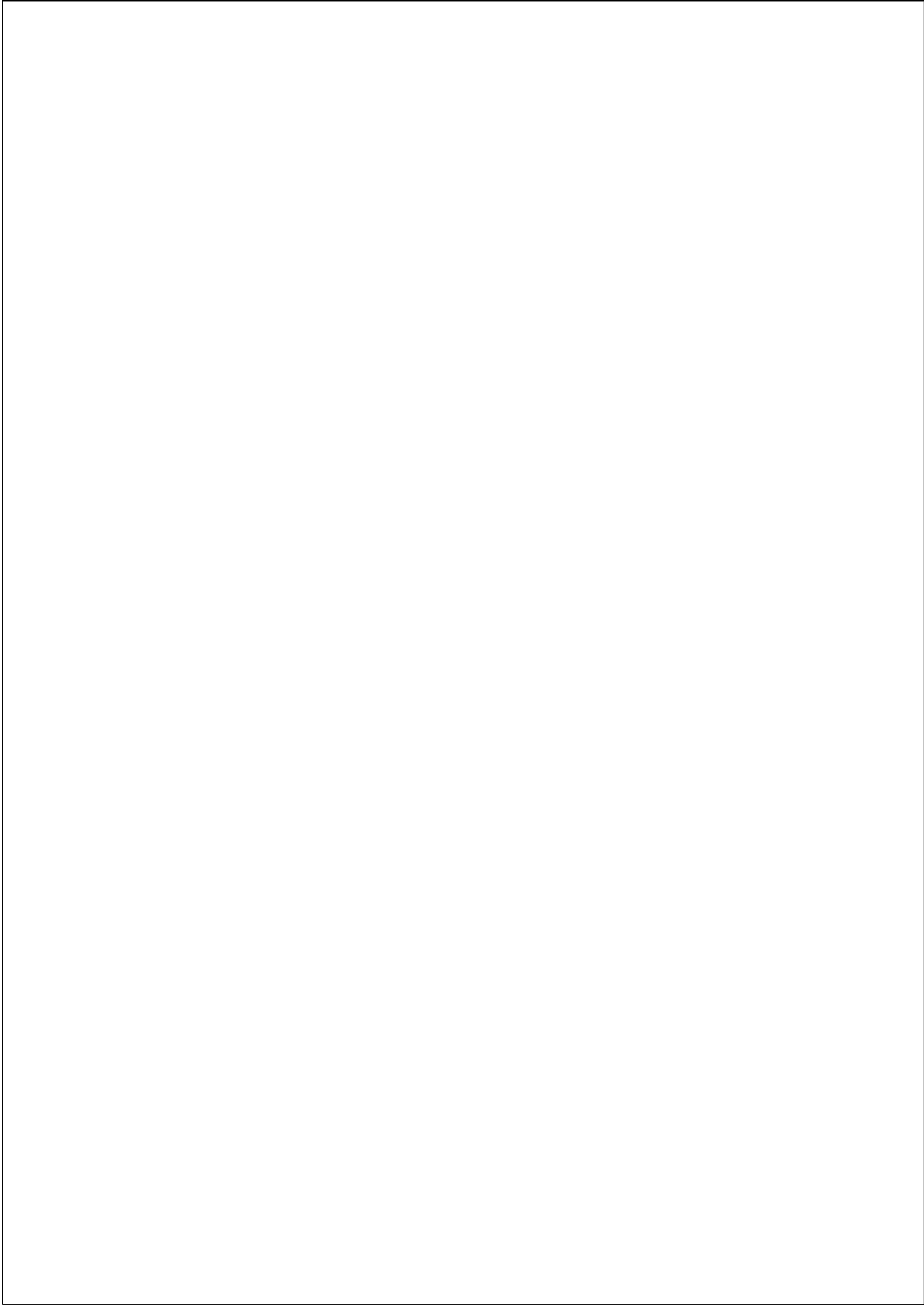
DRAINAGE (JERSEY) LAW 2005

Revised Edition

22.080

Showing the law as at 1 January 2006

This is a revised edition of the law





DRAINAGE (JERSEY) LAW 2005

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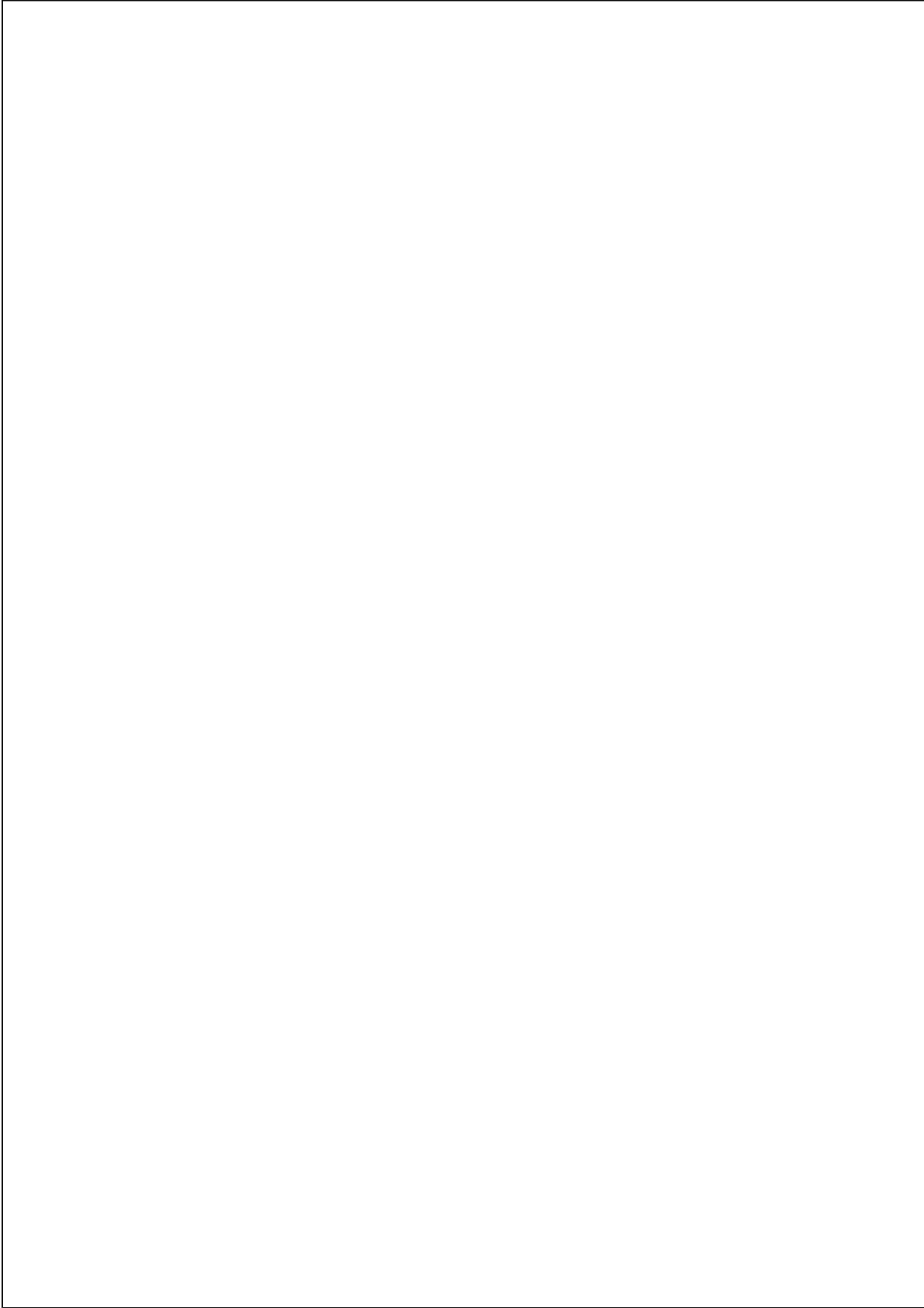
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DRAINAGE (JERSEY) LAW 2005

A **LAW** to consolidate and revise the law relating to sewerage, drainage and flood defence, and for consequential and incidental matters.

Commencement [[see endnotes](#)]

1 Interpretation

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

“accessories” includes –

- (a) any manholes, chambers, ventilating shafts, settling tanks, wash-out pipes, pumps, valves, machinery, equipment or other apparatus, designed or adapted for the use or maintenance of any drain, sewer, sewage disposal works or outfall or of another accessory for such a facility; and
- (b) any associated cabling or telemetry apparatus;

“apparatus” includes a cable, conduit, duct, main or pipe;

“authorized person” means a person who is appointed as an authorized person under Article 7(1);

“business” includes a trade, an industrial or commercial activity and a profession;

“construct” includes to install or to alter;

“contravene”, when used in respect of the conduct of a person who must comply with a requirement in or under this Law, includes to fail to comply with it;

“Crown land” means any land belonging to Her Majesty or to any Department of Her Majesty’s Government or to any other instrument or agency of the Crown;

“day”, in Schedule 1, means a period of 24 hours commencing at midnight;

“designated flood defence works” means flood defence works that are for the time being designated as a facility of general significance for the purposes of flood defence, by an Order made under Article 29;

“designated watercourse” means a watercourse that is for the time being designated as a facility of general significance for the purposes of flood defence, by an Order made under Article 29;

“drain” means a drain that –

- (a) is used for the drainage of one set of premises only, or for the drainage of a yard that is appurtenant to one set of premises only; and
 - (b) is within the same curtilage as those premises,
- and also means such a drain’s outfalls and accessories;

“flood defence” includes –

- (a) the drainage of land;
- (b) the defence of land against surface water, sea water or coastal erosion; and
- (c) the provision of flood warning systems;

“foul sewer” means a public sewer that is reserved under Article 13 for foul sewage;

“land” includes –

- (a) a house, building or other premises;
- (b) land under water; and
- (c) an interest in land,

and the expression “on land” means on, in or under land;

“maintain” includes to inspect, clean, repair, remove an obstruction from, improve or replace and, when used in respect of any watercourse or flood defence works, also includes to dredge, deepen, widen, straighten, raise or divert;

“Minister” means the Minister for Transport and Technical Services;

“outfall” includes an outfall’s accessories;

“person” includes any Minister;

“prescribed” means prescribed by an Order made under this Law;

“public outfall” means an outfall –

- (a) that, immediately before the commencement of this Law, was vested in or maintained by the Minister in the Minister’s capacity as the sewerage undertaker for Jersey; or
- (b) that the Minister constructs under Article 9 or Article 10, or adopts under Article 12, after the commencement of this Law,

being in either case an outfall lying outside and downstream of any sewage disposal works;

“public sewage disposal works” means sewage disposal works –

- (a) that, immediately before the commencement of this Law, were vested in or maintained by the Minister in the Minister's capacity as the sewerage undertaker for Jersey; or
- (b) that the Minister constructs under Article 11, or adopts under Article 12, after the commencement of this Law;

"public sewer" means a sewer –

- (a) that, immediately before the commencement of this Law, was or was deemed to be a public sewer;
- (b) that, immediately before the commencement of this Law, was vested in or maintained by the Minister in the Minister's capacity as the sewerage undertaker for Jersey; or
- (c) that the Minister constructs under Article 9 or Article 10, or adopts under Article 12, after the commencement of this Law;

"public utility undertaking" has the same meaning as it has in Article 1 of the Public Utilities Undertakings (Guarantee on Loans) (Jersey) Law 1963²;

"rateable value", when used in respect of land, has the same meaning as it has in Article 1(1) of the Parish Rate (Administration) (Jersey) Law 2003³;

"Rates List", when used in respect of a Parish, has the same meaning as it has in Article 1(1) of the Parish Rate (Administration) (Jersey) Law 2003;

"routine maintenance" means any maintenance that does not involve the improvement or replacement of the thing that is being maintained and, in the case of any watercourse or flood defence works, does not involve the widening, straightening, raising or diversion of that facility;

"sewage disposal works" does not include a sewer or an outfall that is a public outfall, but otherwise includes –

- (a) pumping stations (and their outfalls and accessories); and
- (b) any other works (and their outfalls and accessories),

that are used for the reception, treatment, handling or disposal of foul sewage or surface water;

"sewer" means –

- (a) a sewer, pumping main, tunnel, conduit, culvert or outfall; or
- (b) an accessory to anything described in sub-paragraph (a),

that is used for the conveying or disposal of foul sewage or surface water, and is not a drain;

"surface water" includes water from roofs;

"surface water sewer" means a public sewer that is reserved under Article 13 for surface water;

"trade effluent" means a liquid (whether or not it contains particles of matter in suspension) that is wholly or partly produced on trade premises, and is not domestic sewage;

“trade effluent discharge consent” and “discharge consent” mean a trade effluent discharge consent that is granted under Article 22;

“trade premises” means any premises that are used or are intended to be used –

- (a) for carrying on a business; or
- (b) for an educational, medical, public, recreational or scientific purpose, or for the purpose of providing an amenity,

and are not premises specified in Schedule 1;

“vary” when used in respect of a trade effluent discharge consent, means to vary a term or condition of the discharge consent;

“watercourse” includes –

- (a) a brook, culvert, cut, ditch, dyke, lavoir, passage, sluice or stream, through which water flows; and
- (b) the outfall of anything described in sub-paragraph (a),

but does not include a sewer or drain.

- (2) In this Law, references to land in public ownership do not include references to land that is owned or administered by or on behalf of a Parish.
- (3) For the purposes of this Law, it is immaterial –
 - (a) that trade premises are or are not used for profit; and
 - (b) that a watercourse is natural or artificial, or that it is for the time being dry.

PART I

ADMINISTRATION

2 General functions of Minister

- (1) The Minister shall be the sewerage undertaker and flood defence authority for Jersey.
- (2) The Minister shall be responsible for the administration, control and maintenance of –
 - (a) public sewers, public sewage disposal works and public outfalls;
 - (b) the property belonging to the public situated at Moulin de la Ville and all other property belonging to the public that was formerly under the administration of the Committee set up in virtue of the “Règlement relatif à la construction d’Égouts en la Ville de St. Hélier” passed by the States on 30th July 1846, and confirmed by Order of Her Majesty in Council, dated 27th August 1846;
 - (c) designated watercourses and designated flood defence works; and
 - (d) all land acquired, purchased or expropriated under this Law or in virtue of any enactment repealed or amended by Article 54(1).
- (3) In the discharge of his or her functions, the Minister may –

- (a) provide, maintain, improve and extend a system of public sewerage facilities, so that Jersey is and continues to be effectively drained;
- (b) provide for the emptying of public sewers, and make any further provision that is necessary for effectively dealing with their contents by public sewage disposal works or other means; and
- (c) provide, maintain, improve and extend facilities and measures to protect Jersey from flooding.

3 Services by agreement

- (1) The Minister may, by agreement with any person, provide services, facilities and materials to the person for the purposes of this Law.
- (2) If a fee or charge is prescribed under Article 4 for a service, facility or material, that fee or charge shall be payable for its provision.
- (3) If a fee or charge is not prescribed under that Article, any amount that is to be payable for the provision of the service, facility or material shall be determined by agreement between the Minister and the person concerned.
- (4) The Minister may engage any person as a contractor, on such terms as the Minister may agree with him or her, to execute any work or perform any other function on the Minister's behalf under or for the purposes of this Law.

4 Prescription of fees and charges – *NOT IN FORCE*

5 Maps and records

- (1) The Minister shall deposit at one of the Minister's public offices a map or record showing, as such –
 - (a) all public sewers;
 - (b) all public sewage disposal works;
 - (c) all public outfalls;
 - (d) all designated watercourses; and
 - (e) all designated flood defence works.
- (2) If a public sewer is reserved under Article 13 for foul sewage or for surface water, the map or record shall show that it is so reserved.
- (3) The map or record shall be available for inspection by any person at any reasonable time during office hours free of charge.
- (4) A copy of the map or record that is certified by the Greffier of the States as a true copy shall be sufficient evidence, unless the contrary is proved, that –
 - (a) a sewer shown on it as a public sewer is a public sewer;
 - (b) a sewer shown on it as a foul sewer is a foul sewer;
 - (c) a sewer shown on it as a surface water sewer is a surface water sewer;

- (d) any sewage disposal works shown on it as public sewage disposal works are public sewage disposal works;
- (e) an outfall shown on it as a public outfall is a public outfall;
- (f) a watercourse shown on it as a designated watercourse is a designated watercourse; and
- (g) any flood defence works shown on it as designated flood defence works are designated flood defence works.

6 Consents and approvals

- (1) Before giving any consent or approval under this Law, the Minister may require the applicant to submit to the Minister plans and specifications and other details of any work or matter for which the consent or approval is sought.
- (2) In giving any consent or approval under this Law, the Minister may do so unconditionally or on such conditions as the Minister may specify in his or her decision.
- (3) If a person to whom the Minister has given consent or approval under this Law contravenes any condition on which that consent or approval is given, he or she shall be guilty of an offence and liable to the same penalty as provided by this Law for doing, without such consent or approval, the act for which that consent or approval is required.

7 Authorized persons

- (1) The Minister may in writing appoint –
 - (a) any person who is employed in the service of the States; or
 - (b) any other individual who is a contractor engaged by the Minister to execute any work or perform any other function on the Minister's behalf under or for the purposes of this Law, or who is a director, partner or manager or other responsible employee of a contractor so engaged by the Minister,to be an authorized person for the purposes of this Law.
- (2) An authorized person who is exercising or proposing to exercise a power under this Law shall produce, on request, evidence of the person's authority to do so.
- (3) An authorized person shall also, on request –
 - (a) state his or her name; and
 - (b) specify the power that he or she proposes to exercise.
- (4) In exercising a power under this Law (including a power conferred by a warrant granted under Article 49), an authorized person may be accompanied by –
 - (a) such assistants, advisers and other persons; and
 - (b) such vehicles, equipment and materials,as are reasonably necessary or expedient for the purpose.

- (5) A person who accompanies an authorized person under paragraph (4) may perform any of the authorized person's functions under this Law, but only under the latter's supervision.

PART 2 SEWERAGE

8 Sewers and drains to the sea

- (1) No person shall construct a sewer or drain, or an outfall, that has an outlet that is capable of discharging foul sewage or surface water on to the sea shore or into the sea, unless he or she has the written consent of the Minister to do so.
- (2) No person shall –
- (a) connect any land to a sewer or drain, or an outfall, that has an outlet that is capable of discharging foul sewage or surface water on to the sea shore or into the sea; or
 - (b) alter such a connection,
- unless he or she has the written consent of the Minister to do so.
- (3) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for consent under this Article.
- (4) Any person who contravenes paragraph (1) or paragraph (2) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (5) Any person who causes or knowingly permits surface water to be discharged on to the sea shore or into the sea, otherwise than through an authorized sewer, drain or outfall shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (6) For the purposes of paragraph (5), a sewer, drain or outfall is authorized if –
- (a) it was in existence, and surface water could be discharged lawfully through it on to the sea shore or into the sea, immediately before the commencement of this Law; or
 - (b) the Minister has given his or her consent under this Article to its construction and, if the surface water is discharged on to the sea shore or into the sea in consequence of having entered the sewer, drain or outfall from any land that is connected to it, the Minister has also given his or her consent under this Article to that connection.
- (7) If any person carries out any works in contravention of this Article, or causes or knowingly permits surface water to be discharged in contravention of this Article, the Minister may –
- (a) remove those works; or
 - (b) stop the discharge,

and recover from that person the costs incurred by the Minister in doing so.

9 Public sewers on land in public ownership

The Minister may construct and maintain –

- (a) a public sewer; or
- (b) a public outfall,

on or over any land in public ownership.

10 Public sewers on other land

(1) The Minister may construct and maintain –

- (a) a public sewer; or
- (b) a public outfall,

in accordance with this Article, on or over any land that is not in public ownership.

(2) At least 28 days before exercising his or her powers under paragraph (1), the Minister shall serve a notice in writing of his or her intention to do so on every person who is an owner or occupier of the land.

(3) The notice shall include the following information –

- (a) a description of the land that is sufficient to identify it;
- (b) a description of the site or proposed site of the sewer or outfall that is sufficient to show where it will be situated on or over the land; and
- (c) details of any works that the Minister proposes to carry out in connection with the construction or maintenance of the sewer or outfall.

(4) The Minister need not comply with paragraph (2) in a case of emergency or routine maintenance.

(5) As soon as reasonably practicable after serving a notice under paragraph (2) for the construction of a public sewer or a public outfall, the Minister shall apply to the Royal Court for an order that the notice be registered in the Public Registry of Contracts.

(6) The registration of the notice in the Public Registry of Contracts shall vest in the Minister –

- (a) the right to construct and maintain the public sewer or public outfall; and
- (b) the right to have access to it at all reasonable times for the purposes of this Law.

(7) This Article is subject to Article 38.

11 Public sewage disposal works on land in public ownership

The Minister may construct and maintain public sewage disposal works on or over any land in public ownership.

12 Adoption of other sewerage facilities

- (1) The Minister may, by agreement with the owner of any sewer, sewage disposal works or outfall, or by making a declaration in accordance with this Article –
 - (a) adopt the sewer as a public sewer;
 - (b) adopt the sewage disposal works as public sewage disposal works; or
 - (c) adopt the outfall as a public outfall.
- (2) If the Minister proposes to make a declaration under this Article, the Minister shall first give notice in writing of the Minister's proposal to the owner.
- (3) After giving notice to the owner, the Minister shall not make the declaration before 28 days have elapsed.
- (4) In deciding whether to adopt any sewer, sewage disposal works or outfall under this Article, the Minister shall have regard to all the circumstances of the case, and in particular –
 - (a) whether the facility is to be adapted or required for any general system of sewerage or sewage disposal that the Minister has provided or proposes to provide;
 - (b) the location of the facility, and the means of access to it;
 - (c) the number of premises that the facility is intended to serve;
 - (d) whether, having regard to the proximity of other premises or the prospect of further development, there may be a requirement to serve additional premises;
 - (e) the mode of construction, state of repair and capacity of the facility; and
 - (f) in any case where an owner objects to the adoption of the facility, whether its adoption would be seriously detrimental to the owner.
- (5) Before any land is deprived of the lawful use of any facility by reason of its adoption by the making of a declaration under this Article –
 - (a) the Minister shall, at the Minister's own cost, carry out any work that is necessary to connect that land to some other public sewer, public sewage disposal works or public outfall (as the case requires); or
 - (b) the Minister shall, at the Minister's own cost, provide an alternative facility.
- (6) On the making of an agreement or declaration under this Article by the Minister, the facility in respect of which it is made shall become a public sewer, public sewage disposal works or a public outfall (as the case may be).

- (7) As soon as reasonably practicable after making an agreement or declaration under this Article, the Minister shall apply to the Royal Court for an order that the agreement or declaration be registered in the Public Registry of Contracts.
- (8) The registration of the agreement or declaration in the Public Registry of Contracts shall vest in the Minister –
 - (a) the right to maintain or alter the facility as a public sewer, public sewage disposal works or a public outfall (as the case may be); and
 - (b) the right to have access to the facility at all reasonable times for the purposes of this Law.
- (9) There shall be a right of appeal, in accordance with Article 42, against a decision by the Minister to adopt a sewer, sewage disposal works or an outfall, by a declaration under this Article.
- (10) This Article is subject to Article 38.

13 Separation of foul and surface water sewers

The Minister may reserve a public sewer for foul sewage only or for surface water only.

14 Obligation to connect to public sewer

- (1) If –
 - (a) it appears to the Minister on reasonable grounds that in the interests of public health or the environment, or for reasons of amenity, the discharge of sewage from any land should be effected by means of a connection to a public sewer; and
 - (b) it is reasonably practicable to connect that land to a public sewer,the Minister may require the owner of the land to construct for that purpose a satisfactory sewer or drain (including any associated pumping arrangements) to connect the land to the public sewer.
- (2) Before making a requirement under paragraph (1) in the interests of public health, the Minister shall consult the Minister for Health and Social Services.
- (3) A requirement under paragraph (1) shall not specify a period of time within which the sewer or drain must be constructed that is sooner than 28 days after the Minister serves notice in writing of the requirement on the owner in accordance with Article 36, but this paragraph is without prejudice to the requirement in paragraph (2) of that Article that the period for compliance must in any event be reasonable in the circumstances.
- (4) To the extent that any part of the sewer or drain is to be constructed on the land of the owner, the Minister may –
 - (a) require the owner to undertake that part of the work; or
 - (b) undertake that part of the work himself or herself.

- (5) However, the Minister shall not require the owner to construct any part of a sewer or drain on land that he or she does not own.
- (6) The Minister may recover from the owner the costs incurred by the Minister in undertaking –
 - (a) any work under paragraph (4); or
 - (b) any work undertaken by the Minister for the purposes of this Article on land that he or she does not own,but this paragraph is without prejudice to the Minister's right under Article 37(2) to recover his or her costs for undertaking any work in default of compliance by the owner with a requirement under paragraph (4) of this Article.
- (7) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.
- (8) The Minister may exercise his or her powers under this Article whether any premises on the land were constructed or the public sewer was constructed before or after the commencement of this Law.
- (9) This Article is subject to Article 38.

15 Repair of sewers and drains by owners

- (1) If it appears to the Minister that a sewer or drain connecting any land directly or indirectly to a public sewer –
 - (a) may be in a condition that is injurious to or likely to cause injury to public health or to the environment;
 - (b) prejudicially affects or is likely to prejudicially affect any amenity;
 - (c) may be in such a condition as to damage, obstruct or otherwise prejudicially affect any public sewer, public sewage disposal works or public outfall; or
 - (d) may be admitting subsoil water,the Minister may examine the condition of the sewer or drain.
- (2) Before exercising a power under paragraph (1) in the interests of public health, the Minister shall consult the Minister Health and Social Services.
- (3) For the purposes of paragraph (1) –
 - (a) the Minister may carry out any test; and
 - (b) if the Minister considers it necessary to do so, the Minister may open the ground.
- (4) If the sewer or drain is found to be in proper condition, the Minister shall reinstate any ground that the Minister has opened and make good any damage that the Minister has done, at the Minister's own expense and as soon as possible afterwards.
- (5) If the sewer or drain is found not to be in proper condition, the Minister may require the owner of the land to repair or replace it at his or her own expense.

- (6) However, the Minister shall not require the owner to repair or replace any part of the sewer or drain that is constructed on land that he or she does not own.
- (7) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.
- (8) Subject to paragraph (4), the Minister may recover from the owner the costs incurred by the Minister in undertaking any work under this Article, but this paragraph is without prejudice to the Minister's right under Article 37(2) to recover the Minister's costs for undertaking any work in default of compliance by the owner with a requirement under paragraph (5) of this Article.
- (9) This Article is subject to Article 38.

16 Restricted discharges into sewers and drains

- (1) No person shall cause or knowingly permit to be introduced into any public sewer, or into any sewer or drain connecting to a public sewer, or into any public outfall –
 - (a) any matter that is likely to injure a person, or to damage or interfere with the free flow of the contents of the public sewer or public outfall, or to exceed its capacity or to impede its maintenance or to prejudicially affect the treatment or disposal of its contents; or
 - (b) any petroleum-spirit, or any substance that in its pure state is flammable, or steam, or any liquid of a temperature higher than 43.3 degrees Celsius.
- (2) In this Article, "petroleum-spirit" means any of the following things that, when tested in the manner described in the definition of that expression in section 23 of the Petroleum (Consolidation) Act, 1928 (c.32) of the United Kingdom, gives off a flammable vapour at a temperature of less than 21 degrees Celsius, namely –
 - (a) crude petroleum;
 - (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; and
 - (c) a product of petroleum or mixture containing petroleum.
- (3) No person shall cause or knowingly permit surface water to be discharged into a public sewer that is not a surface water sewer unless –
 - (a) he or she has the written consent of the Minister to do so; or
 - (b) the person was lawfully doing so before the 28th January 2005, and the volumetric rate at which he or she does so after that date does not exceed that at which the person was lawfully discharging the water into the sewer before that date.
- (4) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for consent under this Article.

- (5) Any person who contravenes paragraph (1) or paragraph (3) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (6) Paragraph (1) does not apply to an act done or an omission made in accordance with a trade effluent discharge consent.

17 Disturbance of public sewers

- (1) No person shall construct, demolish or remove –
 - (a) a building or other structure on or over a public sewer or public outfall, or within 5 metres of a public sewer or public outfall; or
 - (b) any apparatus on or over a public sewer or public outfall, or within one metre of a public sewer or public outfall,unless he or she has the written consent of the Minister to do so.
- (2) Paragraph (1) does not apply to anything that is reasonably done by a public utility undertaking in the course of performing its functions in an emergency, but the undertaking shall inform the Minister promptly of anything so done.
- (3) No person shall –
 - (a) open a public sewer or public outfall;
 - (b) make a connection directly or indirectly with a public sewer or public outfall; or
 - (c) alter such a connection,unless he or she has the written consent of the Minister to do so.
- (4) The Minister shall not give his or her consent to the making or altering of a connection between –
 - (a) a sewer or drain that carries surface water; and
 - (b) a public sewer that is not a surface water sewer,unless there are exceptional circumstances.
- (5) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for consent under this Article.
- (6) Any person who contravenes paragraph (1) or paragraph (3) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (7) If a person has constructed, demolished or removed any building or other structure or any apparatus, in contravention of paragraph (1), the Minister may require him or her to remove it or (as the case may be) to restore it to its condition before the contravention.
- (8) If a person has in contravention of paragraph (3) opened or made a connection directly or indirectly with a public sewer or public outfall, or altered such a connection, the Minister may require him or her to do any of the following things, namely –
 - (a) to keep or lay the public sewer or public outfall, or any sewer or drain that he or she has connected to it, open for a specified period

- so as to enable the Minister to inspect it and examine its mode of construction or condition;
- (b) to stop temporarily, for that purpose, any work that he or she is doing in relation to the public sewer, public outfall, other sewer or drain; and
 - (c) if it appears to the Minister on reasonable grounds that the mode of construction or condition of the connection or alteration is such as to be prejudicial to the public sewer or public outfall, to remedy that situation.
- (9) The States may by Regulations amend paragraph (1) by varying any distance specified in that paragraph.

18 Septic tanks

- (1) An owner or occupier of land that is connected to a public sewer shall not use any cesspool, septic tank, soakaway or similar construction for the reception of foul sewage or other impurities from the person's property unless he or she has the written consent of the Minister to do so.
- (2) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for consent under this Article.
- (3) A person who causes or knowingly permits a cesspool, septic tank, soakaway or similar construction to be used in contravention of paragraph (1) shall be guilty of an offence and liable to a fine of level 4 on the standard scale.
- (4) If a person contravenes paragraph (1), the Minister may require him or her to fill in that cesspool, septic tank, soakaway or other construction.

19 Abandonment of public sewerage facilities

- (1) The Minister may discontinue or prohibit the use of any public sewer, public sewage disposal works or public outfall.
- (2) A discontinuance or prohibition under paragraph (1) may be permanent or temporary.
- (3) At least 28 days before exercising its powers under paragraph (1), the Minister shall serve a notice in writing of the Minister's intention to do so on every person specified in paragraph (4).
- (4) The persons to whom paragraph (3) refers are –
 - (a) every owner or occupier of land that will be deprived of a sewerage facility because of the discontinuance of the sewer, sewage disposal works or outfall; and
 - (b) if the sewer or outfall is or the works are not situated on land in public ownership, every other person who is an owner or occupier of the land on which the facility is situated.
- (5) The notice shall include the following information –
 - (a) a description of the sewer, sewage disposal works or outfall that is sufficient to identify the facility;

- (b) the date of the discontinuance of the facility;
 - (c) whether its discontinuance is permanent or temporary and, if it is temporary, its expected duration; and
 - (d) details of any works that the Minister proposes to carry out in connection with the discontinuance.
- (6) The Minister need not comply with paragraph (3) in a case of emergency.
- (7) Before any land is deprived of a sewerage facility because of the discontinuance of any sewer, sewage disposal works or outfall under this Article –
- (a) the Minister shall, at the Minister's own cost, carry out any work that is necessary to connect that land to some other public sewer, public sewage disposal works or public outfall (as the case requires); or
 - (b) the Minister shall, at the Minister's own cost, provide an alternative facility.
- (8) A person who causes or knowingly permits a public sewer, public sewage disposal works or public outfall to be used while its use is prohibited under paragraph (1) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (9) This Article is subject to Article 38.

PART 3

TRADE EFFLUENT

20 Prohibited discharges of trade effluents

- (1) No person shall cause or knowingly permit a trade effluent to be discharged from any trade premises –
- (a) into any public sewer or public outfall; or
 - (b) into a sewer, or drain, that discharges directly or indirectly into any public sewer or public outfall,
- unless he or she is the owner or occupier of the premises and is acting in accordance with a trade effluent discharge consent.
- (2) Any person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

21 Applications in respect of trade effluent discharge consents

- (1) An application for a trade effluent discharge consent, or for its variation, transfer or revocation, shall be made in writing to the Minister.
- (2) An application for a trade effluent discharge consent may only be made by and granted to the owner or occupier of the trade premises from which the discharge is to be made.

- (3) An application for the variation, transfer or revocation of a trade effluent discharge consent may only be made by the holder of the discharge consent.
- (4) An application for the transfer of a trade effluent discharge consent shall include the written agreement of the proposed transferee to becoming the holder of the discharge consent.
- (5) Every application shall be in such form and shall contain such particulars as the Minister may prescribe or otherwise reasonably require.

22 Trade effluent discharge consents

- (1) On considering an application for a trade effluent discharge consent –
 - (a) the Minister shall grant the application, unconditionally or on such conditions as the Minister may specify in his or her decision, and issue the discharge consent to the applicant; or
 - (b) the Minister shall refuse the application.
- (2) Without prejudice to the generality of the conditions that the Minister may impose in granting an application for a trade effluent discharge consent, they may relate to any of the following matters –
 - (a) the times at or between which the trade effluent may be discharged;
 - (b) the sewer, drain or outfall into which the trade effluent may be discharged;
 - (c) the volume of trade effluent that may be discharged, and the highest rate at which it may be discharged;
 - (d) the exclusion of cooling water from the trade effluent;
 - (e) the elimination, before the trade effluent enters the sewer, drain or outfall of any constituents of the effluent that in the opinion of the Minister would (either alone or in combination with any matter with which the effluent is likely to come into contact while passing through any sewer, drain or outfall) injure any person or prejudicially affect or otherwise damage or obstruct any public sewer, public sewage disposal works or public outfall or render the treatment or disposal of sewage particularly difficult or expensive;
 - (f) the elimination, as far as reasonably practicable, of acids and alkalis from the trade effluent before it is discharged;
 - (g) the provision and maintenance of inspection chambers, manholes or other sampling points that will enable persons to take readily, at any time, samples of the trade effluent;
 - (h) the provision and maintenance of any meters that are required to measure the volume of the trade effluent that is being discharged or the rate at which it is being discharged;
 - (i) the provision and maintenance of any apparatus that is required for determining the nature, composition or quality of the trade effluent that is being discharged;
 - (j) the keeping of proper records of the volume or rate of discharge, nature, composition or quality of the trade effluent and, in

- particular, proper records of readings of meters and other recording apparatus provided in compliance with any other conditions of the discharge consent;
- (k) the making of any returns that may reasonably be required by the Minister and the giving to the Minister of such other information as the Minister may reasonably require about the volume or rate of discharge, nature, composition or quality of the trade effluent being discharged;
 - (l) the provision of one or more separate discharge points;
 - (m) the application of treatments or processes, approved in writing by the Minister, to minimize the risk of any prejudicial effects or injury to persons or damage to any public sewer, public sewage disposal works or public outfall because of the discharge of the trade effluent;
 - (n) the payment to the Minister in respect of the discharge consent of such fees and charges as are prescribed by any Order made under Article 4; and
 - (o) the prohibiting of the alteration of the nature, composition or quality of the trade effluent to be discharged, unless the Minister has given his or her written consent.
- (3) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for a trade effluent discharge consent.

23 Production of plans and furnishing of information

- (1) The Minister may require an owner or occupier of any trade premises –
 - (a) to produce to the Minister any plan or specification that he or she possesses, or is able without unreasonable expense to obtain, in respect of any facility specified in paragraph (2);
 - (b) to allow copies of the plan or specification to be made by or under the directions of the Minister; and
 - (c) to furnish to the Minister any information that he or she can reasonably be expected to supply with respect to the location, size and condition of the facility.
- (2) The facilities to which paragraph (1) refers are any sewer, drain, pipe, channel or outlet that (in any such case) is situated on the trade premises and is used or is to be used for discharging trade effluent –
 - (a) into a public sewer or public outfall; or
 - (b) into a sewer, or drain, that discharges directly or indirectly into a public sewer or public outfall.
- (3) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.

24 Variation, suspension and revocation

- (1) The Minister may at any time of his or her own behalf or on the application of the holder of a trade effluent discharge consent, vary, suspend or revoke the discharge consent.
- (2) If the Minister proposes of his or her own behalf to vary, suspend or revoke a trade effluent discharge consent –
 - (a) the Minister shall serve a notice in writing on the holder, specifying his or her proposal and informing the person that he or she may make representations in writing to the Minister in respect of the proposal within 21 days after the notice is served on the person; and
 - (b) in determining whether or not to proceed with the proposal, the Minister shall consider all representations so made by the person.
- (3) A variation, suspension or revocation of a trade effluent discharge consent shall take effect –
 - (a) when notice in writing of the decision is served on the holder, if the Minister does not specify a later date in the notice; or
 - (b) if the Minister does specify a later date in the notice, on that later date.
- (4) However, if the effect of a variation of a trade effluent discharge consent made of the Minister's own motion is to impose any new restriction, obligation or requirement on the holder, the variation in that respect shall take effect on a date to be specified by the Minister in the notice of the variation, being not sooner than 6 months after the notice is served on the holder.
- (5) The Minister need not comply with paragraph (4) if –
 - (a) there are exceptional circumstances; and
 - (b) the Minister specifies those circumstances in his or her decision.
- (6) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister under this Article.

25 Transfers

- (1) With the written approval of the Minister on an application made in accordance with Article 21, the holder of a trade effluent discharge consent may transfer it to another person.
- (2) However, the Minister shall refuse to give his or her approval unless the Minister is satisfied that, on the day on which such approval is to take effect, the proposed transferee will be an owner or occupier of the trade premises in respect of which the trade effluent discharge consent has been granted.
- (3) With effect from the date of approval, or from any later date that the Minister specifies in the approval –
 - (a) the transferor shall cease to be the holder of the trade effluent discharge consent; and
 - (b) the transferee shall be the holder.

- (4) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister under this Article.

26 Information about harmful effluent

- (1) If it appears to the Minister on reasonable grounds that a person has any trade effluent in his or her custody or control in any case described in paragraph (2), the Minister may require the person –
- (a) to deliver to the Minister in writing such information as the Minister may reasonably require about the trade effluent and the circumstances in which it is in his or her custody or control (including details as to its nature, origin, volume, composition, properties, radioactivity, temperature and other qualities and, where appropriate, any methods of transportation used by the person in respect of it);
 - (b) to deliver to the Minister in writing such other information as the Minister may reasonably require in order to determine the extent of the risk envisaged, and how best to prevent or deal with any occurrence or consequence described in paragraph (2); and
 - (c) to keep proper records for the purposes of sub-paragraphs (a) and (b) of this paragraph.
- (2) Paragraph (1) refers to the following cases –
- (a) any case in which there is a risk that trade effluent may unlawfully enter a public sewer or public outfall, and that its entry may result in injury to any person or in any public sewer, public sewage disposal works or public outfall being damaged, obstructed or otherwise prejudicially affected;
 - (b) any case in which trade effluent has unlawfully entered a public sewer or public outfall, giving rise to the risk that its entry may result in any consequence to which sub-paragraph (a) refers; or
 - (c) any case in which trade effluent has unlawfully entered a public sewer or public outfall, and its entry has resulted in such a consequence.
- (3) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.

27 Control of harmful effluent

- (1) If it appears to the Minister on reasonable grounds that a person has a trade effluent in his or her custody or control in any case described in Article 26(2), the Minister may require the person –
- (a) to take reasonable precautions and undertake appropriate works and other measures (including monitoring); and
 - (b) to comply with reasonable conditions,
- for the prevention or in anticipation of the control, reduction or elimination of any occurrence or consequence described in Article 26(2).

- (2) If it appears to the Minister on reasonable grounds that a person has a trade effluent in his or her custody or control in the case described in Article 26(2)(a), and that –
 - (a) it is not reasonably practicable by any other means to take adequate precautions against any occurrence or consequence described in that sub-paragraph; and
 - (b) the circumstances are sufficiently serious to justify it in doing so, the Minister may require the person to dispose of the trade effluent.
- (3) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.

PART 4 FLOOD DEFENCE

28 Flood defences on land in public ownership

The Minister may construct and maintain –

- (a) a watercourse; or
- (b) flood defence works,

for the purposes of flood defence, on or over any land in public ownership.

29 Designation of flood defences of general significance

- (1) The Minister may by Order designate any watercourse or flood defence works as being a facility of general significance for the purposes of flood defence.
- (2) If a facility that is for the time being so designated is situated wholly or partly on or over land that is not in public ownership, the Minister shall have for the purposes of this Law the following rights in respect of the watercourse or flood defence works –
 - (a) the right to have access to the watercourse or flood defence works at all reasonable times;
 - (b) the right to maintain or alter the watercourse or flood defence works;
 - (c) the right, for the purposes of maintaining the watercourse or flood defence works, to erect any machinery on or adjacent to the facility, or to do anything else that is reasonably necessary for or incidental to those purposes;
 - (d) the right to appropriate and dispose of any matter removed in the course of the carrying out of any maintenance by way of dredging, deepening, widening, straightening, raising or diverting the watercourse or flood defence works; and
 - (e) the right, in the case of a watercourse, in any reasonable manner to deposit any matter so removed on the banks of that watercourse.

- (3) The Minister shall, at least 28 days before exercising any right to which paragraph (2) refers, serve on every person who is an owner or occupier of the land concerned a notice in writing of the Minister's intention to exercise that right.
- (4) The notice shall include the details of any works that the Minister proposes to carry out in connection with the maintenance or alteration of the designated watercourse or designated flood defence works.
- (5) The Minister need not comply with paragraph (3) in a case of emergency or routine maintenance.
- (6) This Article is subject to Article 38.

30 Alteration of designated flood defences

- (1) No person shall carry out any work to any designated watercourse or designated flood defence works, unless he or she has the written consent of the Minister to do so.
- (2) No person shall construct, demolish or remove –
 - (a) a building or other structure on or over any designated watercourse or designated flood defence works, or within 5 metres of any designated watercourse or designated flood defence works; or
 - (b) any apparatus on or over any designated watercourse or designated flood defence works, or within one metre of any designated watercourse or designated flood defence works,unless he or she has the written consent of the Minister to do so.
- (3) No person shall create –
 - (a) an obstruction that affects or may affect the flow of any designated watercourse or designated flood defence works;
 - (b) an obstruction that affects or may affect the maintenance of any designated watercourse or designated flood defence works; or
 - (c) an obstruction that affects or may affect access to any designated watercourse or designated flood defence works for the purposes of maintenance,unless he or she has the written consent of the Minister to do so.
- (4) Paragraphs (2) and (3) do not apply to anything that is reasonably done by a public utility undertaking in the course of performing its functions in an emergency, but the undertaking shall inform the Minister promptly of anything so done.
- (5) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister on an application for consent under this Article.
- (6) Any person who contravenes any of paragraphs (1), (2) and (3) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (7) If a person –
 - (a) has carried out any work in contravention of paragraph (1);

- (b) has constructed, demolished or removed any building or other structure, or any apparatus, in contravention of paragraph (2); or
- (c) has created an obstruction in contravention of paragraph (3),

the Minister may require the person to undo the work, or to remove the building, structure, apparatus or obstruction or to restore the building or structure to its condition before the contravention.

- (8) The States may by Regulations amend paragraph (2) by varying any distance specified in that paragraph.

31 Repair of other flood defences

- (1) This Article does not apply to designated watercourses or designated flood defence works, but does apply to all other watercourses and flood defence works.
- (2) If it appears to the Minister on reasonable grounds that –
 - (a) any watercourse is or any flood defence works are in such a condition that, in a way that is material for the purposes of this Law, the proper flow of water is or may be impeded; or
 - (b) by reason of the condition of any watercourse or flood defence works, or of any obstruction in any watercourse or flood defence works, land is being or may be injured by water,

the Minister may require the person responsible for the maintenance of the watercourse or flood defence works to carry out remedial work.

- (3) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.

PART 5

OTHER PROVISIONS

32 Control of development

- (1) When considering an application under Article 6 of the Island Planning (Jersey) Law 1964¹ for permission to develop land, the Minister for Planning and Environment shall with a view to –
 - (a) the prevention of damage to any facilities specified in paragraph (2);
 - (b) the prevention of the obstruction of those facilities; and
 - (c) the limitation of flooding of any kind,take into account the effect of the development on those facilities.
- (2) The facilities to which this paragraph refers are –
 - (a) public sewers;
 - (b) public sewage disposal works;
 - (c) public outfalls;

- (d) watercourses; and
- (e) flood defence works.

33 Acquisition of land

- (1) If it appears to the States that any land should be acquired for the purpose of carrying into effect any of the provisions of this Law, the States may acquire that land –
 - (a) by agreement with the owner; or
 - (b) by compulsory purchase on behalf of the public in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961¹.
- (2) For the purposes of that Law, the Minister shall be the acquiring authority in relation to the acquisition of any land.
- (3) In assessing the amount of compensation payable to any person in relation to a compulsory purchase the Board of Arbitrators, in addition to acting in accordance with the rules set out in Article 10 of that Law, shall if satisfied that the value of the land to be acquired has been or will be enhanced by reason of the expenditure or proposed expenditure of public money in connection with the purpose for which the land is to be acquired, set off against the value used to assess the compensation any increase in the value attributable to the expenditure.
- (4) The power to acquire land by compulsory purchase to which paragraph (1) refers shall include the power –
 - (a) to acquire any interest in land or a servitude or other right on or over land by the creation of a new interest, servitude or right; and
 - (b) to extinguish or modify any interest in land or a servitude or other right on or over land.

34 Exercise of ancillary powers

- (1) A power under paragraph (3) shall not be exercised in respect of residential land unless –
 - (a) at least 48 hours' notice in writing has been given to the occupier; or
 - (b) the power is being exercised in a case of emergency.
- (2) A power under paragraph (3) shall only be exercised –
 - (a) if there are reasonable grounds for doing so; and
 - (b) in a manner that is proportionate and otherwise reasonable.
- (3) The Minister or an authorized person may, for the purposes of executing any work or performing any other function or exercising any other power under or for the purposes of this Law, do any of the following things at any reasonable hour or in an emergency, namely –
 - (a) enter on any land in order to inspect it;

- (b) take or carry out any measurements, surveys, tests, investigations or photographs on the land;
 - (c) construct, maintain or operate any monitoring equipment or other apparatus on the land;
 - (d) take or remove from the land, for analysis, samples of any substance, article or other thing found there;
 - (e) take or remove from the land, for the purposes of evidence in any civil or criminal proceedings under this Law, any substance, article or other thing; or
 - (f) enter on any land to obtain access to any other land.
- (4) The Minister or an authorized person may, for the purposes of Part 3, exercise any power under paragraph (3) on or in respect of a vehicle.
- (5) A person who is exercising or lawfully proposing to exercise any power under paragraph (3) in respect of any land or vehicle may require any other person present who is or appears to the first person to be –
- (a) the owner or occupier of the land concerned;
 - (b) the driver or other person in charge of the vehicle concerned; or
 - (c) some other responsible person,
- to render any assistance that the first person reasonably requires of the other person in order that the first person can carry out more effectively the purposes for which the power is being or is to be exercised.
- (6) If a person enters on any land or boards any vehicle in the exercise of a power under paragraph (3), and it is for the time being unoccupied or unmanned, the person exercising the power shall leave it secured as effectually as that person found it.
- (7) If a person has exercised any power under paragraph (3) in respect of any land or vehicle, and any person specified in paragraph (8) so requests, the person exercising that power shall as soon as reasonably practicable and in any event within 21 days inform the other person in writing of –
- (a) the power so exercised; and
 - (b) everything taken or removed in the course of its exercise.
- (8) The persons to whom paragraph (7) refers are –
- (a) the owner or occupier of the land concerned;
 - (b) the driver or other person in charge of the vehicle concerned; and
 - (c) any other person of whom a requirement is made under paragraph (5) in respect of the matter.
- (9) Any person who without reasonable excuse contravenes a requirement made of him or her under paragraph (5) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (10) This Article is subject to Article 38.

35 Remedial action by person causing damage

- (1) If a person –

- (a) causes; or
 - (b) knowingly permits the causing of,
any damage to any public sewer, public sewage disposal works, public outfall, designated watercourse or designated flood defence works, the Minister may require the person to take such steps as are reasonably practicable to remedy or mitigate the effects of the damage and to restore the facility to its condition immediately before the damage occurred.
- (2) There shall be a right of appeal, in accordance with Article 42, against the making of a requirement by the Minister under this Article.

36 Notice of requirements

- (1) A requirement by the Minister in the exercise of any power to which any of Articles 14(1), 14(4), 15(5), 17(7), 17(8), 18(4), 23(1), 26(1), 27(1), 27(2), 30(7), 31(2) and 35(1) refers shall be made by a notice in writing served on the person to whom it relates.
- (2) The notice shall specify –
- (a) the information to be delivered, the action to be taken or the conditions to be complied with (as the case may be); and
 - (b) a period of time, being reasonable in the circumstances, within which the notice is to be complied with.
- (3) The notice may specify the means by which the person is to comply with it.
- (4) Paragraph (2), as far as it requires a period of time to be specified in the notice, is subject to Article 14(3) (which specifies a minimum period of time in the case to which it relates).
- (5) Any person who without reasonable excuse fails to comply with a notice served on him or her by the Minister in the exercise of any power under any of Articles 23(1), 26(1), 27(1), 27(2) and 31(2) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

37 Remedial action by Minister

- (1) If –
- (a) a person fails to comply with a notice in writing served on him or her by the Minister in the exercise of a power to which any of the following Articles refers, namely Articles 14(1), 14(4), 15(5), 17(7), and 17(8) (so far as it relates to the action described in Article 17(8)(c)) and Articles 18(4), 27(1), 27(2), 30(7), 31(2) and 35(1);
 - (b) it appears to the Minister on reasonable grounds, in any case in which there are grounds for serving that notice, that the person on whom it is to be served cannot be found; or
 - (c) it appears to the Minister on reasonable grounds, in any case in which there are grounds for serving that notice, that the situation is one of urgency that warrants action under this Article,

the Minister may cause to be carried out, on behalf of the Minister, anything that the Minister has so required or could have so required the person to do.

- (2) If the Minister takes action under paragraph (1), the Minister may recover from the person the costs incurred by it in doing so.

38 Compensation

- (1) If a person has an interest in land that is reduced in value in consequence of the exercise by the Minister or an authorized person of a power under any of Articles 10, 12, 19, 29 and 34, the person shall be entitled to receive compensation from the Minister in accordance with this Article in respect of the reduction in value of that interest.
- (2) If the interest in land is subject to a hypothec –
 - (a) any compensation payable under this Article in respect of the reduction in its value shall be assessed as if the interest were not subject to the hypothec;
 - (b) a claim for compensation may be made by any hypothecary creditor of the interest, but without prejudice to the making of a claim by the person entitled to the interest; and
 - (c) a hypothecary creditor shall not be entitled to claim compensation in respect of his or her interest as such.
- (3) Any person who sustains damage by being disturbed in the enjoyment of any right in land in consequence of the exercise by the Minister or an authorized person of a power under any of Articles 10, 12, 14, 15, 19, 29 and 34 (not being damage that consists of a reduction in the value of an interest in land) shall be entitled to receive compensation from the Minister in respect of that damage.
- (4) A claim for compensation under this Article shall be made –
 - (a) if the power to which the claim relates is exercised during the undertaking of any works by the Minister, within 3 years after the completion of those works; and
 - (b) in any other case, within 3 years after the exercising of the power.
- (5) Any dispute as to the entitlement of any person to the payment of compensation under this Article, or as to the amount of that compensation –
 - (a) shall be referred to and determined by the arbitration of a single arbitrator appointed by agreement between the Minister and the claimant; or
 - (b) in default of that agreement shall be referred to and determined by the Board of Arbitrators appointed in accordance with Articles 8 and 9 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961⁶.
- (6) In the determination of a dispute under paragraph (5), the provisions of Articles 10, 12, 13, 14, 16, 17 and 20 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 shall apply, so far as those provisions are capable of being applied to the circumstances of the case.

- (7) In the application of those Articles (other than Article 13) for the purposes of this Article, the references in them to the Board of Arbitrators shall be read as including a reference to a single arbitrator appointed under paragraph (5)(a) of this Article.
- (8) For the purposes of assessing compensation under this Article in so far as it is payable in respect of a reduction in the value of an interest in land, account shall be taken of the extent to which the value of the land has been enhanced by reason of the exercise of the power to which the claim relates.
- (9) Compensation shall not be payable under this Law to the extent that –
 - (a) a reduction in the value of an interest in land or damage is attributable to the fault of the claimant; or
 - (b) such compensation is payable under any other enactment or rule of law.
- (10) Compensation shall not be payable under this Law for loss of profits, unless the claim arises from the exercise of a power directly in respect of land in which the claimant has an interest or right.
- (11) Interest at the rate specified in Article 11(4) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 and calculated in accordance with that paragraph from the date on which the reduction in value or damage occurred until the date of payment shall be added to the amount of any compensation assessed under this Article.

39 Application for protection of trade secret

- (1) A person specified in paragraph (2) may apply to the Minister for a certificate of confidentiality in respect of any information described in that paragraph, on the ground that its disclosure will reveal a trade secret.
- (2) The persons who may apply for certificates of confidentiality, and the information in respect of which they may so apply, are –
 - (a) an applicant for the grant, variation, transfer or revocation of a trade effluent discharge consent, in respect of any information that he or she is required or wishes to give to the Minister in support of the application;
 - (b) any person, in respect of any other information that he or she is required or wishes to give under the provisions of Part 3; and
 - (c) any person, in respect of any information relating to him or her, or to any business, including any research or experiment, carried on by the person, that the Minister or an authorized person or other person specified in Article 7 may obtain directly or indirectly in the course of the exercise of a power under any of Articles 10, 12, 14, 15, 17(8), 19(7), 29 and 34.
- (3) An application under this Article shall be made in writing.
- (4) However, in a case to which paragraph (2)(b) or paragraph (2)(c) refers, the application may in the first instance be made –
 - (a) orally; and

- (b) either to the person who has required or obtained the information, or to the Minister directly,
but in that event, on the expiry of the period of 14 days following the day on which it was made, it shall cease to be an application made in accordance with this Article unless the applicant has put it in writing and delivered the written application to the Minister.
- (5) If the Minister is satisfied that the disclosure of the information will reveal a trade secret, the Minister shall grant a certificate of confidentiality in respect of that information.
- (6) Within 14 days after determining an application for a certificate of confidentiality, the Minister shall serve on the applicant a written copy of his or her decision.
- (7) There shall be a right of appeal, in accordance with Article 42, against a decision of the Minister under this Article.

40 Information that is protected

- (1) While –
 - (a) an application for a certificate of confidentiality, having been made in accordance with Article 39, has not been determined by the Minister;
 - (b) any time allowed for appealing to the Royal Court against the decision of the Minister in respect of the application has not expired, and the Royal Court has not dismissed the appeal;
 - (c) any time allowed for a further appeal has not expired, and the court concerned has not dismissed the appeal; or
 - (d) any appeal, having been lodged, has not been determined,the information in respect of which the application for a certificate of confidentiality was made shall be confidential, unless it is information described in Article 41.
- (2) If a certificate of confidentiality is granted, whether by the Minister himself or herself, or on appeal, the information in respect of which it is granted shall be confidential, unless it is information described in Article 41.
- (3) Any person who knowingly or recklessly –
 - (a) discloses to any other person any information that is confidential by virtue of paragraph (1) or paragraph (2); or
 - (b) uses that information otherwise than for the purposes of this Law,shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (4) Paragraph (3) does not apply to –
 - (a) any disclosure by the applicant for the certificate of confidentiality, or with his or her consent;

- (b) any disclosure to the Minister or any other Minister or to any public officer or to any other person specified in Article 7, for the purposes of this Law; or
- (c) any disclosure to a court or any party, in any civil or criminal proceedings under this Law, in private and for the purposes of those proceedings.

41 Information that is not protected

Article 40 does not apply to the following information –

- (a) the name and address of the applicant for the certificate of confidentiality; and
- (b) the fact that the applicant has applied for or been granted such a certificate, or that an appeal to the Royal Court, or any further appeal, is pending in respect of his or her application for it.

42 Appeals

- (1) The following persons shall have a right of appeal to the Royal Court under this Law –
 - (a) an applicant for consent under any of Articles 8(1), 8(2), 16(3), 17(1), 17(3), 18(1), 30(1), 30(2) or 30(3), against a refusal by the Minister of the application or against any condition imposed by the Minister in granting the application;
 - (b) the owner of any sewer, sewage disposal works or outfall, against a decision by the Minister under Article 12 to adopt the facility by a declaration under that Article;
 - (c) an applicant for a trade effluent discharge consent, against a refusal of the application under Article 22(1) by the Minister, or against any condition imposed by the Minister under Article 22(1) in granting the application;
 - (d) the holder of a discharge consent, against a variation, suspension or revocation of the discharge consent by the Minister under Article 24, or against a refusal by the Minister of an application under that Article to vary or revoke the discharge consent, or against a refusal by the Minister under Article 25(1) of an application for approval to transfer the discharge consent or against any condition imposed by the Minister in giving such approval;
 - (e) a person of whom a requirement is made by the Minister under any of Articles 14(1), 14(4), 15(5), 23(1), 26(1), 27(1), 27(2), 31(2) or 35(1), against the making of the requirement; and
 - (f) an applicant for the grant of a certificate of confidentiality, against a refusal of the application (wholly or partly) by the Minister under Article 39.
- (2) An appeal shall be brought within 21 days after the appellant is served with a written copy of the decision or requirement against which the

appeal is brought, or within any further time that the Royal Court may allow.

- (3) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision or requirement pending the determination of the appeal.
- (4) On hearing the appeal –
 - (a) the Royal Court may confirm, reverse or vary the decision or requirement against which the appeal is brought; and
 - (b) it may make any order as to the costs of the appeal as it thinks fit.

43 False information

Any person who –

- (a) in connection with an application under any provision of this Law; or
- (b) on being required under a condition of a trade effluent discharge consent or under Article 23(1) or Article 26(1), to give or deliver any information to the Minister or to any other person,

knowingly or recklessly makes a statement that is false or misleading in any material particular shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

44 Interference with operations

- (1) Any person who intentionally and without reasonable excuse obstructs –
 - (a) the carrying out of any work under or for the purposes of this Law by the Minister or any officers, employees or agents (being officers, employees or agents in an administration of the States for which the Minister is assigned responsibility), or by any authorized person; or
 - (b) the carrying out of any work by any person who is required under this Law by the Minister to carry out that work;
 - (c) the exercising or the proposed exercise of any lawful power under this Law by any person; or
 - (d) any person who is lawfully accompanying an authorized person, or performing any function under his or her supervision, under Article 7,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

- (2) Any person who intentionally or recklessly damages –
 - (a) any public sewer, public sewage disposal works or public outfall, or any drain or other facility or plant or equipment that is vested in or maintained by the Minister for the purposes of this Law;
 - (b) any designated watercourse; or
 - (c) any designated flood defence works,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

- (3) Any person who maliciously or dishonestly interferes or tampers with any meter or other apparatus that is installed on or in any land or vehicle –

- (a) by the Minister, for the purposes of this Law; or
- (b) by any other person, in accordance with a requirement of or under this Law,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

45 Criminal liability

- (1) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

- (2) Where an offence under this Law committed by a body corporate or limited liability 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 director, manager, secretary or other similar officer of the body corporate, or a partner of the partnership; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the body corporate or partnership to the penalty provided for that offence.

- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply 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.

46 Evidence

- (1) Where in any civil or criminal proceedings under this Law, evidence is adduced of information recorded by a meter or other apparatus that for the purposes of this Law is approved in writing or used by the Minister, it shall be presumed unless the contrary is proved that the meter or apparatus has at all material times recorded information accurately.

- (2) In any civil or criminal proceedings under this Law, information that is provided by or obtained from any person under any condition of a trade effluent discharge consent shall be admissible in evidence against that person.

47 Subsequent purchasers

- (1) *A tenant après dégrèvement* shall pay all costs that, by virtue of this Law, are owed by a *cessionnaire* at the time when the *héritages* of the latter were placed *en dégrèvement*.
- (2) The purchaser of land shall pay all costs that may, by virtue of this Law, be due from any previous owner, but the purchaser shall have the right of recourse against any previous owner for any payment that he or she makes and for which the previous owner was liable.

48 Recovery of money owing under Law

- (1) Any fee, charge or other money that is due and payable by a person to the Minister under this Law, or costs that the Minister may recover from a person under this Law, may be recovered by the Minister as a civil debt in any court of competent jurisdiction.
- (2) Paragraph (1) is without prejudice to any other mode of recovery.

49 Warrants

- (1) If the Bailiff or a Jurat is satisfied on sworn information that –
 - (a) there are reasonable grounds for the exercise of any power by the Minister or by an authorized person under this Law; and
 - (b) in the circumstances of the case, it is desirable to grant a warrant under this paragraph,

he or she may grant a warrant authorizing the Minister by any officers, employees or agents (being officers, employees or agents in an administration of the States for which the Minister is assigned responsibility) or the authorized person at any time to enter on any land, or board any vehicle, specified in the warrant, and there exercise any such other power and in doing so to use any reasonable force that is necessary.

- (2) A warrant shall continue in force until –
 - (a) the purposes for which the warrant is granted have been fulfilled; or
 - (b) the expiry of the period of one month following its grant, according to its tenor.

50 Orders

- (1) The Minister may make Orders –
 - (a) prescribing forms of application for the grant, variation, transfer and revocation of trade effluent discharge consents, and information to be provided in support of those applications;
 - (b) prescribing standard conditions in trade effluent discharge consents;
 - (c) prescribing forms in which records shall be kept and returns shall be made under this Law;

- (d) prescribing the form of applications for certificates of confidentiality;
 - (e) amending Schedule 1;
 - (f) providing for any matters that are to be or may be prescribed by the Minister under any other provisions of this Law;
 - (g) providing that contravention of provisions of Orders made under this Law shall be offences; and
 - (h) providing for any other matters that are reasonably necessary for or incidental to the purpose of carrying this Law into effect.
- (2) Any person who commits an offence under any Order made under this Law shall be liable to a fine of level 4 on the standard scale.

51 Service of documents

- (1) Without prejudice to any other mode of service that is permitted under any rule of law, a document may be served under this Law in any of the following ways –
- (a) on an individual, by delivering it to him or her personally or by leaving it at his or her proper address or by sending it by recorded delivery post to the person at that address;
 - (b) on a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body;
 - (c) on a partnership, by serving it in accordance with sub-paragraph (a) on a partner or a person having the control or management of the partnership business; or
 - (d) on an unincorporated body or association of persons, by serving it in accordance with sub-paragraph (a) on any person having the control or management of its affairs.
- (2) For the purposes of this Article, and of Article 7 of the Interpretation (Jersey) Law 1954⁷ in its application to this Article, the proper address of any person or body on whom a document is to be served shall be his, hers or its last known address, except that –
- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; or
 - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) In the case of a company registered outside Jersey or of a partnership carrying out business outside Jersey, its principal office in Jersey shall be its principal office for the purposes of paragraph (2).
- (4) Where a person who is to be served under this Law with any document has specified an address in Jersey other than his or her proper address, as determined in accordance with paragraph (2), as the one at which the person or someone on his or her behalf will accept service of documents,

that address may be treated as the proper address for the purposes of this Article.

- (5) Where a document is to be served under this Law on the owner or occupier of any land or the driver or person in charge of any vehicle, and after reasonable enquiry he or she cannot be found and his or her name and address cannot be ascertained, and the document relates to the land or vehicle –
 - (a) the document may be served by leaving it with any other responsible person who is or appears on reasonable grounds to be resident or employed on the land, or employed in connection with the vehicle; or
 - (b) it may be served by affixing it, or a copy, conspicuously to a part of the land or vehicle.
- (6) This Article shall not apply to any document for which provision for service is made by Rules of Court.

52 Relationship to other enactments

Nothing in or done under this Law shall relieve any person from an obligation to obtain any authorization, consent, permit or permission required under any other enactment for the time being in force.

53 Application to the Crown

- (1) Subject to this Article, this Law (other than the provisions of Article 33 relating to the compulsory purchase of land) shall bind the Crown.
- (2) No contravention by the Crown of any provision of this Law shall make the Crown criminally liable.
- (3) However, –
 - (a) the Royal Court may, on the application of the Minister, declare unlawful any act or omission of the Crown that contravenes a provision of this Law; and
 - (b) the provisions of this Law apply in any event to persons in the public service of the Crown as they apply to other persons.
- (4) The powers of the Minister or of an authorized person under this Law shall not be exercised in respect of any Crown land unless the Lieutenant-Governor consents or they are so exercised in a case of emergency.
- (5) If the Minister considers it necessary or desirable to carry out any work under Part 4 on any Crown land to protect the coast of Jersey against erosion or encroachment by the sea, the Lieutenant-Governor shall not withhold his or her consent under paragraph (4) unreasonably.
- (6) Notwithstanding paragraph (4) or paragraph (5), if the Lieutenant-Governor certifies that it appears to him or her that in the interests of national security any powers in or under this Law that are specified in the certificate should not be exercisable in relation to any Crown land specified in the certificate, those powers shall not be exercisable in respect of that land.

- (7) This Law does not apply to Her Majesty in her private capacity.

54 Repeals, amendments, savings and transitional provisions

- (1) Subject to the savings and transitional provisions in paragraphs (2) and (3) of this Article –

- (a) the enactments specified in Schedule 2 shall be repealed; and
- (b) the enactments specified in column (1) of Schedule 3 shall be amended in the manner specified in column (2) of that Schedule.

- (2) If –

- (a) this Law requires the consent or approval of the Minister for a matter;
- (b) permission for such a matter (whether by way of authority, authorization, consent or other approval) has been obtained, before the commencement of this Law, under any enactment specified in Schedule 2 or Schedule 3; and
- (c) such permission was in effect immediately before the commencement of this Law,

that permission shall continue in force according to its tenor, after the commencement of this Law, as if it were a consent or approval given by the Minister under this Law.

- (3) If –

- (a) this Law requires the consent or approval of the Minister for a matter; and
- (b) an application for permission for such a matter (whether by way of authority, authorization, consent or other approval) was pending, immediately before the commencement of this Law, under any enactment specified in Schedule 2 or Schedule 3,

that application shall be determined as if it were an application for the consent or approval of the Minister under this Law for the matter.

55 Citation and commencement

- (1) This Law may be cited as the Drainage (Jersey) Law 2005.
- (2) Article 4 shall come into force on such day or days as the States may by Act appoint, and different days may be appointed for different provisions or different purposes of that Article.

SCHEDULE 1

(Article 1(1))

PREMISES THAT ARE NOT TRADE PREMISES

- 1 Hotels, guest houses, lodging houses, public houses, camp sites, leisure centres, restaurants, cafes and takeaway food shops, other than those parts of any such premises that –
 - (a) are used to brew alcohol;
 - (b) are used as a laundry, or laundrette, discharging more than 500 cubic metres per annum or more than 30 litres per minute of trade effluent;
 - (c) are used to process photographic film;
 - (d) are used to wash more than 5 motor vehicles per day; or
 - (e) are swimming pools that exceed 50 cubic metres in capacity or discharge water at more than 60 litres per minute.
- 2 Laundries or laundrettes (other than those in premises to which paragraph 1 refers) discharging less than 500 cubic metres per annum and less than 30 litres per minute of trade effluent.
- 3 Premises (other than those to which paragraph 1 refers) that are used solely to wash not more than 5 motor vehicles per day.
- 4 Swimming pools (other than those in premises to which paragraph 1 refers) that do not exceed 50 cubic metres in capacity and do not discharge water at more than 60 litres per minute.
- 5 Medical, dental and veterinary surgeries.
- 6 Funeral directors' and morticians' premises.
- 7 School laboratories.
- 8 Pharmacies.
- 9 Pet shops.
- 10 Garden centres.

SCHEDULE 2

(Article 54(1))

ENACTMENTS REPEALED

Sewerage (Amendment) (Jersey) Law 1953⁹

Loi (1954) (Amendement No. 3) sur les Egouts⁹

Sewerage (Amendment No. 5) (Jersey) Law 1961¹⁰

Sea Defence (Jersey) Law 1970¹¹

SCHEDULE 3

(Article 54(1))

ENACTMENTS AMENDED

(1)	(2)
<i>Enactment</i>	<i>Extent of amendment</i>
Loi (1937) sur les Egouts ¹²	<p>(a) By repealing Articles 1, 3, 4 and 5.</p> <p>(b) In Article 9(2), by substituting for the words "dix livres sterling" the words "le niveau 4 selon la Cédule de la Loi dite 'Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993'".</p> <p>(c) By repealing Articles 13, 14, 15, 16, 17, 18, 33, 34, 36, 47, 49, 50, 51, 52, 54, 56, 59, 61, 62 and 64.</p>
Drainage (Jersey) Law 1962 ¹³	<p>(a) In Article 1(1), by deleting the definitions "culvert", "drainage", "the Drainage Laws", "highway authority", "road", "land" and "watercourse".</p> <p>(b) By repealing paragraphs (2) and (3) of Article 1.</p> <p>(c) By repealing Articles 2, 3, 4 and 5.</p> <p>(d) By deleting paragraphs (a) and (b) of Article 6.</p> <p>(e) By repealing Articles 7, 8, 9, 10, 11 and 12.</p> <p>(f) By repealing the First Schedule and the Second Schedule.</p>
Island Planning (Jersey) Law 1964 ¹⁴	By repealing Article 6(7).
Water Pollution (Jersey) Law 2000 ¹⁵	(a) In Article 1(1), by deleting sub-paragraph (a) of the definition "public sewer" and substituting the following sub-paragraph –

“(a) means a public sewer or public outfall as defined in Article 1(1) of the Drainage (Jersey) Law 2005; and”.

(b) By deleting Article 1(2) and substituting the following paragraph –

“(2) In this Law, references to the Minister in his or her capacity as the sewerage undertaker for the Island are references to the Minister in that capacity by reason of Article 2 of the Drainage (Jersey) Law 2005.”

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement
Drainage (Jersey) Law 2005	L.3/2005	28 January 2005, except Article 4
States of Jersey (Amendments and Construction Provisions No. 3) (Jersey) Regulations 2005	R&O.132/2005	9 December 2005

Table of Renumbered Provisions

Original	Current
None	

Table of Endnote References

- ¹ *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 3) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- ² *chapter 24.930*
- ³ *chapter 24.840*
- ⁴ *chapter 22.225*
- ⁵ *chapter 18.135*
- ⁶ *chapter 18.135*
- ⁷ *chapter 15.360*
- ⁸ *chapter 22.375*
- ⁹ *incorporated in chapter 22.150*
- ¹⁰ *incorporated in chapter 22.375*
- ¹¹ *chapter 22.825*
- ¹² *chapter 22.150*
- ¹³ *chapter 22.075*
- ¹⁴ *chapter 22.225*
- ¹⁵ *chapter 27.800*