

STATES OF JERSEY



DRAFT LOI (201-) (AMENDEMENT) SUR LA VOIRIE

Lodged au Greffe on 4th June 2013
by the Comité des Connétables

STATES GREFFE



Jersey

DRAFT LOI (201-) (AMENDEMENT) SUR LA VOIRIE

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chairman of the Comité des Connétables has made the following statement –

In the view of the Chairman of the Comité des Connétables, the provisions of the Draft Loi (201-) (Amendement) sur la Voirie are compatible with the Convention Rights.

Signed: **Connétable J. Le S. Gallichan of Trinity**

Chairman of the Comité des Connétables

Dated: 3rd June 2013

REPORT

The Loi (1914) sur la Voirie is a Law concerning highways, as its name indicates.

The first part of the Law deals with the administration of public roads and, in relation to Parish by-roads, establishes the Roads Committee for each Parish (“*Comité des Chemins*”) and the Roads Inspectors (“*Inspecteurs des Chemins*”).

The second part of the Law deals with the *Visites du Branchage*. The Law dates from 1914 with the last substantive changes made in 1995. The Connétables have, for some time, recognised that some of the provisions of the Law need to be updated and there are, from time to time, comments that the dates for the *Visites du Branchage*, and the height to which the branchage should be cut, should be altered.

The Comité des Connétables issued a Green Paper in September 2007 seeking views on the following issues –

1. Is the existing Law (*Visite* in July and September with the ability to order impediments and *branchage* to be removed at any time if necessary) adequate to ensure that roads and footpaths are passable; or
2. Should the dates for the *Visites* be brought forward and, if so, what should be the range of dates?
3. Is the existing height over roads (12 feet) adequate or should it be increased and, if so, to what height?
4. If increased, should the height be raised for both main roads and Parish by-roads?
5. Should the owner be held responsible for the *branchage* where a property consists of a block of flats or is owned by flying freehold, *etc.*?
6. Should there be a greater tolerance for flowers and flowering shrubs on aesthetic grounds?
7. Comments are invited on debris left on roads/footpaths and fines.
8. Comments are invited as to whether the *Visites du Branchage* should include identifying fields/land where there are injurious weeds.
9. Comments are invited on the proposal to clarify the position relating to the *relief*.

The results of the consultation, together with the Comité’s comments, were published in August 2008 and are available on www.gov.je. A total of 59 responses were received from a variety of consultees, including individuals (some with a parochial link), associations, organisations and companies. The breakdown is as follows –

Association/Organisation	11
Individual	16
Company	3
Parish (inc. individuals with Parish link)	26

States	3
Total	59

The general view was that –

- The existing Law is adequate but 40% did suggest greater discretion/more flexibility in the dates for the *Visites du Branchage*;
- Views were split regarding the height of the branchage over main roads but a clear majority supported no increase in height over by-roads;
- There was support for the owner being responsible for the *branchage* where a property had multiple occupiers such as a block of flats;
- There should be some tolerance for flowers, particularly annuals;
- Debris should be collected and fines should be imposed for non-compliance with some suggesting an increase in fines;
- Whilst it should not become the responsibility of parishes, there was support for noxious weeds identified during the *Visite* to be notified to the Environment Department; and
- It was generally agreed the position of the *relief* should be clarified in law.

Although the total number of responses was small, the Comité considered the consultation was a useful exercise and the key stakeholders responded to the consultation. The issues were well understood and the respondents were able to usefully contribute and to raise other relevant issues, such as who would meet the cost if the height of the branchage was increased; the importance of sustainable management; the damage caused by mechanical flails (particularly when used by untrained staff); and that the most important part of the whole review should be the future policy towards the environment in general, and the country by-roads, banks and hedges.

Following careful consideration of the replies, the Comité decided that it was minded to make the following changes to the Law which are provided for in the Article(s) indicated –

- Give greater flexibility in the dates of the *Visites du Branchage* by extending the period from 14 days to 21 days (21 days from 24th June and from 1st September) – Article 7;
- Maintain the current height of 12 feet over roads and 8 feet over footpaths for the height of branchage (no change required);
- Amend the Law to provide that if there are multiple occupants of a property such as a block of flats sharing a communal area then the person liable for the foncier rate should also be liable if the branchage is not cut – Article 7;
- Amend the Law to clarify that the branchage over the relief must be cut – Article 7;
- Address a lacuna in Articles 41 and 42; and update the practical arrangements for the *Visites* and deal with other such minor matters – Articles 7 – 11.

The Comité has also taken the opportunity to update a number of other provisions including some which relate to the Roads Committee and Roads Inspectors. These are as follows –

- Abolish the £5.00 penalty leviable against a Roads Committee member who fails without good reason to attend a meeting – Article 3;
- Remove the deadline for the presentation of the Roads Committee’s accounts – Article 4. These accounts are now presented as part of the Parish accounts;
- Remove the requirement for the Roads Inspectors to present annual accounts – Article 5. Such accounts are now maintained by the Parish and not by the Inspectors;
- Remove the fine technically leviable on the Roads Inspectors under Article 12 of the Law for failure to carry out the instructions of the Roads Committee – Article 6;
- Clarify that failure to cut the branchage by the date of the Visite creates liability to an administrative penalty, rather than a criminal penalty, not exceeding £50 – Article 8;
- Provide that a failure to comply with an Order of the Connétable to cut back the branchage may be dealt with summarily at a Parish Hall Enquiry if the person accepts that jurisdiction – Article 8;
- Provide for future amendments to the Law, and also to the Highways (Jersey) Law 1956 (which forms a pair with the Voirie Law), may be made by Regulations rather than an amendment to the Law – Articles 11 and 12. Such a provision already exists in other legislation relating to roads such as the Road Traffic (Jersey) Law 1956 and the Motor Traffic (Jersey) Law 1935.

The amendments made by *Article 7* are worthy of further comment. Articles 41, 42 and 43 of the principal Law are replaced with new *Articles*, the precise effects of which are set out in the Draftsman’s Explanatory Note. Of particular note in the new *Article 41* is the provision in relation to apartment buildings or flats bordering a public road. The Law will be clear that in such cases it will not be the occupiers, but –

- the co-ownership association (in the case of flying freehold); or
- the company (in the case of share transfer flats),

on whom the responsibility will fall in respect of the *branchage*.

Of particular note in the new *Article 43* are the provisions enabling the Connétable in respect of the *branchage* –

- to recover administrative penalties as a civil debt (in the Petty Debts Court) if they are not paid on time; and
- to undertake the work required and to recover the cost as a civil debt from the person who should have undertaken the work.

Article 8 makes it clear that *branchage* ‘fines’ (*amendes*) are not criminal, but administrative (*i.e.* purely civil), penalties. There has been doubt about the precise

status of *amendes de branchage* in the past, and this amendment will put the matter beyond doubt.

In relation to further amendments of the *Loi (1914) sur la Voirie*, the Comité – as mentioned earlier – seeks to avoid the need, after this amending Law has been passed, for further amending legislation to be submitted to Her Majesty in Council. The States are already empowered by an Order in Council of 26th December 1851 to make Regulations relating to “the police of the public roads”, and those powers enable the States to amend the Road Traffic (Jersey) Law 1956, and other similar motor traffic legislation, without the need of reference to Her Majesty in Council. This amending Law would make it clear that such powers were similarly exercisable by the States in relation to the *Loi (1914) sur la Voirie* and the Highways (Jersey) Law 1956.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

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

APPENDIX TO REPORT

Human Rights Note on the Loi (201-) (Amendement) sur la Voirie

1. This Note has been prepared in respect of the Draft Loi (201-) (Amendement) sur la Voirie (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

Article 6 ECHR

2. The draft Law amends Article 45 of the Loi (1914) sur la Voirie (“**the principal Law**”) which, in its present form, empowers the Connétable to impose a fine (*‘amende’*) on a person who fails to remove obstructive material from the highway. Such a provision potentially engages Article 6 ECHR. Article 6 provides that –

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

3. Article 8 of the draft Law amends the said Article 45 so that, instead of the Connétable being empowered to impose what is ostensibly a fine, he or she is instead empowered to impose what is clearly only an administrative financial penalty (*‘pénalité financière’*) unconnected with any notion of a fine fixed by reference to the Standard Scale of fines.
4. Similarly, in relation to the *visite du branchage*, provision will be made by a substituted Article 42(3) for the imposition of what are clearly stated to be administrative penalties on a person who fails to comply with the notice issued in advance of the *Visite* (not exceeding £50 as notified to Parishioners under new Article 41), this in place of the existing provision for the levying of *une amende* (*i.e.* ostensibly a fine).
5. The relevance of these amendments to Article 6 is that the imposition of a fine – that is to say a criminal penalty – brings into play the additional safeguards under Article 6 ECHR for those charged with criminal offences. It has never been clear, in spite of the language of the provisions in the principal Law, whether these proceedings resulting in ‘amendes’ were to be treated as criminal in nature and so attracting the procedural requirements and protections of Article 6 ECHR. Such doubt is removed by the draft Law; and it becomes clear, not merely from the language, but from the context, that the proceedings are not criminal in nature and thus the additional safeguards under Article 6 ECHR for those charged with criminal offences do not therefore apply. The context here is that there is no criminal conviction, the fine is not severe and proceedings to enforce payment would be civil, *i.e.* brought in the Petty Debts Court.
6. It is perhaps worth emphasizing also that when the Connétable imposes a penalty, he or she is not determining a civil right or performing a judicial function and therefore Article 6 ECHR, in its application to civil rights, is not engaged either. Such a determination would only be made if the person refused to pay the penalty and was, as a result, taken by the Connétable to the Petty Debts Court. The Court

would, self evidently, satisfy the independence and impartiality criteria of Article 6 ECHR.

7. In relation to the offence under Article 43, of the principal Law, of failure to comply with a notice to cut back *branchage*, the matter may be dealt with summarily (as with a range of other offences) by a Centenier at Parish Hall level. However this is not a mandatory but a consensual procedure. New Article 43(3) allows a person, charged with a contravention of an order to remove branches, obstacle or other deleterious matter in accordance with an order under Article 42, to choose whether to have the matter dealt with summarily by the Centenier or by the Magistrate. The maximum penalty a Centenier may impose is 40% of the penalty for which the Magistrate could impose (two-fifths of level 2 on the standard scale).
8. Providing for fines to be imposed summarily at a Parish Hall inquiry is not a novel approach in Jersey. For example, the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948 allows a person guilty of failing to display his or her insurance disc to accept the jurisdiction of the Centenier to levy a fine summarily.
9. **The draft Law is therefore compatible with Article 6 ECHR.**

Article 1, Protocol 1 ECHR (“A1, P1”)

10. P1, A1 provides that –

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

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

11. None of the revisions to the principal Law are thought to create any difficulty from an A1, P1 perspective. As regards the A1, P1 compatibility of the *branchage* system generally under the principal Law, requiring a person to cut his or her overhanging branches could be interpreted as interfering with their peaceful enjoyment to their property, i.e. it could be seen as a control of use of his or her property. The right to peaceful enjoyment of property is however a qualified right which may therefore be interfered with by a public authority, providing that there is a legitimate aim, the interference is in accordance with law, and there is proportionality in deploying the measures which seek to achieve the legitimate aim. In fact, the Convention jurisprudence, from many cases over the years, has made it clear that State Parties have a wide margin of appreciation in relation to this particular right.
12. As to the legitimate aim, P1, A1 allows interference when it is in the “public interest” or “general interest” (and the ECtHR and Commission have not drawn a distinction between the two). These are wide grounds and the *branchage* is easily justifiable on the grounds of, e.g. public safety, or for the protection of the environment, both grounds which have been accepted by the ECtHR as legitimate aims.

13. Interference with P1, A1 rights must also be in accordance with law, that is to say it should be accessible and formulated with enough precision to allow persons to regulate their conduct and foresee the consequences of their actions. The principal Law clearly sets out the acceptable limits for overhanging branches, and the Connétable is required by new Article 41 to issue at least a week's notice to all those potentially affected by the *branchage* visit.
14. The final strand that must be satisfied, in order to justify an interference with a qualified ECHR right, is that the interference with one's P1, A1 rights does not go further than is necessary, i.e. it is a proportionate means to the end of achieving the public/general interest. It seems clear that the interferences permitted by the principal Law are proportionate, and the draft Law does not introduce anything that undermines this view. The modest fine for non-compliance, the fact that notice is given before visits (such visits taking place during the same period each year) and the well-established prescribed heights of 12 feet for public roads and 8 feet for pedestrian footpaths are all factors that demonstrate an underlining reasonableness in the interference. The practice of controlling the height and positioning of for example branches is an accepted practice in ECHR States. As an example, in the UK, there are provisions and penalties in the Anti-social Behaviour Act 2003 to deal with "high hedges" And there is a clear general interest in requiring occupiers of land adjacent to highways and other public rights of way, to manage their land in such a way as to avoid interference with the public's rights.
15. Regarding the imposition of fines under the amendments brought by the draft Law, contracting states are given a wide margin of appreciation in imposing penalties on persons and the modest penalties, as well as the other factors mentioned in the paragraph above, mean that there is unlikely to be any issue as to the proportionality of such measures.
16. **The draft Law is therefore compatible with Article 1, Protocol 1 ECHR.**
17. No other provisions of the ECHR are engaged by the draft Law.

Explanatory Note

This draft Law would make various changes to the *Loi (1914) sur la Voirie* and one parallel change to the Highways (Jersey) Law 1956.

Article 1 specifies that in this draft Law the *Loi (1914) sur la Voirie* is referred to as the principal Law.

Article 2 updates the language of a reference to a standard scale penalty in Article 5 of the principal Law.

Article 3 abolishes a fine that currently may be imposed on Roads Committee members who miss meetings.

Article 4 removes the current July deadline for the presentation of Roads Committee annual accounts, but keeps the obligation to present those accounts.

Article 5 abolishes the requirement that Roads Inspectors present annual accounts. The accounts are now kept by the parishes.

Article 6 abolishes a fine that may be imposed on a Roads Inspector who fails to carry out the directions of a Roads Committee.

Article 7 replaces Articles 41 to 43 of the principal Law. The substituted Article 41 includes changes –

- (a) to allow greater flexibility in the timing of the *visite du branchage* now that spring growth tends to start earlier in the year;
- (b) to make it clear that if a public notice of the *visite du branchage* is given in the Jersey Gazette on behalf of all parishes this may be signed by the Chairman of the Comité des Connétables;
- (c) to make it clear that for the purposes of the principal Law the width of a road includes the *reliefs* on its sides;
- (d) where an apartment building is alongside a road, to require not the occupiers of the apartments but the association of the *copropriété* (in the case of flying freehold) or the company (in the case of division by share transfer) to meet the requirements of Article 41; and
- (e) to make it clear that when property alongside a road is in a different parish from the road itself the parish that counts for the purposes of the principal Law is the parish where the road is located.

The substituted Article 42, which deals with the *visite du branchage*, includes provision –

- (a) to allow an administrative penalty to be imposed on a person who fails to comply with a branchage notice under Article 41;
- (b) to make it possible that when a Vingtenier accompanies a Connétable on a visit of a vingtaine, the Vingtenier may be from a different vingtaine in the same parish; and

- (c) to require one of the Vingteniers to enforce an administrative penalty and to serve a written order from the Connétable specifying the branches, obstacle or other deleterious matter that is to be removed and specifying that it is to be removed within a week.

The substituted Article 43 provides –

- (a) that a Connétable may recover, as a civil debt, an administrative penalty imposed under Article 42 on a person who fails to carry out work required by a branchage notice;
- (b) that a Connétable may remove branches, an obstacle or other deleterious matter that a person has failed to remove and recover the cost of the removal as a civil debt;
- (c) that, in the case of a person's failure to remove branches, an obstacle or other deleterious matter in accordance with a Connétable's written order referred to in Article 42, the person is guilty of an offence punishable by a fine not exceeding level 2 (that is, £500) on the standard scale;
- (d) that such a failure is no longer referred to the Royal Court;
- (e) that, as an alternative to proceedings for such an offence, the matter may be dealt with by a Centenier of the relevant parish, if the person agrees, in which case a fine of not more than £200 may be imposed summarily by the Centenier; and
- (f) that the parish may retain such a fine imposed by a Centenier.

Article 8 makes changes to Article 45 of the principal Law to allow administrative penalties (instead of criminal penalties) to be imposed on persons who fail to carry out branchage work at times other than the annual visits.

Article 9 deletes Article 45A of the principal Law, as references to standard scale penalties are now incorporated into the text where they arise.

Article 10 takes out of Article 46 of the principal Law what is no longer needed. It omits reference to contributions, as only Article 10 of the principal Law will now refer to these and Article 10 of that Law already makes it clear that they are to be dedicated to parish road maintenance.

Also omitted is reference to the receipt of administrative penalties by Vingteniers, because the recovery of these is already dealt with in Article 42(4) and 43 of the principal Law as amended.

Article 46 of the principal Law will now provide simply that the proposed administrative penalties will be applied to the repair of parish roads.

Article 11 –

- (a) removes the present Article 47 of the principal Law, a provision relating to procedure before the Royal Court, which applied when certain Articles of the principal Law required matters to be dealt with by that Court; and
- (b) substitutes a new Article that provides that amendments may be made to the principal Law by Regulations, provision that is already found, for example, in Article 46(6) of the Motor Traffic (Jersey) Law 1935 and Article 92 of the Road Traffic (Jersey) Law 1956.

Article 12 makes similar provision for the amendment by Regulations of the Highways (Jersey) Law 1956, a Law that forms a pair with the principal Law.

Article 13 names the draft Law and specifies when it will come into force.

Note: Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the standard scale of fines is –

Level 1	£50
Level 2	£500
Level 3	£2,000
Level 4	£5,000.

English Translation

1 Interpretation

In this Law, “principal Law” means the Public Roads Law 1914.

2 Article 5 amended

In Article 5 of the principal Law for the words “fine not exceeding level 1” there shall be substituted the words “fine of level 1 on the standard scale”.

3 Article 7 amended

In Article 7 of the principal Law the last sentence (beginning with the words “If a member”) shall be deleted.

4 Article 10 amended

In Article 10 of the principal Law the words “before 1st July,” shall be deleted.

5 Article 11 repealed

Article 11 of the principal Law shall be repealed.

6 Article 12 amended

In Article 12 of the principal Law the words “, liable to a penalty not exceeding level 1 in relation to each contravention, which shall be imposed, if the case is proven, by the Royal Court on information provided by the Connétable” shall be deleted.

7 Articles 41, 42 and 43 substituted

For Articles 41, 42 and 43 of the principal Law there shall be substituted the following Articles –

“41

- (1) At least one week before the first visit in each period specified in paragraph (3), each Connétable shall notify the persons who occupy the houses, lands, and other properties, alongside the public roads in his or her parish –
 - (a) that those persons must cut forthwith the overhanging branches growing from their properties along those public roads in such a way that there is a height of 12 feet free beneath the branches (and that that requirement, moreover,

extends over the entire width of those roads (including their “reliefs”), but not over the footpaths where the height to be left free is to be 8 feet);

- (b) that, in addition, they must remove the branches that have been cut off in accordance with this Article as well as brambles, weeds and all other obstructions and deleterious matter that encroach on the public road; and
- (c) that, in the case of a failure to comply with these requirements, they shall be liable to an administrative penalty not exceeding £50 for each infringement.

(2) The Connétables shall at the same time announce the dates fixed for the branchage visits in their respective parishes.

(3) The branchage visits shall be carried out in the three-week period starting on 24th June each year and in the three-week period starting on 1st September in each year.

(4) In the application of paragraphs (1) and (2) –

(a) a notification or an announcement is to be made by notice in the Jersey Gazette;

(b) such a notice –

(i) may relate to one or more parishes or all the parishes, and

(ii) must be signed, either by the relevant parish Connétables if the notice relates to one or more parishes, or by the Chairman of the Comité des Connétables if the notice relates to all the parishes;

(c) the expression ‘the houses, lands, and other property, alongside the public roads’ includes a house, land, and other property, alongside a public road, including in the case where the property is not situated in the same parish as the public road but in the adjoining parish;

(d) the person who occupies a house, land, or other property, alongside a public road is considered to be –

(i) in the case of an immovable that is divided among several persons by virtue of a declaration of flying freehold, a reference to the association of those persons, or

(ii) in the case of an immovable that is divided into flats that shareholders of the company that owns the immovable have a right to occupy, a reference to that company.

42

(1) On the days fixed for the branchage visits, each Connétable shall visit the roads in his or her parish in the company of the members of the Roads Committee and the Centeniers.

- (2) The Connétable shall be accompanied in each Vingtaine of the parish either by one or more Vingteniers of the Vingtaine or by one or more other Vingteniers of the parish.
- (3) On the advice of the said members of the Roads Committee and Centeniers, the Connétable shall decide the administrative penalties that each person who has failed to comply with the notice referred to in Article 41 shall incur.
- (4) One of the Vingteniers shall have the duty –
 - (a) to enforce the said administrative penalties in respect of the said persons;
 - (b) to serve on each of the said persons a written order from the Connétable specifying which branches, obstacle or other deleterious matter is to be removed; and
 - (c) to notify each of the said persons that they have a week in which to remove, as the case requires, the branches, obstacle or other deleterious matter.

43

- (1) An administrative penalty referred to in Article 42 that is not paid shall be recoverable by the Connétable as a civil debt.
- (2) Any person who does not remove the branches, obstacle or other deleterious matter in accordance with the requirements of an order under Article 42(4) shall be guilty of an offence and liable to a penalty of level 2 on the standard scale
- (3) If a person charged with such a contravention accepts the decision of a Centenier having jurisdiction in the matter, the Centenier may deal summarily with the offence and impose a fine of two-fifths of level 2 on the standard scale.
- (4) Such a fine imposed by the Centenier shall be retained by the parish.
- (5) In any case, the Connétable may undertake the necessary work in order to remove the branches, obstacle or other deleterious matter and may recover the costs incurred as a civil debt.”.

8 Article 45 amended

In Article 45 of the principal Law for the words “he or she may impose on the wrongdoer a fine not exceeding level 1 on the standard scale” there shall be substituted the words “he or she may impose on the person responsible an administrative penalty not exceeding £50, which may be recovered by the Connétable as a civil debt”.

9 Article 45A repealed

Article 45A of the principal Law shall be repealed.

10 Article 46 substituted

For Article 46 of the principal Law the following Article shall be substituted –

“46

The administrative penalties imposed by virtue of this Law may be applied to the repair of local roads.”.

11 Article 47 substituted

For Article 47 of the principal Law the following Article shall be substituted –

“47

The powers conferred on the States by the Order in Council of 26th December 1851 to make Regulations relating to the police of the public roads include a power to amend the provisions of this Law.”.

12 Amendment of the Highways (Jersey) Law 1956

After Article 8 of the Highways (Jersey) Law 1956 the following Article shall be inserted –

“8A Amendment by Regulations

The powers conferred on the States by the Order in Council of 26th December 1851 to make Regulations relating to the police of the public roads include a power to amend the provisions of this Law.”.

13 Citation and commencement

- (1) This Law may be cited as the Public Roads (Amendment) Law 201-.
- (2) This Law shall come into force 7 days after registration.



Jersey

DRAFT LOI (201-) (AMENDEMENT) SUR LA VOIRIE

Arrangement

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Jersey

DRAFT LOI (201-) (AMENDEMENT) SUR LA VOIRIE

LOI pour modifier la Loi (1914) sur la Voirie

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

LES ÉTATS, moyennant la sanction de Sa Très Excellente Majesté en Conseil, ont adopté la Loi suivante –

1 **Interprétation**

Dans cette Loi, la “Loi principale” signifie la Loi (1914) sur la Voirie¹.

2 **Amendement de l’Article 5**

Dans l’Article 5 de la Loi principale aux mots “amende n’excédant pas le niveau 1” seront substitués les mots “amende du niveau 1 du tarif uniforme”.

3 **Amendement de l’Article 7**

Dans l’Article 7 de la Loi principale la dernière phrase (qui commence avec les mots “Si un membre”) sera supprimée.

4 **Amendement de l’Article 10**

Dans l’Article 10 de la Loi principale les mots “avant le 1er juillet,” seront supprimés.

5 **Suppression de l’Article 11**

L’Article 11 de la Loi principale sera supprimé.

6 Amendement de l'Article 12

Dans l'Article 12 de la Loi principale les mots “, sur peine d'une amende n'excédant pas le niveau une pour chaque contravention, qui sera infligée, s'il y a lieu, par la Cour Royale, après rapport présenté par le Connétable” seront supprimés.

7 Substitution des Articles 41, 42 et 43

Aux Articles 41, 42 et 43 de la Loi principale les Articles suivants seront substitués –

“41

- (1) Au moins une semaine avant la première visite de chaque période précisée dans l'alinéa (3), chaque Connétable avertira les personnes qui occupent les maisons, les terres, et les autres propriétés, bordant les chemins publics dans sa paroisse –
 - (a) d'avoir immédiatement à couper le branchage croissant sur leurs propriétés le long desdits chemins publics, de manière qu'il reste une hauteur de 12 pieds jusqu'au branchage, et cela sur toute la largeur desdits chemins (y compris leur reliefs), sauf en dessus des trottoirs où il sera de 8 pieds;
 - (b) d'avoir de plus à retirer le branchage qui a été coupé conformément aux stipulations de cet Article et les ronces, les sarclures et tous autres empêchements et choses nuisibles qui pourraient empiéter sur le chemin public; et
 - (c) qu'elles doivent obtempérer à cet avertissement sous peine d'une pénalité financière n'excédant pas £50 pour chaque défaut.
- (2) Les Connétables annonceront, en même temps, les jours fixés pour les visites du branchage dans leurs paroisses respectives.
- (3) Les visites du branchage s'effectueront dans la période de 3 semaines qui commence le 24 juin de chaque année, et dans la période de 3 semaines qui commence le 1er septembre de chaque année.
- (4) Dans l'application des alinéas (1) et (2) –
 - (a) un avertissement et une annonce seront faits moyennant un avis qui apparaît dans la Gazette de Jersey;
 - (b) un tel avis –
 - (i) peut regarder soit une ou plusieurs paroisses soit toutes les paroisses, et
 - (ii) doit être signé, si l'avis regarde une ou plusieurs paroisses, par les Connétables des paroisses concernées ou, si l'avis regarde toutes les paroisses, par le Président du Comité des Connétables;
 - (c) l'expression 'les maisons, les terres, et les autres propriétés, bordant les chemins publics' comprend également une

maison, une terre, ou une autre propriété, qui borde un chemin public, même dans le cas où elle n'est pas située dans la paroisse où se trouve le chemin public mais dans la paroisse contiguë; et

- (d) la personne qui occupe une maison, une terre, ou une autre propriété, bordant le chemin public est censée être –
 - (i) dans le cas d'un immeuble la propriété de laquelle est répartie entre plusieurs personnes en vertu d'une déclaration de copropriété, l'association des copropriétaires, ou
 - (ii) dans le cas d'un immeuble réparti en des appartements que les actionnaires de la société propriétaire de l'immeuble ont le droit d'occuper, la société propriétaire.

42

- (1) Les jours fixés pour les visites du branchage, chaque Connétable, assisté des membres du Comité des Chemins et des Centeniers, fera la visite des chemins de sa paroisse.
- (2) Le Connétable sera accompagné dans chaque Vingtaine de la paroisse soit par un Vingtenier, ou plusieurs Vingteniers, de la Vingtaine, soit par un autre Vingtenier, ou d'autres Vingteniers, de la paroisse.
- (3) De l'avis desdits membres du Comité des Chemins et des Centeniers, le Connétable déterminera à l'égard de chaque personne qui n'aura pas obtempéré à l'avertissement mentionné à l'Article 41, les pénalités financières qu'elle aura encourues.
- (4) Il sera du devoir d'un des Vingteniers –
 - (a) d'exiger lesdites pénalités financières de chacune desdites personnes;
 - (b) de remettre à chacune desdites personnes un ordre par écrit du Connétable précisant quel branchage, empêchement ou chose nuisible doit être retiré; et
 - (c) d'avertir chacune desdites personnes d'avoir dans les 8 jours à retirer, selon le cas, le branchage, l'empêchement ou la chose nuisible.

43

- (1) Une pénalité financière visée à l'Article 42 qui n'aura pas été réglée pourra être réclamée par le Connétable comme une dette civile.
- (2) Toute personne qui n'aura pas retiré le branchage, l'empêchement ou l'autre chose nuisible selon les exigences d'un ordre en vertu de l'Article 42(4) sera coupable d'une contravention et passible d'une amende du niveau 2 du tarif uniforme.

- (3) Si une personne accusée d'une telle contravention accepte la décision du Centenier chargé de l'affaire, le Centenier pourra statuer sommairement sur la contravention et infliger à la personne une amende de 2 cinquièmes du niveau 2 du tarif uniforme.
- (4) Une telle amende infligée par le Centenier sera appliquée au bénéfice de la paroisse concernée.
- (5) En tout cas, le Connétable pourra faire entreprendre les travaux nécessaires afin de retirer le branchage, l'empêchement ou l'autre chose nuisible, et les frais y résultant pourront être réclamés par le Connétable comme une dette civile.”.

8 Amendement de l'Article 45

Dans l'Article 45 de la Loi principale aux mots “il pourra infliger sur le délinquant une amende n'excédant pas le niveau 1” seront substitués les mots “il pourra infliger à la personne responsable une pénalité financière n'excédant pas la somme de £50, qui pourra être réclamée par le Connétable comme une dette civile”.

9 Suppression de l'Article 45A

L'Article 45A de la Loi principale sera supprimé.

10 Substitution de l'Article 46

A l'Article 46 de la Loi principale l'Article suivant sera substitué –

“46

Les pénalités financières perçues en vertu de la présente Loi seront applicables à la réparation des chemins vicinaux.”.

11 Substitution de l'Article 47

A l'Article 47 de la Loi principale l'Article suivant sera substitué –

“47

Les pouvoirs conférés aux États par l'Ordre en Conseil du 26 décembre 1851 de faire des Règlements relatifs à la police des chemins publics² comprennent un pouvoir d'apporter des modifications aux dispositions de la présente Loi.”.

12 Amendement de la Loi dite “Highways (Jersey) Law 1956”

Après l'Article 8 de la Loi dite “Highways (Jersey) Law 1956³” l'Article suivant sera inséré –

“8A Amendment by Regulations

The powers conferred on the States by the Order in Council of 26th December 1851⁴ to make Regulations relating to the police of the public roads include a power to amend the provisions of this Law.”.

13 Citation et entrée en vigueur

- (1) La présente Loi pourra être citée sous le titre de “Loi (201-) (Amendement) sur la Voirie”.
- (2) Elle entrera en vigueur 7 jours après qu’elle aura été entérinée à la Cour Royale.

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- ¹ *chapter 25.950*
² *chapter 23.350*
³ *chapter 25.150*
⁴ *chapter 23.350*