

# STATES OF JERSEY



## DRAFT ROAD WORKS AND EVENTS (JERSEY) LAW 201-

---

Lodged au Greffe on 8th December 2015  
by the Minister for Transport and Technical Services

---

STATES GREFFE





Jersey

## **DRAFT ROAD WORKS AND EVENTS (JERSEY) LAW 201-**

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

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Transport and Technical Services has made the following statement –

In the view of the Minister for Transport and Technical Services, the provisions of the Draft Road Works and Events (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy E.J. Noel of St. Lawrence**

*Minister for Transport and Technical Services*

Dated: 2nd December 2015

# REPORT

---

## 1. INTRODUCTION

Within Jersey, Transport and Technical Services (TTS) has responsibility for looking after the Island's network of strategic main roads (171 miles), with each of the 12 Parishes having responsibility for looking after local byroads (295 miles).

The proposed law sponsored by TTS, with the support of the Parishes, is principally designed to make improvements to the regulation of 'road based activities' that either impact road users, in terms of delays and reduced safety, or the roads themselves as a publicly funded asset. The Law divides into 2 main areas, with the principal part dealing with 'road works' and the other with 'road events'.

The Law's high level objectives are to provide the Island's 13 highway authorities with –

- ❖ Greater powers and sanctions to manage road based activities more effectively;
- ❖ Clear institutional responsibilities;
- ❖ Simplified, more resource effective administration tools; and
- ❖ Sustainable funding of their regulatory role through appropriate cost recovery.

In preparing the legislative instruction, TTS has worked in partnership with the Parishes, from the setting out of broad policy objectives to the formation of specific recommendations. This has been achieved with the agreement of the Comité des Connétables and the Parish Road Committees through the formation of a 'Joint Highway Authority Working Group'. The legislative instruction has also been prepared in consultation with the Island's utility undertakers (i.e. utility companies and the drainage authority), to ensure that their interests have been taken into account from an early stage.

This report seeks to explain what the Law will achieve for the Island and provide policy context to its individual provisions.

## ROAD WORKS

## 2. BACKGROUND

Best practice, along with increased public expectation, requires the Island's highway authorities to ensure that road works are carried out –

- ❖ safely;
- ❖ with the minimum disruption and nuisance; and
- ❖ without compromising the road.

Whilst TTS and the Parishes have made improvements in recent years to their road work management regimes, progress is hampered by dated and piecemeal legislation, which favours 'utility undertaker' (i.e. utility companies, the drainage authority, etc.) rights over highway authority powers, limiting progress beyond various voluntary arrangements.

Having carried out a comprehensive review of the local situation and taken the opportunity to investigate the powers available to highway authorities in other jurisdictions (looking at best practice and new developments) TTS is proposing the introduction of new road work legislation.

Proposed legislation has been drafted with the following road work related objectives –

- ❖ A co-ordinated approach to work management;
- ❖ Control of how and when works take place;
- ❖ Establishment of clear duties on persons carrying out works;
- ❖ Highway authority inspection and enforcement powers; and
- ❖ Protection of road infrastructure and utility apparatus.

### 3. CONTEXT

#### 3.1 Road works defined

The term ‘road works’ with respect to the new Law means –

- ❖ Undertaker works: Works carried out in a road (under a statutory power) in order to place, inspect, maintain, repair, replace or remove electricity, gas, telecoms, water and sewerage infrastructure (termed “apparatus”). Often this involves the ‘breaking up’ or ‘excavation’ of the road, which then requires reinstatement.
- ❖ Specified road works: Works carried out in or near a road (but which use space in the road) creating an obstacle or potential hazard to the road users. Potential work types include building construction and maintenance, scaffolding and skip related activity, road side wall (re)construction, tree surgery, lifting operations, etc.
- ❖ Contracted highway authority works: Works for the highway authority in order to maintain or improve the road and its associated infrastructure. While some of this work is carried out by ‘direct labour’, significant amounts of it, particularly large scale projects, are ‘contracted out’ through competitive tender. Such works are termed “contracted highway authority works”.

#### 3.2 Highway authority works defined

TTS and the Parishes carry out a wide range of maintenance and improvement works each year. These works cover a wide range of asset types and are termed “highway authority works”.

Maintenance works range from ‘planned’ maintenance such as road resurfacing, traffic signal or street light replacement to cleaning road signs or replacing line markings, etc., to ‘reactive’ maintenance such as road patching, replacing crash barriers, stabilising embankments and fixing defective traffic signals, etc.

Improvement works range from small works such as footpath widening, laying high friction surfacing, constructing new pedestrian refuges or controlled crossings, to major works such as remodelling important traffic junctions.

While ‘highway authority works’ do not fall under the definition of ‘road works’ in the Law, they are subject to many of the same duties and requirements. The main difference is that they are not subject to permit requirements.

### **3.3 Highway authority role**

The Island has 13 highway authorities responsible for the maintenance and superintendence of the Island’s roads (as defined by the ‘Loi (1914) sur la Voirie’). TTS is responsible for the strategic network of distribution routes known as ‘main roads’, as listed in the ‘Voies de Grande Communication Act 1934’ and subsequently in the ‘Main Road (Classification) Acts, No. 1 to 27’, of which there are 171 miles in total. The Parishes are responsible for the administration of local by-roads, generally quieter country lanes or small urban roads, of which there are 295 miles in total.

#### **3.3.1 Basic duties**

Highway authority duties in relation to the regulation of road works broadly fall into four areas –

- ❖ Network management: To secure the expeditious movement of traffic on its road network so as to minimise disruption and inconvenience to the public, having regard in particular to the needs of people with a disability.
- ❖ Safe working: Enforcing safe working practices in the interest of the public and those working in the road.
- ❖ Asset protection: Enforcing standards of workmanship and material use to protect road infrastructure against damage and reduced service life. This also applies to buried apparatus.
- ❖ Communication: Providing useful and accessible public information about potential disruption to traffic or services.

There are also a number of specific interest groups that need to be considered or consulted when planning road works. These fall into 2 categories –

- ❖ Administrative Authorities: Whose permission is required for works to go ahead, e.g. other highway authorities, TTS’ Parking Control Section (i.e. when parking suspension is required), the Health Protection Unit (i.e. when a dispensation is required to undertake night works), etc.
- ❖ Major Consultation Groups: Emergency services, bus service operator, etc.

#### **3.3.2 Notice rules**

Key to the regulation of road works is the ability to ensure that road works are properly planned and co-ordinated. To do this effectively highway authorities are dependent on –

- ❖ Receiving timely and accurate information about planned works; and
- ❖ Having the ability to influence their timing (i.e. times, dates and durations), traffic management and method of working.

Therefore, in most jurisdictions highway authorities have basic powers to –

- ❖ Set minimum notice and information requirements; and
- ❖ Give directions regarding the timing of works, traffic management and working method.

#### **3.3.3 Permits**

More recently many jurisdictions in the British Isles have put in place legislation allowing the introduction of ‘road works permits’, with the aim of creating a stronger

regulatory framework. While enshrining the powers set out above, the introduction of permits also provide new enforcement powers with the ability to withdraw consent for breach of conditions.

Such a regime was introduced at a policy level by TTS in 2011 with the support of the Parishes, albeit without legal underpinning. The permit regime is managed using a 'web based system' called 'Trafficworx' which allows the Island's key road work promoters (including utility companies, civil and resurfacing contractors, etc.) to apply for permits on-line. Completed trench reinstatements are also registered on the system which forms a central register, allowing trench defects to be traced back to the original work promoter.

### **3.3.4 Road work inspections**

Inspections are critical to the enforcement of safe working and the protection of the road (e.g. by ensuring the correct reinstatement of trenches and the identification of defects). TTS and some Parishes therefore perform a range of ad hoc and planned inspections, including –

- ❖ Category A: Live work checking on operative qualifications, safety working, workmanship, reinstatement material use.
- ❖ Category B: Trench reinstatement defect checks within the first 6 months after reinstatement.
- ❖ Category C: Trench reinstatement defect checks at the end of the undertaker's 'guarantee period' (current policy is 3 years) prior to public adoption of the reinstated road surface.

## **3.4 Highway authorities**

### **3.4.1 Transport and Technical Services Department**

With the largest and busiest network of roads in the Island, TTS is responsible for regulating approximately 60% of the road works carried out each year. These works are larger in scale and impact than those taking place on by-roads, requiring significant planning input. As such, TTS takes the lead in co-ordinating works and setting standards.

As the administering authority of the 'Entertainment on Public Roads (Jersey) Law 1985' and the 'Motor Vehicle Races (Jersey) Law 1946' TTS also gives a considerable amount of input into traffic management planning for events occurring on public roads.

TTS duties in relation to the regulation of road works are exercised through its 'Traffic and Street Works Section'. In addition to day to day planning meetings with work promoters (e.g. utility companies, etc.), TTS chairs a monthly meeting of the utility undertakers, the Parish of St. Helier (including their Honorary Police) and the Island's bus company to facilitate co-ordination. Meetings are held with a view to identifying programme conflicts and to maximise, where possible, joint working.

TTS also administers the Island's electronic road works management system 'Trafficworx'.

### **3.4.2 Parish of St. Helier**

With 30% of the Island's population and home to the finance industry, the Parish of St. Helier (POSH) is responsible for regulating approximately 20% of the road works carried out each year. Due to the close physical inter-relationship between by-roads and main roads in Town, TTS has delegated the regulation of scaffolding and hoarding on main roads to the Parish.

POSH's duties in relation to the regulation of road works are exercised through its 'Technical and Environmental Services Department'.

### 3.4.3 Other Parishes

The Island's remaining Parishes are responsible for regulating 20% of the road works carried out each year. This duty is exercised through their Road Committees and appointed 'Road Inspectors' as per the requirements of the 'Loi (1914) sur la Voirie'. However, 'day to day' administration is often dealt with by the parish office or Duty Centenier.

### 3.5 Road works numbers

In 2014 (the last full year of records) there were 2903 separate road work activities in the Island of which 60% were on TTS main roads, 20% on Parish of St. Helier by-roads and 20% on the other Parishes' by-roads. These works ranged from very significant projects on main roads that require months of planning to those that can be evaluated and approved within a short period. The types of work for which a permit was issued is broken down in Table 1 below:

**Table 1: Type of Road Works in 2014**

Promoter	Permits	%	Type of works
Jersey Telecom	868	30%	<b>Undertaker works</b>  <u>Digging:</u> 10,900 m <sup>2</sup> of road surface was excavated (and reinstated), 7,700 m <sup>2</sup> (or 70%) in main roads.
Jersey Water	415	14%	
Jersey Electricity	327	11%	
Jersey Gas	107	4%	
TTS Drainage	103	4%	
Newtel	10	>1%	
Sure	4	>1%	
TTS Highways Section	196	7%	Contracted highway authority works
Other	873	30%	Specified road works (e.g. scaffolding, road side works, etc.)

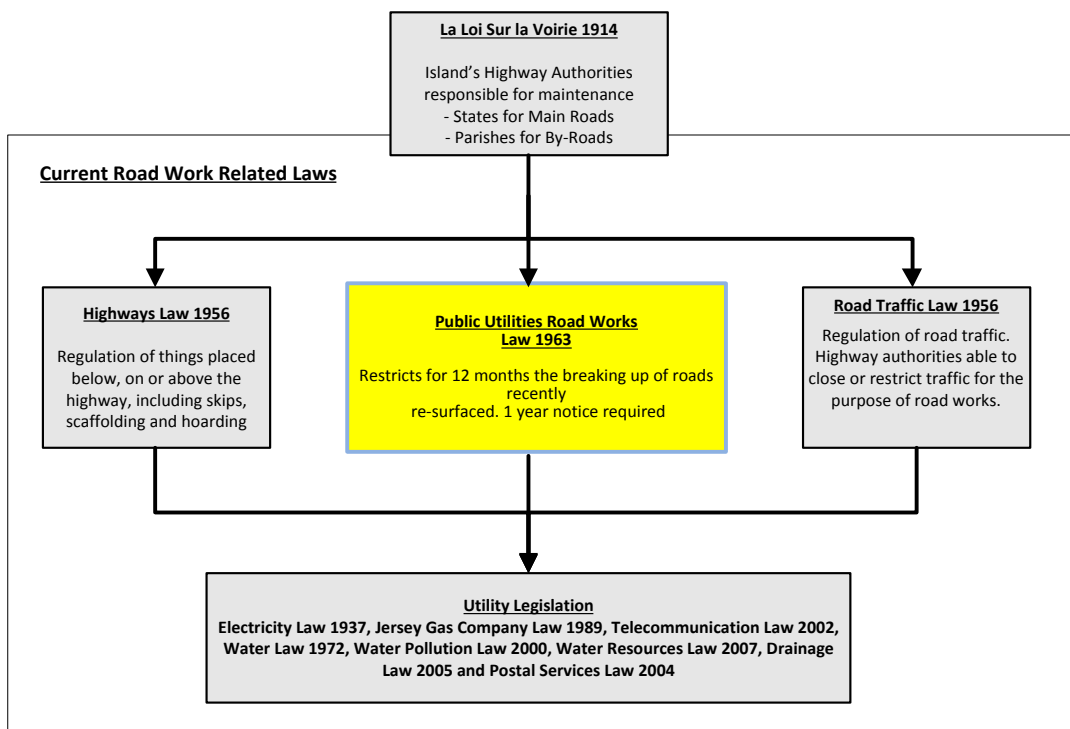
On main roads 74% were carried out during 'non-peak times' (i.e. before 7 a.m., between 9 a.m. and 4 p.m., or 2.30 p.m. on school routes, or after 6 p.m.), 53% were on time, 39% early and 8% late. Approximately 8% of the works involved a road closure.

### 3.6 Current road works laws

There are currently 3 primary pieces of highway authority legislation relating to the regulation of road works along with a number of utility laws setting out various road work powers and duties. The current framework is set out in Figure 1 below.



**Figure 1: Current legal framework for road works**



### 3.6.1 Highways (Jersey) Law 1956

The ‘Highways (Jersey) Law 1956’ is intended to control the placing of things below, on or above highways. In ‘Article 4(1)’ the Law gives highway authorities power to –

*“grant a licence to any person authorising the person to place anything below, on or above any highway administered by that authority, and any such licence may be granted subject to such conditions as the Highway Authority may think fit to impose and to the periodic payment of such reasonable sum as the Highway Authority may determine”*

This power is divided between TTS in relation to main roads and the Parishes in relation to by-roads and is used by Highway Authorities to licence activities such as –

- ❖ The placing of skips, scaffolding, hoarding and construction materials on the road.
- ❖ Crane jibs over-flying the road.

On occasions it is also used to licence the placing of private apparatus in the road. Typical reasons for this include private connections to the public sewer and water supply. These works are ‘contracted out’ to highway authority approved road works contractors.

### 3.6.2 Public Utilities Road Works (Jersey) Law 1963

The ‘Public Utilities Road Works (Jersey) Law 1963’ is currently the only road work law explicitly developed to restrict the exercise of powers held by utility undertakers (see section 3.6.4). In particular it places restrictions on the ‘breaking up’ or ‘opening’ of roads recently re-surfaced.

The Law allows an ‘embargo’ to be imposed by the highway authority following resurfacing works (currently 12 months), subject to a number of notice constraints.

If an utility undertaker breaks up a road under embargo without good reason (i.e. emergency repair works), the Law says that they must pay the highway authority an amount equal to any costs reasonably incurred by the highway authority in making good the road and in addition pay a fine not exceeding £100.

### **3.6.3 Road Traffic (Jersey) Law 1956**

The Road Traffic (Jersey) Law 1956 is the principal law with regard to the regulation of road traffic and gives highway authorities a number of powers critical to enabling road works –

- ❖ In ‘Article 67(1) and (2) – Temporary traffic restrictions’ (i.e. road works):  
This provision allows highway authorities to restrict or prohibit the use of a road to vehicles for the purpose of road works. This power is exercised exclusively through TTS in relation to main roads and the Parishes in relation to by-roads.
- ❖ In ‘Article 67(4) and (5) – Temporary traffic restrictions’ (i.e. events):  
This provision allows the Connétable of a Parish to restrict or prohibit the use of a road to vehicles if there is an event occurring in the ‘vicinity’ of the road. This power covers both main roads and by-roads in the Parishes concerned and requires no consultation with TTS or other Parishes.
- ❖ In ‘Article 68 – Temporary modification of the effect of Orders made under Article 59, 62 or 63’:  
This provision enables highway authorities to temporarily suspend (for up to 12 months) traffic restrictions set out in Road Traffic Orders. In practice this allows the suspension of restrictions pertaining to parking, one way systems and vehicle widths, etc.

### **3.6.4 Utility Laws**

The ability of utility undertakers to carry out road works is established through the following utility laws –

- ❖ Drainage (Jersey) Law 2005
- ❖ Electricity (Jersey) Law 1937: Article 2 and 4
- ❖ Jersey Gas Company (Jersey) Law 1989: Article 46
- ❖ Telecommunications (Jersey) Law 2002: Article 26
- ❖ Water Law (Jersey) 1972: Article 2

Although each Law varies significantly in its structure and content, the following common powers are established –

- ❖ Power to break up roads, etc.
- ❖ Power to place, inspect, maintain, adjust, repair, alter or renew service apparatus below, on or above roads.

However, in exercising the above powers the reciprocal duties placed on the utility undertaker by their respective utility laws differs significantly, as set out in Table 2.

**Table 2: Utility legislation vs road work duties**

<b>Road Work Duties</b>	<b>Drainage Law</b>	<b>Electricity Law</b>	<b>Gas Law</b>	<b>Telecoms Law</b>	<b>Water Law</b>
Give advanced notice of works?	No	10 days or 48 hrs if a property connection	8 days	No	No
Compliance with traffic management directions?	No	Yes	Yes	No	No
Comply with reinstatement standards?	No	Yes	Yes	No	No
Correct failed reinstatements during a guarantee period?	No	No	12 months	No	No
Comply with minimum training and supervision requirements?	No	No	No	No	No
Keep a record of buried apparatus?	Yes	Yes	No	No	No
Design, maintain apparatus with respect to road safety?	No	No	No	No	No

### **3.6.5 Summary comment**

Current road work related laws have evolved in a reactive and piecemeal manner without a coherent approach. Current highway authority legislation is inadequate and does not support today's highway authorities in their regulatory role, providing little in the way of guidance regarding duties, powers, penalties, remedies or a framework for the use of Codes of Practice.

Having carried out a review of road works and highway related legislation in the British Isles, Jersey is unusual in the extent to which utility undertakers have been left to establish their own obligations with respect to road work practice. This has led to significant inconsistencies between the various utility laws as well as omissions, which on the whole favour their 'rights' over highway authority powers.

Current legislation also provides little in the way of powers to manage other types of road works such as crane operations, repair to road side walls, tree felling, etc., all of which can cause a hazard to people using the road.

### **3.7 Development of Law**

The Law's development is set out in Table 3 below:

**Table 3: Record of Law Development**

<b>Stage 1: TTS policy review</b>	
TTS	⇒ Preparation of new road works Policy (from June 2007) ⇒ Submitted to TTS Management (December 2007) ⇒ Revised and resubmitted (March 2008)
TTS Management Team	⇒ New road works policy signed off (March 2008)
Minister	⇒ New road works policy signed off (June 2008)
<b>Stage 2: Development of joint TTS / Parish law requirements</b>	
Parishes	⇒ Briefed on TTS' new road works policy (July 2008) ⇒ TTS request working group to identify joint law requirements
TTS / Parish Working Group	⇒ Group formed (Mid-August 2008) ⇒ Law recommendations prepared (Late September 2008)
TTS / Parishes	⇒ Law recommendations signed off (3rd November 2008)
<b>Stage 3 Law review recommendations – pre-instruction consultation</b>	
Utility Undertakers	⇒ Consultation workshop (incl. TTS drainage, JE, JG, JW and JT) (5th November 2008) ⇒ Written consultation amendments (Mid December 2008)
TTS / Parishes	⇒ Proposed consultation amendments reviewed and signed off (9th March 2009)
Scrutiny	⇒ Review of final Law recommendations (26th March 2009)
<b>Stage 4: Instruction preparation</b>	
TTS	⇒ Instruction prepared (11th November 2009)
Law Officers	⇒ Instruction reviewed (11th November 2009 to 9th June 2010)
Minister	⇒ Ministerial Decision (9th July 2010)
<b>Stage 5: Drafting (Versions 1 to 13) Oct 2010 to May 2015</b>	
Law Officers	⇒ Initial review of penalties (incl. fix penalty offences) (February and March 2015)

<b>Stage 6: Law consultation (Draft 13)</b>	
Council of Ministers	⇒ Consultation approved (6th May 2015)
Scrutiny	⇒ Briefed (18th May 2015)
Comité des Connétables	⇒ Briefed (18th May 2015)
Parish Road Committees	⇒ Presentations (24th June and 14th July 2015)
Law Officers	⇒ Offences and penalties review (start 26th June 2015)
Utility Undertakers	⇒ Briefed (incl. TTS drainage, JE, JG, JW, JT, Sure, Newtel and Channel Islands Competition and Regulatory Authorities) (21st May 2015)
	⇒ Formal consultation period (1st June to 24th July 2015) ⇒ Written questions to TTS (26th June 2015)
TTS / Utility Undertakers	⇒ TTS / stakeholder (TTS drainage, JE, JG, JW and JT) meetings (week of 29th June 2015)
TTS	⇒ TTS answers to written questions (13th July 2015) ⇒ TTS issues agreed policy changes (17th July 2015)
Utility Undertakers	⇒ Final written comments (24th July 2015)
<b>Stage 7: Post consultation drafts (Version 14 to 21)</b>	
Utility Undertakers	⇒ Sign off of consequential amendments to utility laws (14th August 2015)
Law Officers	⇒ ECHR review (start 3rd September, notes back on 17th November 2015)
<b>Stage 8: Scrutiny (Environment, Housing and Technical Services)</b>	
Having reviewed TTS and the Parish's final joint 'Law Review Recommendations' on the 26th March 2009 and having been further briefed of the draft Law's progress on the 18th May 2015, Scrutiny confirmed no further work would be done on the draft Law on 17th August 2015.	
<b>Stage 9: Regulations and Orders – policy consultation</b>	
Utility Undertakers	⇒ Consultation (2nd to 23rd October 2016)
<b>Stage 10: Road works permit fee proposals – policy consultation</b>	
Comité des Connétables	⇒ Briefed (12th October 2015)
Utility Undertakers	⇒ Consultation (16th to 30th October 2015)

### **3.7.1 Stage 1: TTS policy review**

Prior to the development of the drafting instructions it was essential that TTS understood the broader changes that needed to be made to how road works were regulated in the Island. TTS therefore initiated a comprehensive review of both the Parishes and its own

regulatory / management regimes. The approach adopted for the review included the following tasks –

- ❖ The review of existing legislation, codes, standards, policies, procedures, business processes and IT.
- ❖ The identification of problems, principal causes and effects.
- ❖ The definition of objectives required to overcome the problems.
- ❖ The review of best practice elsewhere (including England, Wales, Scotland, Northern Ireland, Republic of Ireland, Isle of Man and Guernsey).
- ❖ The development of recommendations based on the defined objectives taking into account best practice elsewhere.

To ensure that the review was comprehensive it was carried out in partnership with representative Parishes such as St. Helier (as the key urban Parish) and St. Peter (as a rural parish).

### ***3.7.2 Stage 2: Development of joint TTS / Parish requirements***

Having completed the review TTS presented its ‘New Road Works Policy’ to the Comité des Connétables and Parish Road Committees with the objective of –

- ❖ Reaching a consensus regarding the outline requirements of an Island wide road works regime; and
- ❖ Forming a ‘Joint Highway Authority Working Group’ (the Working Group) in which to carry out a detailed review of joint law drafting requirements.

The Working Group was made up of TTS’ Street Works Manager and a combination of Parish Road Committee members and Parish Secretaries. The Working Group used TTS ‘New Road Work Policy’ as the framework upon which to develop detailed law drafting requirements. The Working Group’s ‘Law Review Recommendations’ were subsequently endorsed by both Parish Road Committees and the Comité des Connétables.

### ***3.7.3 Stage 3: Law review recommendations – pre-instruction consultation***

Following the endorsement of the Working Group’s ‘Law Review Recommendations’, the following pre-instruction consultation exercises were carried out –

- ❖ A workshop was held with representatives of the Island’s utility undertakers to provide a briefing on the ‘Law Review Recommendations’ and to identify any issues that could be dealt with immediately. Questions and comments raised at the workshop, along with TTS / Parish responses, were recorded and circulated.
- ❖ Following the workshop a formal consultation period of 5 weeks was provided. All written responses were collated by TTS.
- ❖ The final Law recommendations were reviewed by Scrutiny at TTS’ request.

### ***3.7.4 Stage 4 and 5: Instruction preparation and drafting***

To ensure the Law’s smooth progress the instruction was reviewed by the Law Officers at TTS’ request.

### 3.7.5 Stage 6: Law (Draft 13) consultation

#### *Scrutiny*

Scrutiny were briefed on the Law’s progress. TTS invited Scrutiny to undertake a further review of the draft Law.

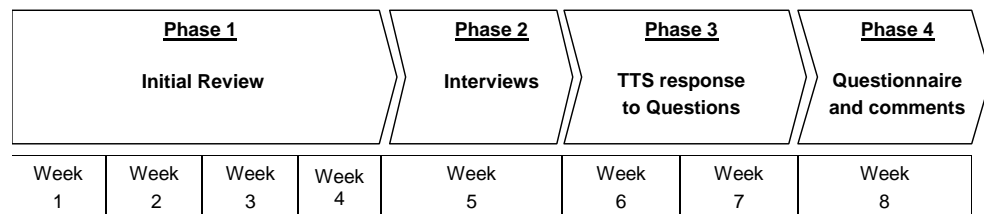
#### *Parishes*

The Comité des Connétables were briefed on the Law’s progress. TTS sought advice concerning the best consultation approach for the Island’s 12 Parish Road Committees. Copies of the draft Law were issued to each Parish to allow formal comments to be passed back and presentations were given by TTS to Road Committee members.

#### *Utility undertakers*

Following completion of ‘Draft 13’ and initial stakeholder briefings TTS undertook a formal 8 week consultation. The framework followed is set out in Figure 2 below.

**Figure 2: Consultation framework for utility undertakers**



Note: As the Island’s telecommunication industry regulator the ‘Channel Islands Competition and Regulatory Authorities’ were kept fully briefed on the process and outcomes of the consultation.

### 3.7.6 Stage 7: Post consultation drafting changes (Version 14 to 21)

Consequential amendments to utility laws were signed off by utility companies on 14th August 2015. The draft Law was reviewed by Law Officers for European Court of Human Rights (ECHR) compliance. Final ECHR notes were received on 17th November 2016.

### 3.7.7 Stage 8: Scrutiny (Environment, Housing and Technical Services)

Having reviewed TTS and the Parish’s final joint ‘Law Review Recommendations’ on the 26th March 2009 and having been further briefed of the draft Law’s progress on the 18th May 2015, Scrutiny confirmed no further work would be done on the draft Law on 17th August 2015.

### 3.7.8 Stage 9: Regulations and Orders – policy consultation

To facilitate policy development prior to drafting of the Law’ Regulations and Orders (after the Law’s adoption by the States) TTS has prepared and circulated a number of policy documents for review / comment by utility undertakers.

### 3.7.9 Stage 10: Road works permit fee proposals – policy consultation

TTS has prepared and circulated a briefing paper setting out the proposed charging framework for road work permits, including fee levels and indicative annual costs to utility companies.

## 3.8 Law drafting strategy

TTS has prepared the drafting instruction with the aim of ensuring that the new Law fully addresses the local situation and as such has avoided trying to localise UK legislation (or that of any other jurisdiction) in a wholesale manner. Therefore, the

development process has been from the ‘bottom up’. Notwithstanding this, in preparing the instruction general reference was made to –

- ❖ The ‘New Roads and Street Works Act 1991 (c. 22): Part 3: Street works in England and Wales’ (as amended by the ‘Traffic Management Act 2004: Part 4 and the Transport Act 2000: Part 5’).
- ❖ The ‘Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007’ (as allowed for under the NRSWA).
- ❖ The ‘Traffic Management Permit Scheme (England) Regulations 2007’ (as allowed for under the Traffic Management Act 2004: Part 3, Permit Schemes).

In addition the Law has been drafted so as to avoid the need for further primary legislation, by for example –

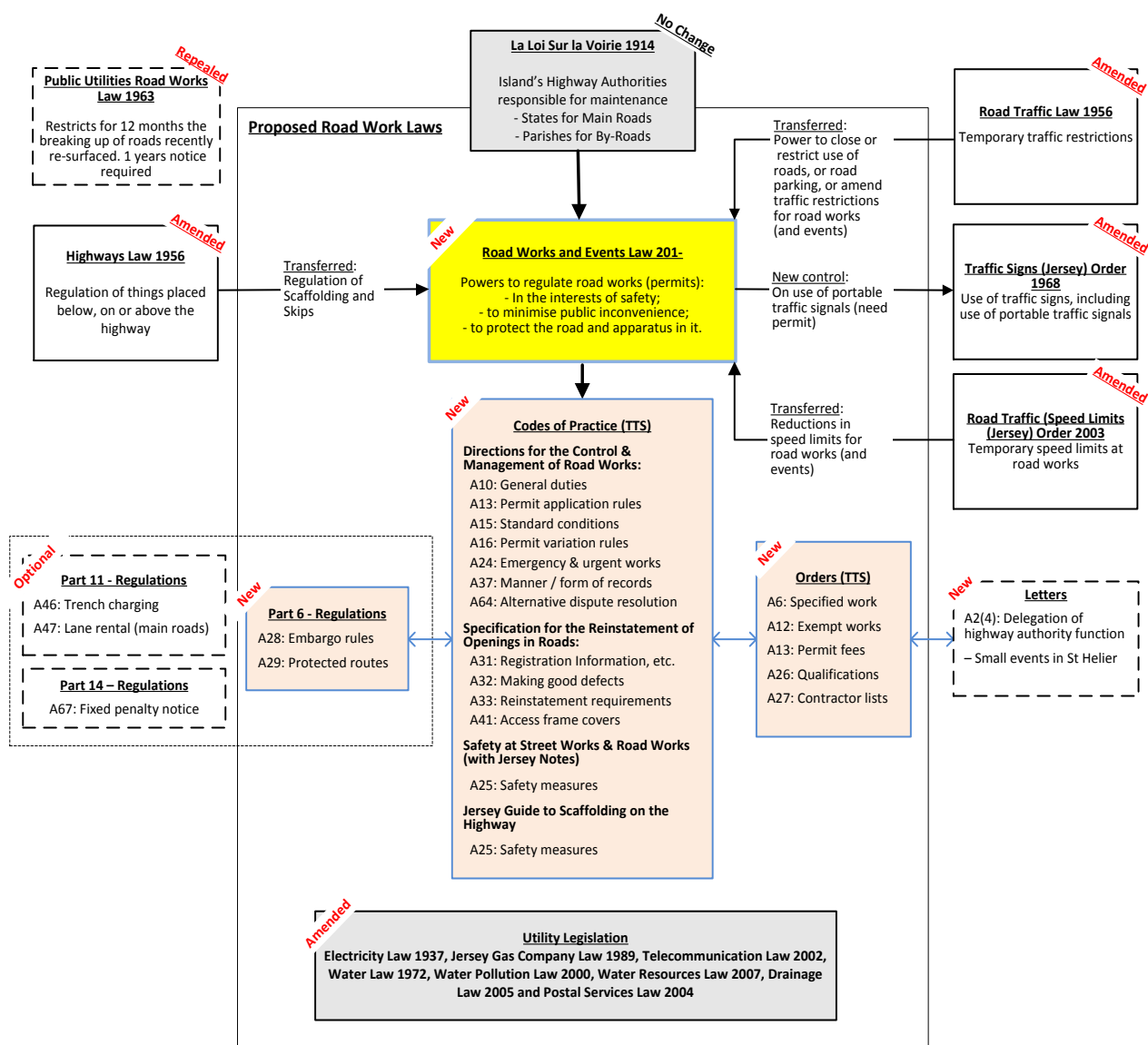
- ❖ Anticipating possible future requirements and providing optional Regulations.
- ❖ Creating a framework for issuing codes of practice (or adopting relevant UK versions) which can easily be changed in line with developing requirements.

The Law also introduces an accessible dispute resolution model for resolving conflict between highway authorities and road work promoters without necessary redress to the Royal Court.

The proposed legal framework is set out in Figure 3.



**Figure 3: Proposed legal framework for road works**



#### 4. SUMMARY OF PROVISIONS

This section explains the Law’s key provisions with respect to road works:

##### ❖ Part 1: Introductory – Road Works

The Law will create for the first time a comprehensive legal framework for regulating road works in Jersey. The term ‘road works’ meaning any of the following –

- **Undertaker works:** Works carried out in a road (under a statutory power) in order to place, inspect, maintain, repair, replace or remove electricity, gas, telecoms, water and sewerage infrastructure (termed “apparatus”). Often this involves the ‘breaking up’ or ‘excavation’ of the road, which then requires reinstatement.
- **Specified road works:** Works carried out in or near a road (but which use space in the road) creating an obstacle or potential hazard to road users.

Potential work types include building construction and maintenance, scaffolding and skip related activity, road side wall (re)construction, tree surgery, lifting operators, etc. While providing potential for regulation the Law would only apply to a particular work type if specifically identified by the Minister (TTS) as needing regulation through an Order, e.g. scaffolding activity.

- **Contracted highway authority works:** Contracted works for the highway authority in order to maintain or improve the road and its associated infrastructure.

#### ❖ **Part 1: Introductory – Road**

The Law will define the term ‘road’ to encompass ‘public realm spaces’ such as squares, promenades, cycle tracks, parks, etc. to ensure that both the public using such spaces and the spaces are afforded the same level of protection with respect to road works.

#### ❖ **Part 2: General Road Work Duties (Articles 9 – 10)**

Highway authorities and people wishing to carry out road works will be under a duty to co-operate and work together in the interests of safety, minimising disruption and inconvenience to road users, to protect the structure of the road and the integrity of utility service apparatus in it. The duty will also extend to co-operation between highway authorities to ensure effective management of the Island’s road network.

#### ❖ **Part 3: Road Work Permits (Articles 11 – 20)**

People wishing to carry out road works will be under a duty to obtain a permit from the relevant highway authority before undertaking work (except in the case of emergency or urgent utility repair works, or where the class of work is explicitly exempt by Order). The highway authority will have the ability to refuse consent or set conditions (e.g. regarding shared working, the timing of work, required traffic management and advance publicity) and to withdraw consent if those conditions are unreasonably breached. The highway authority will also be able to charge a fee (set by the Minister for Transport and Technical Services by Order) to offset regulatory costs associated with the planning, co-ordination, administration and inspection of road works.

#### ❖ **Part 4: Emergency and Urgent Works (Articles 21 – 24)**

The Law will make clear the circumstances under which undertakers (i.e. utility companies, the drainage authority, etc.) are permitted to execute work without prior highway authority consent, i.e. where there is need to carry out emergency, or urgent repair works. It will balance this mandate with a duty on undertakers to, in so far as it is reasonably practical, consult the highway authority before executing urgent works (with a view to agreeing steps that might reduce the works impact) and to promptly notify the highway authority in any event of starting either emergency or urgent works.

#### ❖ **Part 5: Safety, Training and Supervision (Articles 25 – 27)**

The Law will introduce a duty on persons carrying out road works (or highway authority works) to ensure that the works are adequately guarded, lit and appropriately signed, giving specific recognition to the needs of people with a disability.

It will also allow the introduction of a range of measures designed to drive up competence and performance, including minimum training and supervisory standards and the ability for highway authorities to limit critical work to ‘approved’ contractors.

#### ❖ **Part 6: Restrictions on Undertaker Works (Article 28) – Requires Regulations**

The Law will allow the introduction of Regulations giving highway authorities the power to impose a proposed 3 year embargo on digging following resurfacing work, or

a 5 year embargo if the road is significantly reconstructed. The Law will provide a simple, cost effective and flexible notice procedure (allowing alternatives to Gazette notices) for putting an embargo in place (the notice period being not less than 6 months), along with strong penalties if a breach occurs (£5000). Emergency or urgent utility repair works and some property connection work will be exempt, but will be subject, along with embargo breaches to increased road reinstatement standards.

❖ **Part 6: Protected Roads (Article 29) – Requires Regulations**

The Law will allow the introduction of Regulations giving key transport routes (e.g. The Tunnel, La Route de la Liberation and Victoria Avenue, etc.) ‘protected’ status to prevent (where a practical alternative exists) new services apparatus from being buried in them. The aim being to maximise road life and minimise disruption associated with their installation and ongoing maintenance.

❖ **Part 7: Damage to Roads, Road Assets and Apparatus (Article 30)**

New measures will be put in place to help highway authorities deal with the collateral damage caused by road works to the road and its assets (e.g. traffic equipment, street furniture, road markings, and planting areas, etc.). These measures include a duty on people carrying out works to report damage and the power to recover repair or replacement costs. Equivalent protection will also be available to undertakers with respect to their service apparatus.

❖ **Part 7: Trenching and Reinstatement (Articles 31 – 36)**

The Law will introduce a duty on undertakers (and their contractors) to reinstate the road (when excavated) to a minimum standard (set out in an approved specification) and to register details of any reinstatement (e.g. its size, depth, location, type, etc.) within 5 working days of completing works to allow the highway authority to start monitoring performance and identify responsibility for defects.

It will also allow the introduction of a range of measures designed to improve ongoing road condition, such as a 3 year reinstatement ‘guarantee period’ to ensure that latent defects are picked up before the reinstated area of road is adopted by the public.

Highway authorities will also have the power to instruct an ‘enhanced’ reinstatement, where there is an engineering need, or in some cases to protect the visual appearance of a road. The highway authority will also have the option of carrying out the reinstatement work themselves, such as part of a planned resurfacing scheme and recharge appropriate costs.

❖ **Part 8: Apparatus Records and Protection (Articles 37 – 39)**

The Law will introduce a duty on undertakers to keep an accurate record of buried service apparatus situated in the road, i.e. their location, depth, type etc., to apply common record standards and to make that information available to people with a legitimate need (for an appropriate fee). It will also place a duty on people carrying out road works to report to the apparatus owner if a service is wrongly marked, or missing from the record.

To reduce the risk of buried service apparatus being damaged by road works, there will be a duty on those carrying out the work to inform the owner if their apparatus is at risk of damage. Owners will have a right to monitor the work and require protection measures to be put in place.

❖ **Part 8: Design, Location and Maintenance of Apparatus (Articles 40 – 41)**

The Law will introduce a duty on undertakers to ensure that apparatus placed in the road, which includes buried services, access chambers, road covers, cabinets, poles and overhead lines, etc., are “designed, located and kept in efficient working condition” in

such a way that any risk to persons using the road are minimized, along with any inconvenience and that the integrity of the road's structure is maintained. Also repair of road defects occurring in the vicinity of access chambers (0.5m), caused by their presence, will be the responsibility of the apparatus owner.

❖ **Part 9: Investigation, Inspection and Enforcement (Articles 42 – 43)**

Highway authorities will be given investigation powers to check if people have reinstated road excavations correctly (e.g. by taking cores through a reinstated area) and if not recover investigation and rectification costs.

Highway authorities will be given the power to appoint 'authorized' road work inspectors, with authority to undertake investigations to ascertain if a person has complied, or is in compliance with the permit, or their duties under the Law (e.g. safe working, good workmanship, the correct use of materials, etc.).

❖ **Part 10: Liability (Articles 44 – 45)**

The Law provides that a highway authority is not liable for damages unless acting in bad faith, or its action is unlawful under the 'Human Rights (Jersey) Law 2000'. Also it provides that utility undertakers are not liable for breach of statutory duty (e.g. the need to provide a new customer connection within a set period, etc.) where failure is attributable to a decision by a highway authority (e.g. it requires work by a school to be delayed until a holiday period to mitigate impact to the school, etc.).

❖ **Part 11: Trench Charging (Article 46) – Optional Regulations**

The Law provides for the introduction of Regulations allowing a 'road trench charge'. Such a charge (if applied) is designed to address the costs incurred by the public as a result of the long-term damage caused to roads by trenching. With a total of 10,900 square meters of road surface being excavated in 2014 (70% in main roads) the impact on the integrity of the road is significant.

The provision for such a charge is in line with UK road work legislation and is underpinned by a wide range of research (including locally) showing that trenching (even when correctly reinstated) reduces the life of roads by between 30% and 40%, leading to increased maintenance, reduced performance and early replacement. Subject to possible exemptions, the charge could be based on criteria such as area of trench, depth, the importance of the road, its age and condition, etc.

❖ **Part 11: Road Lane Rental (Article 47) – Optional Regulations**

The Law provides for the introduction of Regulations allowing a charge determined by reference to the duration of road works (a system known as 'lane rental'). The aim being (if applied) to create an incentive for works to be carried out quickly. Charges would be limited to strategic transport routes and could take account of factors such as the time of day the road is restricted and level of traffic restriction.

❖ **Part 12: Events (Article 48 – 56) – See Sections 5 to 7**

❖ **Part 13: Temporary Traffic Changes (Articles 57 – 60)**

The Law will provide a simplified, more cost effective and flexible legal procedure (with alternatives to the Gazette for public notices) for putting in place temporary traffic changes in order to carry out road works. For example, closing a road, reducing permitted traffic speed, or making changes to an existing traffic restriction, as defined by 'Road Traffic Order', such as reversing the permitted direction of traffic or suspending road side parking, etc.

❖ **Part 14: Alternative Dispute Resolution Procedures (Article 64)**

In line with construction industry trends (following the publication of the UK government's 'Latham Report – Constructing the Team' in 1996'), the new Law allows

for ‘alternative dispute resolution procedures’ to be set out by Code of Practice (e.g. based on mediation, etc.) to enable disputes between highway authorities and persons carrying out works with respect to the application of the Law to be settled both quickly and efficiently, if at all possible without redress to the Royal Court.

❖ **Part 14: Codes and Standards (Article 66)**

The Law will provide a framework for codes of practice (either locally developed or adopted from the UK), relating to safe working, trench reinstatement methods, permit rules, public consultation in advance of works and publicity, etc.

Such codes, which address technical requirements, can be changed over time in line with developing requirements, without the need for further primary or subordinate legislation.

❖ **Part 14: Fixed Penalty Notices (Article 67) – Optional Regulations**

The Law provides for the introduction of Regulations allowing ‘fixed penalty notices’ for a range of offences, creating a more usable and direct enforcement regime in less extreme cases of infringement, as an alternative to prosecution.

## ROAD EVENTS

### 5. BACKGROUND

The Minister for Transport and Technical Services (TTS) is responsible for approving the Island’s ‘road based events’ (subject to Parish consultation) through a system of enabling Orders. Entertainment, such as the Battle of Flowers, is administered under the ‘Entertainment on Public Roads (Jersey) Law 1985’ and motor vehicle racing, such as the ‘Festival of Motoring’, under the ‘Motor Vehicle Races (Jersey) Law 1946’.

In recent years the number and scale of road based events has increased notably (along with event led tourism), with 12 to 13 event Orders now prepared each year. There are also a further 10 events which might need an Order in the future should they become larger fixtures.

As a legal instrument, the preparation of an event Order involves 19 administrative stages and takes up to 3 months, making subsequent changes, e.g. due to the cancellation of an event as a result of bad weather, difficult. Not counting other TTS or States resources (e.g. secretarial, administrative, draftsmen) each Order consumes between 1 and 10 days of accumulated Officer time. This, along with need to publish public Gazette notices on multiple occasions prior to the event regarding traffic changes, etc. makes the process of legally enabling a road event very costly to both the public and promoter.

Therefore, TTS is proposing the introduction of new legislation to replace the current road event laws.

Proposed legislation has been drafted with the following road event related objectives –

- ❖ To create a simple, resource efficient and flexible means of enabling road events and associated temporary traffic changes; and
- ❖ To create the option of recovering highway authority and police support costs (e.g. for large commercial events).

## 6. CONTEXT

The Law has been drafted in consultation with the Bailiff's Chambers so as to not affect the role or power of the Bailiff with respect to granting permission for events, whether on the basis of custom or statute. Currently, the Bailiff's permission is required under the 'Unlawful Public Entertainments (Jersey) Regulations 2013' to provide all public entertainments, including events for which Ministerial Orders are made under current legislation such as the 'Entertainments on Public Roads (Jersey) Law 1985'. The 2013 Regulations create criminal offences for providing a public entertainment without the Bailiff's permission or for contravening any conditions imposed by the Bailiff. Under the draft Law, the decision whether to grant a licence with respect to any particular event has been left to the discretion of the highway authority and replicates as far as possible the current position where Orders for events are at the discretion of the Minister. The draft Law will not therefore infringe on the Bailiff's role in connection with civic events such as Liberation Day celebrations, etc. which currently take place without a Ministerial Order.

## 7. SUMMARY OF PROVISIONS

This section explains the Law's key provisions with respect to road events:

### ❖ Licences

The Law will replace the current 'Order' based event legislation with a 'licence' system administered by each highway authority with respect to events on their roads. The Law will also provide the authority with power to impose conditions regarding safety arrangements, insurance or publicity.

### ❖ Standing Provisions

The Law will provide 'standing' provisions essential to the holding of road events, such as powers to place materials on the road and to restrict access, etc.

### ❖ Discretionary Recovery of Costs

The Law will give the highway authority and Police discretionary power to recover expenses incurred in supporting an event, e.g. the provision of traffic management for a large commercial event.

### ❖ Other Licencing Options

To reduce administration, the Law will allow highway authorities to issue single licences for recurring events (e.g. for the Five Mile Road Sprints). Where there is more than one highway authority involved in an event, the Law will allow them to issue a joint licence. In the case of main roads, the Law will allow Parishes to administer small events, subject to the Minister's discretion.

### ❖ Part 13: Temporary Traffic Changes

The Law will provide a simplified, more cost effective and flexible legal procedure (with alternatives to the Gazette for public notices) for putting in place temporary traffic changes in the interest of holding an event. For example, closing a road, reducing permitted traffic speed, or making changes to an existing traffic restriction, as defined by 'Road Traffic Order', such as reversing the permitted direction of traffic or suspending road side parking, etc.

## ROAD WORKS AND EVENTS

### 8. DETAILED ANALYSIS

This section outlines the key policy rationales behind the Law by comparing current legal / regulatory constraints versus effect / benefit of the Law.

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
Part 1: Introductory – Road Works	There is currently no comprehensive legal definition of what ‘road works’ are.	The Law will create for the first time a comprehensive legal framework for regulating road works. The term ‘road works’ meaning any of the following:  <u>Note:</u> ‘Highway authority works’ carried out by direct labour do not fall under the definition ‘road works’ but will be subject to many of the same duties and requirements to promote consistent / equivalent working practices.
Part 1: Introductory – Road	There is currently no adequate legal definition of what a ‘road’ is with respect to the regulation of road works.	The Law will define the term ‘road’ to encompass ‘public realm spaces’ such as squares, promenades, cycle tracks, parks, etc. to ensure that both the public using such spaces and the spaces are afforded the same level of protection with respect to road works.
Part 2: General Road Work Duties	<p><u>Highway Authorities</u></p> <p>There is currently no comprehensive legal framework for regulating road work or detailing the highway authority’s role and duties. There is therefore no clear legal underpinning or imperative to justify the actions that highway authorities are expected to take on a daily basis to prevent unsafe working, or avoidable traffic disruption and public inconvenience, or damage to the road and service apparatus in it, etc.</p> <p>There is no duty on the Island’s 13 highway authorities to co-ordinate and consult one another about road works and road events that may affect another highway authority’s roads.</p> <p><u>Persons carrying out road works</u></p> <p>There are no parallel duties on persons carrying out road works to co-operate with the highway authority (in whose</p>	<p><u>Highway Authorities</u></p> <p>The new law will clearly define the highway authority’s regulatory duties with respect to road works and create the legal imperative needed to justify the powers contained in the new Law as a whole, to prevent unsafe working, or avoidable traffic disruption and public inconvenience, or damage to the road and service apparatus in it, etc.</p> <p>The new Law will place a duty on Highway Authorities to co-operate with one another in performing their common ‘regulatory duty’.</p> <p><u>Persons carrying out road works</u></p> <p>The new Law will place parallel duties on persons carrying out road works to co-operate with the highway authority, persons carrying out other road works who may be affected by the works and with statutory</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>road the works are occurring) in its role, or with another person carrying out other road works who may be affected by the works, or with a statutory undertaker (i.e. utility companies, etc.) whose service apparatus may be affected by the works.</p> <p>Critically there is no legislation detailing the duties a person carrying out road works is under, i.e. to ensure that the works are carried out safely, with the minimum of traffic disruption and public inconvenience, without damaging the road and service apparatus in it (except where part of the works), etc.</p>	<p>undertaker whose service apparatus may be affected by the works.</p> <p>The new Law will place a duty on persons carrying out road works to use their ‘best endeavours’ to ensure that the works are executed having regard to –</p> <ul style="list-style-type: none"> <li>(a) the interests of safety,</li> <li>(b) the need to minimise inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability),</li> <li>(c) the need to protect the structure of the road and the integrity of apparatus in it; and</li> <li>(d) ensure that they are carried out as quickly and efficiently as is practicable in the circumstances.</li> </ul> <p>Backed by a strong penalty for a failure of duty (up to £5000).</p>
Part 3: Road Work Permits	<p>As highway authorities, TTS and the Parishes have to ensure that road works are properly planned and co-ordinated, minimising potential disruption. To do this effectively they are dependent on:</p> <ul style="list-style-type: none"> <li>❖ Receiving timely and accurate information about planned works; and</li> <li>❖ Having the ability to influence their timing, traffic management, shared working, advanced publicity, etc.</li> </ul> <p>In 2012 TTS put in place (with Parish support) an electronic road works permit system (called ‘Trafficworx’). While the system has been very effective it lacks legal underpinning.</p> <p>In particular under the current legal framework utility undertakers are free to exercise their road works powers with little restriction or limitation. With the exception of works requiring</p>	<p>The Law will introduce a ‘permit’ based regulatory framework for road works (in line with many other jurisdictions) allowing application rules (set by the Minister for TTS) that ensure highway authorities have sufficient time and information to consider the likely implications of all road work types, allowing better planning and co-ordination.</p> <ul style="list-style-type: none"> <li>❖ Permits can be refused or issued with appropriate conditions regarding the timing of work, traffic management, shared working and advanced publicity, etc., or consent withdrawn if conditions are unreasonably breached.</li> </ul> <p><u>Note:</u> To ensure proportionality a mechanism has been included allowing ‘prescribed’ classes of work (set by Order), i.e. low impact / low risk road works, to be exempt from requiring a permit.</p>



Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>road closure, highway authorities have <u>no</u> comprehensive legal power to –</p> <ul style="list-style-type: none"> <li>❖ Require a minimum amount of information or notice before work goes ahead.</li> <li>❖ Refuse works, or direct their timing, traffic management, shared working, advanced publicity, etc.</li> </ul>	<p>‘Emergency’ or ‘urgent’ repairs works by undertakers will also be exempt.</p> <ul style="list-style-type: none"> <li>❖ The highway authority will be able to charge a ‘prescribed’ fee (set by the Minister for TTS by Order) to offset regulatory costs associated with the planning, co-ordination, administration and inspection of road works.</li> </ul>
<p>Part 4: Emergency and Urgent Works</p>	<p>Neither current highway nor utility legislation provides consistent guidance as to when a statutory undertaker is entitled to make repair works in a road, without first notifying or getting approval from the highway authority, i.e. commonly called an ‘emergency works’ situation.</p> <p>Current emergency work criteria are too broad and do not sufficiently distinguish situations which call for a less immediate ‘planned’ response, as opposed to an ‘immediate’ response. This lack of distinction between the 2 situations is on occasion used to disguise poor planning and communication on the part of the Statutory Undertaker.</p> <p>Undertakers are not currently under a duty to seek guidance from the highway authority about traffic mitigation measures, even when there is time and opportunity to do so.</p> <p>There is currently no requirement to notify the highway authority of the works.</p>	<p>The Law will make clear the circumstances under which undertakers are permitted to execute work without prior highway authority consent.</p> <p>The Law will provide a clear definition and distinction between situations which call for a less immediate ‘planned’ response (i.e. Urgent Works), as opposed to an ‘immediate’ response (i.e. Emergency Works).</p> <p>In the case of urgent works the Law will balance the ability to do works without permit consent with a duty, so far as it’s reasonably practical, to consult the highway authority before executing the works (with a view to agreeing steps that might reduce the works impact).</p> <p>Whether emergency or urgent works the Law will introduce a duty on undertakers to notify the highway authority of the works starting within a fixed period (within 2 hours, if that is not possible for any reason, as soon as possible after that and in any event by 10.30 a.m. the next working day).</p>
<p>Part 5: Safety, Training and Supervision</p>	<p>It is essential that road works (and highway authority works) are well planned and adequately supervised with appropriate safety measures put in place by competent staff. This is to ensure that works are carried out safely without endangering the staff or road users, with the minimum</p>	<p>The Law will introduce a duty on persons carrying out road works (or highway authority works) to ensure that the works are adequately guarded, lit and appropriately signed (giving specific recognition to the needs of people with a disability) and a parallel penalty (up to £5000). This will be underpinned by a framework allowing</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>disruption and without damaging the road or buried utility apparatus.</p> <p>However, other than the general duties established under the ‘Health and Safety at Work (Jersey) Law 1989’, there is currently no specific duty, or penalty, to ensure that road works (or highway authority works) are adequately guarded, lit and appropriately signed. There is also no specific legal framework for setting out:</p> <ul style="list-style-type: none"> <li>❖ Safe working standards in a code of practice*; or</li> <li>❖ Minimum training and supervision requirement.</li> </ul> <p>Highway authorities have no direct means of preventing persistently poor performing contractors (whether in relation to safety or workmanship, etc.) from continuing to work on public roads. Nor a clear mandate allowing them to take direct action to bring an end to a dangerous situation (e.g. by putting additional safety measures in place, or removing works), or to recover the cost of so doing.</p> <p><i>*Note:</i> While the ‘Health and Safety at Work (Jersey) Law 1989: Article 10’ allows the Minister (Social Security) to issue codes of practice in relation to Regulations, etc. issued under that Law, compliance with such a code would not be linked to the road work specific duties, or offences, created by the new Law.</p>	<p>the Minister (TTS) to set (by Order) minimum –</p> <ul style="list-style-type: none"> <li>❖ Safe road working standards, i.e. a code of practice; and</li> <li>❖ Minimum road work training and supervision requirement.</li> </ul> <p>The Law will create a new offence to address circumstances such as unlawful tampering with or removing safety equipment from works (e.g. barriers, hazard lights, signs, cones, etc.) and penalty (up to £5000).</p> <p>The Minister (TTS) will be able to regulate which contractors are permitted to carry out road works (as appropriate) allowing poor performance to be challenged, ensuring that only responsible contractors, with trained staff are permitted to carry out road works.</p> <p>Highway authorities will be given new inspection powers (see Part 9) and the ability to intervene to make works safe or to remove works where it is necessary to do so and recover costs in so doing.</p>
Part 6: Restrictions on Undertaker Works – Requires Regulations	TTS regards the ability to prevent recently resurfaced roads from being dug up as critical in its ability to protect the public’s investment in road infrastructure. However, the current ‘no digging’ embargo provided for by the ‘Public Utilities Road Works (Jersey) Law 1963’ (to be repealed) is too narrow, weak, rigid and costly to apply –	<p>The new Law will allow (through the introduction of Regulations) highway authorities to impose a proposed 3 year embargo following resurfacing work, or a 5 year embargo if the road is significantly reconstructed.</p> <p><i>Note:</i> Statutory undertaker emergency and urgent works, along with some property connection work will be exempt, but will be subject to</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<ul style="list-style-type: none"> <li>❖ The 12 month embargo period gives insufficient protection.</li> <li>❖ A highway authority must provide utility undertakers with at least 1 years advance Gazette notice of their planned resurfacing works, followed by a 3 month Gazette notice before the works start. The works must start within 1 month of the stated start date.</li> <li>❖ The penalty for breach of an embargo is inadequate (£100 fine).</li> <li>❖ The utility undertakers 'emergency works' mandate is ill defined and open to abuse.</li> <li>❖ The appeal process is costly, slow and in most cases impractical (i.e. appeals must be made to the Royal Court).</li> </ul>	<p>increased road reinstatement standards, along with embargo breaches.</p> <p>In addition the Law will –</p> <ul style="list-style-type: none"> <li>❖ Provide a simplified, more cost effective and flexible legal notice procedure (with alternatives to Gazette notices) for putting an embargo in place. The notice period being not less than 6 months.</li> <li>❖ Provide a higher level of fines (up to £5000) to provide greater disincentive to breach an embargo, along with enhanced reinstatement standards if a breach does occur.</li> <li>❖ Allow the use of non-judicial 'alternative dispute resolution procedures'.</li> </ul> <p>The above will better protect the public's investment in roads, increasing road life, reducing maintenance costs and will ensure that utility undertakers plan road works further ahead.</p>
Part 6: Protected Roads – Requires Regulations	Currently there is no legal means of stopping utility undertakers (i.e. utility companies, etc.) from burying service apparatus along the Island's most important transport routes, even if an alternative route is available to them. This can lead to avoidable disruption associated with their installation and ongoing maintenance.	This new Law will allow (through the introduction of Regulations) key transport routes (e.g. The Tunnel, La Route de la Liberation and Victoria Avenue, etc.) to be given 'protected' status to prevent (where a practical alternative exists) new services apparatus from being buried in them, with the aim of maximising road life and minimising disruption associated with their installation and ongoing maintenance.
Part 7: Damage to Roads, Road Assets and Service Apparatus	Collateral damage caused by road works to the highway (including traffic equipment, street furniture, road markings, planting areas, etc.) is fairly commonplace and a challenge for highway authorities to redress due to the lack of reporting.	The new Law will introduce a duty on persons carrying out road works to report damage, backed by a strong penalty for failing to do so (up to £5000), particularly in relation to damage to underground service apparatus. This will improve reporting and enable highway authorities and utility companies, etc. to undertake

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>Equally, damage to underground service apparatus caused by road works can go unreported with potentially serious consequences.</p> <p>Subsequent failure of damaged service apparatus can lead to public harm, building damage, or highly disruptive ‘emergency or urgent’ road works.</p>	<p>repairs in a safe, planned way and to recover their costs.</p>
<p>Part 7: Trenching and Reinstatement</p>	<p>There is currently no comprehensive legal duty on undertakers (and their contractors) to reinstate the road (when excavated) to a set standard.</p> <p>There is no legal duty to register details of reinstatements (e.g. its size, depth, location, type, etc.) with the highway authority in order to facilitate ongoing performance monitoring. Therefore, on occasion highway authorities are not made aware of new trenches (and their reinstatement) which can remain unidentified. This means that the cost of repairing reinstatement defects is picked up by the public.</p> <p>The current trench reinstatement guarantee provided by utility legislation is too short (12 months) with latent defects often not appearing until after it is adopted by the public.</p> <p>There is <u>no</u> means of passing on the cost of resurfacing a road fundamentally compromised by multiple utility excavations, e.g. service connection works linked to a major building development, etc.</p>	<p>The Law will introduce a duty on undertakers (and their contractors) to reinstate the road (when excavated) to a minimum standard (set out in an approved specification) and to register details of any reinstatement (e.g. its size, depth, location, type method, etc.) within ‘5 working days’ of completing works (a period amendable by Order) to allow the highway authority to start monitoring performance and identify responsibility for defects.</p> <p>It will also allow the introduction of a range of measures designed to improve ongoing road condition, such as a ‘3 year’ reinstatement ‘guarantee period’ (a period amendable by Regulations) to ensure that latent defects are picked up and repaired before the reinstated area of road is adopted by the public.</p> <p>Highway authorities will also have the power to require an enhanced reinstatement, where there is an engineering need, or in some cases to protect the visual appearance of a road. The highway authority will also have the option of carrying out the reinstatement work themselves, such as part of a planned resurfacing scheme and recharge appropriate costs.</p>
<p>Part 8: Apparatus Records and Protection</p>	<p>It is essential that undertakers keep an accurate record of buried service apparatus situated in the road, i.e. their location, depth, type etc. and to make that information available to people undertaking road works, in</p>	<p>The Law will introduce a duty on undertakers (i.e. utility companies, the drainage authority, etc.) to keep an accurate record of buried service apparatus situated in the road, i.e. their location, depth, type etc. and to –</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>order to prevent damage and injury when excavation work takes place.</p> <p>However, current utility legislation does not provide a comprehensive or consistent set of legal duties with respect to this important area. Nor does it gives highway authorities a say in how records are kept or made available.</p> <p>There is no clear duty on people carrying out road works to report to the record provider if buried service apparatus information is wrong, or missing from the record.</p> <p>At times the lack of accurate record information and the failure to report record errors leads to additional road excavations (i.e. to find service apparatus) and delayed finishing when unexpected service apparatus are encountered.</p>	<ul style="list-style-type: none"> <li>❖ Apply common record standards to improve accessibility and the use of technology (i.e. 24 hour access via the internet or on a mobile device, particularly useful in an emergency work situation).</li> <li>❖ Make that information available to people with a legitimate need of it (for an appropriate fee).</li> </ul> <p>It will also place a duty on people carrying out road works to report to the apparatus owner if a service is wrongly marked, or missing from the record, reducing the risk of future damage and injury, as well as unnecessary road works.</p> <p>There will also be a duty on those carrying out the work to inform the owner of apparatus at risk of damage (e.g. loss of support, proximity to mechanical digging operation, etc.). Owners will have a right to monitor the work and require protection measures to be put in place.</p>
Part 8: Design, Location and Maintenance of Apparatus	Undertakers have a legal right to place service apparatus above, on and below public roads. While this power exists for the public good, there is insufficient clarity regarding the duties that should go along with the exercise of this power with respect to its impact on people using the road for transport and the integrity of the road itself as a structure.	<p>The Law will introduce a duty on statutory undertakers to ensure that apparatus placed in the road, which includes buried services, access chambers, road covers, cabinets, poles and overhead lines, etc., are “designed, located and kept in efficient working condition” in such a way that any risk to persons using the road are minimized, along with any inconvenience and that the integrity of the road’s structure is maintained.</p> <p>Repair of road defects occurring in the vicinity of access chambers (0.5m), caused by their presence, will be the responsibility of the apparatus owner.</p>
Part 9: Highway Authority Investigation, Inspection and Enforcement	<u>Reinstatements</u> : Highway authorities have no clear or comprehensive investigation powers to ensure that undertakers and their contractors have complied with reinstatement standards, or to require remedial	<u>Reinstatements</u> : Highway authorities will be given investigation powers to check if roads have been reinstated correctly, e.g. by taking cores, and if not recover investigation and rectification costs.

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>work, or to recover investigation costs where non-compliance is proved.</p> <p><u>Safe working</u>: While the ‘Health and Safety at Work (Jersey) Law 1989’ give the ‘Health and Safety Inspectorate’ powers to intervene in cases of unsafe working, including road works (i.e. through improvement and prohibition notices), Jersey is unusual when compared to the UK, in that highway authorities do not themselves have legal authority to enforce good practice and take action to remove unsafe works from the road.</p> <p><u>Inspectors</u>: Current ‘road works inspectors’ do not have legal recognition for their work on behalf of the highway authority.</p>	<p><u>Safe working</u>: ‘Part 5’ will enable highway authorities to enforce good practice and take action to remove unsafe works from the road. ‘Part 14’ allows for the introduction of ‘fixed penalty notices’ by Regulations.</p> <p><u>Inspectors</u>: ‘Part 9’ gives highway authorities the power to appoint ‘authorized’ road work inspectors, with authority to undertake investigations to ascertain if a person has complied, or is in compliance with the permit, or their duties under the Law* (e.g. safe working, good workmanship, the correct use of materials, etc.).</p> <p>In line with the UK inspectors will be required to act in subordination to police enquires and to follow operational protocols with other enforcement authorities, such as the ‘Health and Safety Inspectorate’.</p>
Part 10: Liability	<ul style="list-style-type: none"> <li>❖ The Law provides that a highway authority is not liable for damages unless acting in bad faith, or its action is unlawful under the ‘Human Rights (Jersey) Law 2000’.</li> <li>❖ Also the Law provides that utility undertakers are not liable for breach of statutory duty (e.g. the need to provide a new customer connection within a set period, etc.) where failure is attributable to a decision by a highway authority (e.g. it requires work by a school to be delayed until a holiday period to mitigate impact to the school, etc.).</li> </ul>	
Part 11: Trench Charging – Optional Regulations	<p>Research both locally, in the UK and USA indicates that utility trenching reduces the life of roads by between 30% and 40%, leading to increased maintenance, reduced performance and early replacement.</p> <p>The average service life of a TTS ‘Class 1 or 2’ main road with significant buried utility apparatus in it is approximately 15 years, whereas for example, La Route de la Liberation which does not have buried utility apparatus in it is still serviceable after 20 years.</p> <p>As the road network ages and its condition deteriorates, due in part to the damage caused by utility trenches,</p>	<p>In view of the negative impact of utility trenching many other jurisdictions, including within the British Isles, have either introduced legislation enabling the introduction of charges via Regulations (such as the UK) or have introduced actual charging schemes (such as the ‘Republic of Ireland). It is therefore important that the new Law provides a ‘possible’ future mechanism for ‘compensation’.</p> <p>The new Law therefore provides for the introduction of Regulations allowing a ‘road trench charge’. Subject to possible exemptions, the charge could be based on criteria such</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>a higher proportion of highway authority revenue funds are swallowed up by reactive maintenance (i.e. plugs and patching).</p> <p>With a total of 10,900 m<sup>2</sup> of road surface being excavated in 2014 for utility road works (7,700m<sup>2</sup> in main roads, or 70%) the impact is significant.</p>	<p>as area of trench, depth, the importance of the road, its age and condition, etc.</p>
Part 11: Road Lane Rental - Optional Regulations	<p>The Law provides for the introduction of Regulations allowing a charge determined by reference to the duration of road works (a system known as ‘lane rental’). The aim being (if applied) to create an incentive for works to be carried out quickly. Charges would be limited to strategic transport routes and could take account of factors such as the time of day the road is restricted and level of traffic restriction.</p>	
Part 12: Events	<p>As a legal instrument, the preparation of an event Order involves 19 administrative stages and takes up to 3 months, making subsequent changes, e.g. due to the cancellation of an event as a result of bad weather difficult. Not counting other TTS or States resources (e.g. secretarial, administrative, draftsmen) the production of an Order to enable an event commits TTS officer resources as follows –</p> <ul style="list-style-type: none"> <li>❖ New or repeat Order with major amendments: large events = 5 to 10 accumulated days, or small events = 3 to 5 accumulated days.</li> <li>❖ Repeat Orders with minor amendments: 1 to 2 accumulated days.</li> </ul> <p>This, along with the need to publish public Gazette notices on multiple occasions prior to the event regarding traffic changes, etc. makes the process of legally enabling a road event very costly to both the public and promoter.</p>	<p>It is anticipated that adoption of a licence based system for enabling road events will save –</p> <ul style="list-style-type: none"> <li>❖ 40 to 60 TTS officer days</li> <li>❖ 15 drafting days</li> </ul> <p><u>Note:</u> The Law will also give highway authorities and Police the option of recovering support costs (e.g. for large commercial events).</p>
Part 13: Temporary Traffic Changes	<p>It is often necessary when carrying out road works or holding an event to restrict or prohibit the use of a road in some way. The ability to make such temporary changes is currently</p>	<p>The Law will replace ‘Article 67’ of the ‘Road Traffic (Jersey) Law 1956’ and ‘Article 4C’ of the ‘Road Traffic (Speed Limits) (Jersey) Order 2003’ with a simplified, more cost effective</p>

Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>provided for under the ‘Road Traffic (Jersey) Law 1956: Article 67 Temporary traffic restrictions’.</p> <p>However, where the effect of such a change is to modify an existing restriction under a Road Traffic Order (e.g. ‘Road Traffic (St. Helier) (Jersey) Order 1996’), for example to –</p> <ul style="list-style-type: none"> <li>❖ Reverse the permitted direction of traffic on a road, or</li> <li>❖ Permit traffic at a time it would otherwise be prohibited, or</li> <li>❖ Suspend or create road side parking, etc.</li> </ul> <p>Then the highway authority must proceed with the change by a public notice (under ‘Article 68’).</p> <p>Unfortunately the procedure is both time consuming and expensive, requiring 2 Gazette notices in the 7 days preceding the change, with no allowance made for emergency or urgent road work situations (except without Police involvement).</p> <p>Highway authorities also have limited options when seeking to reduce traffic speed during road works. For example the ‘Road Traffic (Speed Limits) (Jersey) Order 2003: Article 4C – Part-time speed limits at works’ does not allow speed restrictions to be introduced on diversionary routes (e.g. narrow by-roads) and there is no legal provision for the use of temporary speed humps, etc.</p> <p>Current legislation does not provide the highway authority with the option of recovering costs that it may incur as a result of the road works or event with respect to making traffic changes (e.g. notices, signage, etc.).</p>	<p>and flexible legal procedure (e.g. with alternatives to Gazette notices) for enabling temporary traffic changes associated with road works and events. The procedures will cover planned and emergency situations. Provision has been made for cost recovery.</p> <p>The ‘Traffic Signs (Jersey) Order 1968: Article 25’ will be amended to prevent use of portable traffic signals without highway authority consent.</p>
Part 14: Alternative Dispute Resolution Procedures	It is important that road works legislation includes an effective framework for resolving disputes arising between road works promoters and highway authorities in exercising	In line with construction industry trends the new Law allows ‘alternative dispute resolution procedures’ to be issued by the Minister (TTS) in an approved code of practice (e.g. based



Part	Current Legal / Regulatory Constraints	Effect / Benefits of the Law
	<p>their powers. Under current road works legislation such as the ‘Public Utilities Road Works (Jersey) Law 1963’ the only means of dispute resolution available with statutory support is the Royal Court. However, in most situations redress to the Royal Court is either disproportionate or prohibitively expensive.</p>	<p>on mediation, etc.) enabling disputes between road work promoters and highway authorities with respect to the application of the new Law to be settled quickly and efficiently, if at all possible without necessary redress to the Royal Court.</p>
<p>Part 14: Codes and Standards</p>	<p>There is currently no specific legal framework for developing ‘codes of practice’ with respect to road works, or a mechanism for approving relevant UK codes (beyond being an example of best practice).</p> <p>Therefore, current highway authority guidance documents with respect to safe working and trench reinstatement methods, do not have clear legal status, being no more than policy statements. This compromises efforts to drive up standards.</p>	<p>The new Law will create a legal framework giving the Minister (TTS) power to issue codes of practice or adopt relevant UK codes with respect to –</p> <ul style="list-style-type: none"> <li>❖ General duty on persons carrying out road works (Article 7).</li> <li>❖ Safety measures (Article 22).</li> <li>❖ Dispute resolution procedures (Article 61).</li> <li>❖ Any determination by the Minister (TTS) permitted under the new Law, e.g. with respect to trench reinstatement standards, permit rules, public consultation in advance of works, publicity, etc.</li> </ul> <p>Such codes, which address technical requirements, can be changed over time in line with developing requirements without the need for further primary or subordinate legislation; an approach also taken in the UK.</p>
<p>Part 14: Fixed Penalty Notices – Optional Regulations</p>	<p>The Law provides for the introduction of Regulations allowing ‘fixed penalty notices’ for a range of offences, creating a more usable and direct enforcement regime in less extreme cases of infringement, as an alternative to prosecution.</p>	

## 9. FINANCIAL AND MANPOWER IMPLICATIONS

### 9.1 Road works

There are no additional manpower, revenue or capital requirements arising from the Law for the States or Parishes. Regulatory requirements created by the Law are in the most part already practiced and enforced at a policy level (albeit without the necessary legal underpinning to be provided by the Law), with relevant infrastructure already in place.

#### 9.1.1 Regulatory costs – permit fees

The approximate cost of regulating utility company ‘undertaker works’ each year are set out in Table 4 below.

**Table 4: Approximate cost (per year) of undertaker work regulation**

TTS	POSH	Other Parishes	Total
£242 k	£41 k	£75 k	£358 k

These costs (which include overheads) relate to highway authority co-ordination, planning and inspection activity, also consequential road reinstatement monitoring.

‘Article 10(6)’ of the new Law states that –

*“A person who makes an application [for a permit] shall pay such fee as the Minister may prescribe [by Order]”.*

As such the Law will allow the Minister (TTS) to put in place a permit charging framework with the purpose of enabling the Island’s highway authorities to recover regulatory costs associated with utility company works.

Although the Law’s permit fee provision would allow all regulatory cost to be recovered, any specific proposal will be subject to arguments of reasonableness and precedent. Therefore, although there are differences between the UK and Jersey’s proposed permit fee frameworks and different economies of scale (with UK authorities being larger), proposed fee levels will be set to correlate, so far as they can, with statutory guidance issued by the UK’s Department for Transport (DfT).

Based on this approach and by analysing permit numbers for the last 3 years, it is envisaged that approximately £287k can be recovered via permit fees, or 80% of highway authority regulatory costs associated with undertaker works.

The management and collection of permit fees will be via the Island’s existing electronic road work management system, ‘Trafficworx’, administered by TTS. The new income generated would be individually returned to highway authorities to offset their costs.

#### 9.1.2 Improved road protection

In 2016, TTS has budgeted to spend £2,673,000 (capital) on planned main road maintenance resurfacing and £456,000 (revenue) on reactive maintenance (e.g. patching).

A wide range of research (including locally) shows that trenching (even when correctly reinstated) reduces the life of roads by between 30% and 40%, leading to increased maintenance, reduced performance and early replacement.

With, for example a total of 10,900 m<sup>2</sup> (square meters) of road surface being excavated in 2014 (70% in main roads), the impact is significant. The Law therefore introduces provisions designed to reduce this negative impact, including –

- ❖ Part 6: An increased ‘no digging’ embargo period following road resurfacing from 1 year to 3 years, or 5 years if fully reconstructed;
- ❖ Part 7: An ‘enhanced’ reinstatement standard where there is an engineering need, or to protect the visual appearance of a road of high aesthetic importance;
- ❖ Part 7: A duty to register reinstatements to allow the highway authority to monitor performance and trace responsibility for defects.
- ❖ Part 7: An increased reinstatement ‘guarantee period’ from 1 year to 3 years to ensure latent defects are picked up and repaired before becoming a cost to the public.
- ❖ Part 9: Greater highway authority investigation powers to ensure that road work defects are picked up and repaired by the works promoter.

While it is not possible to directly quantify the impact of such measures, the financial effect in the medium to long-term has the potential to be significant.

### ***Trench charging***

‘Part 11’ of the Law provides for the introduction of Regulations allowing a ‘road trench charge’. Such a charge (if applied) is designed to address the cost incurred by the public as a result of the long-term damage caused to roads by trenching. The provision for such a charge is in line with UK road work legislation and would be based on criteria such as area of trench, depth, the importance of the road, its age and condition, etc.

## **9.2 Road events**

There are no additional manpower, revenue or capital requirements arising from the Law’s ‘Part 12: Events’ to the States or Parishes.

However, the Law introduces a simplified, more efficient means of enabling road events (and associated temporary traffic changes) which will free up valuable resources. In total it is anticipated that adoption of a licence based system for enabling road events will save –

- ❖ 40 to 60 TTS officer days;
- ❖ 15 drafting days.

The Law also gives highway authorities and Police discretionary power to recover expenses incurred in supporting an event, e.g. the provision of traffic management for a large commercial event.

## **10. 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 Draft Road Works and Events (Jersey) Law 201-**

This note has been prepared in respect of the Draft Road Works and Events (Jersey) Law 201- by the Law Officers' Department. It explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000.

**This note is included for the information of States Members. It is not, and should not be taken as, legal advice.**

The draft Law deals with the regulation of the use of something that is a quintessential public space (i.e. roads) or activity that affects the use of that space. Such things must be regulated, and barring the inclusion of irrational or discriminatory provisions, it is difficult to see how human rights principles can touch on such matters. There is nothing in the use of fixed penalty notices (and certainly not mediation) that gives any cause for concern – what is created is a perfectly familiar system whereby such notices may be accepted or challenged in court.

## Explanatory Note

---

This Law would replace various enactments relating to road works and the holding of events affecting roads with a cohesive system of regulation, including tighter controls and requirements on all parties concerned to take appropriate account of each other's interests, including highway authorities, utility companies and persons organizing events affecting road use.

### **PART 1 – INTRODUCTORY**

*Article 1* is an interpretation provision. In particular it cross refers to the Articles defining “road works” and other kinds of “works” and defines “events” to mean competitions, fêtes, parades, concerts, entertainments or anything of a similar nature that may be prescribed by Order made by the Minister for Transport and Technical Services (“Minister”).

*Article 2* defines “road” to include parks, public parking spaces and other open spaces accessible to the public, including beaches. It also defines the phrase “in a road” to include below, on or above the surface of a road.

*Article 3* defines “highway authority” and “relevant highway authority”. “Highway authority” is defined to mean any person, body or authority responsible for repairing, (or with powers to maintain) a road including the States, parishes and any person, body or authority specified by the States in Regulations. In relation to works, “relevant highway authority” means the highway authority responsible for the road in which the works are carried out. In relation to events, “relevant highway authority” means the highway authority responsible for the road in which the event is to take place or responsible for the road which is in the vicinity of the event and which will be affected by it.

*Article 4* defines “road works” to mean any of the following –

- “undertaker works” (defined in *Article 7*, see below);
- “specified road works” (defined in *Article 6*, see below);
- “contracted highway authority works” (defined in *Article 5*, see below).

*Article 5* defines “highway authority works” to mean, broadly, works for the provision, improvement or maintenance of roads by or on behalf of a highway authority. It also defines “contracted highway authority works” to mean highway authority works carried out by a contractor on the highway authority's behalf.

*Article 6* defines “specified road works” to mean, broadly, things done in or near a road that involve temporary occupation or use of space in a road comprising such things as building construction, maintenance or repair, tree felling and related activities but excluding highway authority works and undertaker works. Such things become “specified road works” only if they are prescribed as such by Order made by the Minister.

*Article 7* defines “undertaker works” to mean, broadly, works carried out in a road relating to apparatus for the conveyance of electricity, gas, telecommunications, water or sewage.

*Article 8* allows the States to amend *Articles 1 to 7* by Regulations.

## **PART 2 – DUTIES ON HIGHWAY AUTHORITIES AND PERSONS CARRYING OUT WORKS**

*Article 9* places a general duty on highway authorities to use their powers to secure the expeditious movement of traffic on roads having particular regard to safety, the need to minimise the inconvenience to road users, the need to protect road structure and the impact of works and events on other works and events.

*Article 10* places a general duty on persons carrying out road works to co-operate with the relevant highway authority, other persons carrying out works, and undertakers in respect of their apparatus, to ensure that the works are carried out having particular regard to safety, the need to minimise the inconvenience to road users and the need to protect road structure. Failure to comply with the relevant duty is an offence.

## **PART 3 – ROAD WORKS PERMITS**

*Article 11* prohibits any person from carrying out road works (including a person contracted on that person's behalf) unless such works are authorized by a permit, the person is carrying out emergency or urgent works (defined in *Articles 21* and *22*) or the works are exempted by Order. Contravention of this Article is an offence.

*Article 12* gives the Minister power to exempt by Order particular road works from the requirement to have a permit, but such power does not extend to anything involving disturbing the road surface, road closures, or the use of portable traffic lights.

*Article 13* sets out the procedures for making an application to the relevant highway authority for a permit. It also sets out specific kinds of work for which separate permits are required in the course of carrying out road works such as carrying out reinstatement or making good works as provided for in *Articles 31* and *32*.

*Article 14* sets out the procedures for the grant or refusal of a permit by a highway authority. This Article is subject to *Articles 28* and *29*.

*Article 15* makes provision for permits to be subject to conditions. Standard conditions are determined by the Minister in a code of practice (see *Article 66*), but other conditions may be imposed by the highway authority granting the permit.

*Article 16* makes provision for the variation and suspension of permits either on the application of the permit holder or on the highway authority's own volition.

*Article 17* makes provision for revocation of permits on specified grounds, including breach of a permit condition.

*Article 18* requires a highway authority to take into account the impact that exercising its powers in relation to permits would have on the statutory functions and duties of another body or person, including undertakers.

*Article 19* makes it an offence to breach a permit condition except to the extent that such breach involves carrying out urgent or emergency works (defined in *Articles 21* and *22*).

*Article 20* sets out what a highway authority may do when a person carries out unauthorized works or breaches a permit condition. The person must comply with any notice issued by the highway authority to rectify the position but, if the person fails to do so, this Article allows the authority to take the necessary remedial action and recover costs.

## **PART 4 – EMERGENCY AND URGENT WORKS**

*Article 21* defines "emergency works" to mean works carried out by an undertaker in circumstances where likely danger to persons or damage to property is imminent.

*Article 22* defines “urgent works” to mean works carried out by an undertaker to prevent interruption of supply of services by the undertaker, unplanned failures of apparatus or substantial financial loss to the undertaker.

*Article 23* requires an undertaker to consult the relevant highway authority before undertaking urgent works in so far as that is reasonably practicable.

*Article 24* requires an undertaker to give notice of emergency or urgent works, if possible, within 2 hours after such works starting, or if not possible, by 10.30 a.m. the next working day.

#### **PART 5 – SAFETY, TRAINING AND SUPERVISION**

*Article 25* requires a person carrying out road works or highway authority works to ensure adequate guarding and lighting of roads that are broken up or obstructed and that there are adequate traffic signs. A relevant highway authority may give such a person specific directions on how to do this.

*Article 26* requires a person carrying out undertaker works, highway authority works and, if prescribed by Order, specified road works, to ensure that a qualified supervisor having such qualifications or training as the Minister may prescribe by Order supervises such works. The Article also requires that, at all times when works are being carried out, a trained operative is present on the site. A trained operative must also have such qualifications and training as the Minister may prescribe by Order.

*Article 27* requires any person carrying out particular works prescribed by Order to ensure that such works are not carried out by a contractor unless that contractor is approved in accordance with provisions made by the Minister by Order.

#### **PART 6 – RESTRICTIONS ON UNDERTAKER WORKS**

*Article 28* prevents certain undertaker works from being carried out in a road following substantial highway authority works (such as involving construction or resurfacing) that have taken place in the road within a period of time specified in Regulations made by the States. There are exceptions to the general rule, these are: emergency or urgent works, works which the highway authority thinks are necessary and have given advance indication to the undertaker that it is minded to grant a permit for them, works involving supply to a new customer, and works connected with reinstating a road after undertaker works have taken place.

*Article 29* prevents undertaker works from taking place in a protected road unless such works comprise works relating to existing apparatus in the road or such works have the Minister’s prior consent. The States may designate a road as “protected” if they consider it to be of sufficient strategic importance to Jersey’s transport connections.

#### **PART 7 – DAMAGE AND REINSTATEMENT**

*Article 30* makes provision for liability when a road, road asset or apparatus is damaged by a person carrying out road works or when such damage is caused by the failure of an undertaker’s apparatus (such as a burst water pipe). The relevant highway authority responsible for the damaged road, or the owner of apparatus that has been damaged, as the case may be, may serve on the person responsible for the damage (that is, the person who carried out the road works or on the undertaker whose apparatus caused the damage) a notice requiring the damage to be repaired or requiring reimbursement of the expenses of repair.

*Article 31* places a duty on undertakers carrying out undertaker works to ensure that a road is reinstated as soon as reasonably practicable in accordance with standards required under *Article 33*. Reinstatement may be permanent or interim, but permanent reinstatement must be completed within 12 months of completion of the interim

reinstatement and an undertaker must ensure that no part of a road is left in a dangerous state before completion of permanent reinstatement. In carrying out reinstatement, undertakers must comply with specified time limits for replacing line markings.

*Article 32* places a duty on undertakers to repair any defects arising during the period of 3 years after completion of reinstatement. If, during the 3 year period following such repairs, any further defect arises, that further defect must also be repaired. The repairs must be made as soon as reasonably practicable or within such period as the Minister or highway authority may determine. Repairs under this Article are referred to in the Law as “making good”.

*Article 33* provides that, in carrying out reinstatement or repairs under *Article 31* or *Article 32*, an undertaker must comply with such standards as may be determined by the Minister or by the relevant highway authority if the authority serve a notice on the undertaker under *Article 34*.

*Article 34* allows a highway authority to serve a notice on an undertaker subject to the duty under *Article 31* or *32* to the effect that the undertaker must carry out such specific works or use such specific material or comply with such specified standards of workmanship and performance as are specified in the notice.

*Article 35* allows a highway authority to carry out reinstatement or repairs itself either wholly or partly in place of the undertaker under *Article 31* or *32* and to recover its costs of doing so from the undertaker.

*Article 36* makes provision for how *Articles 31 and 32* are to apply where subsequent road works take place. Unless the relevant highway authority finds that an undertaker has not complied with its duty under *Article 31* or *32* when carrying out an investigation under *Article 42*, an undertaker carrying out subsequent road works becomes subject to the duties under *Articles 31 and 32*. It is presumed, unless the contrary is proved, that failure to comply with the standards required under *Article 33*, is the fault of the person carrying out the later or last of successive road works.

## **PART 8 – APPARATUS**

*Article 37* requires an undertaker, to the extent that the Minister may determine, to keep an up-to-date accurate record of the location and description of apparatus owned by it that is situated in a road, including a record of whether such apparatus is currently in use. The Minister may determine the extent to which this requirement applies to apparatus situated in a road before the date that this Article comes into force. The Minister may allow an undertaker with responsibilities for particular apparatus to be responsible for the record for that apparatus, rather than the owner, if different. An undertaker must make its record available to any person with a sufficient interest in it, including any person authorized to carry out works under this Law or under any other enactment.

*Article 38* requires an undertaker carrying out undertaker works who finds that information about apparatus belonging to another undertaker is not correctly recorded to take reasonable steps to inform the undertaker to whom the apparatus belongs, or if the undertaker is not known, to inform the Minister instead.

*Article 39* requires an undertaker carrying out undertaker works to allow another undertaker whose apparatus is likely to be affected by such works a reasonable opportunity to monitor the works. Also, the undertaker carrying out the undertaker works must comply with any reasonable requirements of the other undertaker to protect the apparatus.

*Article 40* requires an undertaker to use its best endeavours to ensure that its apparatus is designed, located and kept in efficient working condition so as to minimise the risk



to road users' safety, to cause as little inconvenience to road users as possible and to maintain the structure of the road and to protect road assets.

*Article 41* deals with damage or defects in a road caused by access frame covers to the extent that provision is not made for such damage or defects elsewhere in this Law. An "access frame cover" is defined in *Article 1* to mean the structure at road surface level covering access to any cable, conduit, duct, drain or pipe used for supplying, delivering, disposing or conveying electricity, gas, telecommunications, water or sewage. An undertaker must repair any such damage or defect in a road which is within 0.5m of an access frame cover (or within such other measurement as the States may specify in Regulations).

## **PART 9 – ENFORCEMENT POWERS OF RELEVANT HIGHWAY AUTHORITY**

*Article 42* gives a highway authority power to carry out investigations to determine whether an undertaker is in compliance with its statutory duties under *Parts 7 and 8*. If there has been a failure to comply, the highway authority may serve a notice on the undertaker setting out the steps it must take to put the matter right and requiring the undertaker to pay the reasonable costs of carrying out the investigation. No notice is required if the failure is causing danger to road users. In such a case, or if the undertaker fails to carry out remedial work as required in the notice, the highway authority may do the work itself and recover the costs from the undertaker.

*Article 43* gives a highway authority the power to appoint inspectors to carry out inspections and investigations to find out whether a person is complying with any of the person's duties under this Law. Such inspectors must have such training or qualifications or both as the Minister may prescribe. This Article sets out the inspectors' powers to do such things as require information and documents, to take measurements and photographs and to conduct interviews. Failure to comply with an inspector's requirements is a criminal offence.

## **PART 10 – LIABILITY**

*Article 44* provides that a highway authority is not liable in damages for anything done under this Law, unless acting in bad faith or its action is unlawful under the Human Rights (Jersey) Law 2000.

*Article 45* provides that an undertaker is not liable for breach of any statutory duty under any enactment if such failure is attributable to any action by a highway authority or the Minister under this Law.

## **PART 11 – POWER TO MAKE REGULATIONS FOR CHARGING**

*Article 46* enables the States to make Regulations for undertakers to contribute towards the costs incurred by a highway authority for road maintenance.

*Article 47* enables the States to make Regulations requiring a person carrying out road works to pay a charge to the Minister having regard to the area of road surface affected, the place and time at which the road works are executed, the type of works and such other factors as the States consider relevant.

## **PART 12 – EVENTS**

*Article 48* is an interpretation provision. As explained above, "event" is defined in *Article 1*. This Article provides that references in this Part to "purposes of an event" include preparations, trials and practices for the event. This Article also provides that the Minister is the highway authority in relation to a sea beach for the purposes of this Part.

*Article 49* requires a person who wishes to hold an event in a road, or in the vicinity of a road which will affect road use, to notify the relevant highway authority of the person's intention. A person who fails to make such a notification is guilty of an offence. This Article makes provision to enable such a person to apply to the relevant highway authority for a licence under this Part. However this Article also provides that nothing in this Part relieves a person from the requirement to obtain permission from the Bailiff in relation to the holding of an event when required to do so under the Unlawful Public Entertainments (Jersey) Regulations 2013 or under any other enactment or customary law and a person who wishes to hold an event is required under this Law to notify the Bailiff at the same time as notifying the highway authority.

*Article 50* makes provision for a highway authority to grant a licence for the holding of a single event or a licence for an event that occurs periodically. If the roads of more than one highway authority will be affected by the event, the highway authorities may grant a joint licence. If a licence is refused, the applicant has a right of appeal.

*Article 51* allows a highway authority to impose conditions on a licence, including conditions relating to safety arrangements, placing material on roads, insurance, publication of notices and paying for the cost of using the highway authority or police officers for safety arrangements and placing material on roads.

*Article 52* provides that costs of the highway authority or police relating to safety arrangements and the placing of materials on roads as referred to in *Article 51* may be recovered as a debt.

*Article 53* makes provision for a licence to be varied, either on the licence holder's application or on the highway authority's initiative. A licence holder must have an adequate opportunity to make representations if a proposed variation is on the highway authority's initiative. There is a right of appeal if a highway authority refuses an application or varies a licence in a way that the licence holder has not requested.

*Article 54* allows a highway authority to revoke a licence if it discovers that the licence holder provided false or misleading information in connection with a licence application; a licence condition has been breached, there has been a significant change in circumstances since the licence was granted or the licence holder requests or agrees to revocation.

*Article 55* provides that, except where necessary for safety reasons, nothing in this Part authorizes the restriction of reasonable access to premises by vehicles or pedestrians.

*Article 56* sets out offences relating to breach of licence conditions and other provisions relating to a licence and failure to obey directions of police officers, the highway authority and licence holder.

### **PART 13 – RESTRICTION OF ROAD USE IN RESPECT OF WORKS OR EVENTS**

*Article 57* gives a highway authority powers to restrict the use of traffic in a road in which works are taking place or which is in the vicinity of an event regardless of whether a permit or licence has been granted. The highway authority's powers include imposing diversions, designating parking spaces and suspending or modifying the operation of existing enactments.

*Article 58* requires a highway authority to place notices on relevant parts of the road and other places where powers under *Article 57* are exercised, to consult with the Minister and other highway authorities who may be affected where enactments are suspended or modified and (except in relation to emergency and urgent works) to give advance notice to the public.

*Article 59* enables a highway authority to recover the cost of expenses incurred by it under *Articles 57 and 58* from the person carrying out the works, licence holder or person responsible for the event, as the case may be.

*Article 60* provides that, to the extent that anything done under a licence or in accordance with this Law in relation to works requires the suspension or modification of an enactment relating to use of a road by vehicles or pedestrians, that enactment is suspended or modified, as the case may be.

#### **PART 14 – MATTERS RELATING TO DECISIONS, DETERMINATIONS, PROCEEDINGS AND PENALTIES**

*Article 61* specifies the provisions in the Law where a “decision” is deemed to be made, such as the refusal of a permit or licence and where notices are required to be issued by a highway authority.

*Article 62* makes provision for when a decision as specified in *Article 61* shall take effect, that is, on the date specified in the notice but subject to any variation by the Royal Court or in accordance with a dispute resolution procedure.

*Article 63* sets out the time period for appealing against a decision. Unless the Royal Court decides otherwise, 2 months is allowed for an appeal. If an alternative dispute resolution procedure is followed as provided for in *Article 64*, the length of time for appeal must be extended by the Royal Court if a person has not been able to appeal within the 2 month period by reason of attempting to settle the dispute through that procedure.

*Article 64* makes provision for an alternative dispute resolution procedure. If the Minister has issued a code of practice making provision for alternative dispute resolution, a person must consider whether such procedures could reasonably be expected to settle the dispute rather than through the normal hearing process of the Royal Court.

*Article 65* makes provision for a person to go to arbitration in the event of any dispute arising under this Law concerning the recovery of costs or expenses.

*Article 66* enables the Minister to issue or approve codes of practice for the purpose of giving guidance on any matter in or under the Law or for any other purpose referred to in the Law and requires such codes to be available to the public free of charge and published on a States of Jersey website. *Article 66* also makes provision for determinations made by the Minister under specified provisions of the Law to be set out in such a code of practice. The specified provisions relate to such things as time limits, forms and information to accompany an application for a permit or licence, standard permit conditions, and matters concerning requirements for reinstatement and repairs under *Articles 31 and 32*. *Article 66* also makes provision for when the Minister must consult with undertakers and highway authorities before issuing or approving a code of practice (including any material variation).

*Article 67* allows the States to make Regulations for fixed penalty notices to be issued for offences which are specified in that Article as fixed penalty offences. Subject to the Attorney General’s power to require a prosecution in any particular case, the effect of such a notice is that a person can discharge any liability to conviction by payment of a fixed penalty. The Article specifies the provisions that shall be included in Regulations including who may issue such notices, the contents of such notices and the amount of fixed penalty payments.

## **PART 15 – MISCELLANEOUS AND CLOSING**

*Article 68* makes general provision for Regulations and Orders made under this Law, in particular it makes provision for fees by providing that the Minister may set amounts of fee which raise income in excess of the amount necessary to cover expenses.

*Article 69* makes provision for savings, transitional and consequential provisions. Nothing in or under this Law is to affect the operation of any customary law or enactment unless expressly provided by or under this Law. Provision is made so that the repeal of enactments specified in *Article 70* continue in operation to be in force in respect of events or works which have been authorized but not ended or completed on the date the repeal comes into effect. *Article 69* also gives the States power by Regulations to amend enactments in consequence of this Law and gives effect to *Schedules 1 and 2*. *Schedule 1* amends utility legislation mainly to remove powers which overlap with provisions in this Law and to make it clear the extent to which the powers under such legislation are subject to the requirements of this Law. The opportunity is also taken to amend obsolete references to the English Electricity Commissioners in the Electricity (Jersey) Law 1937. *Schedule 2* makes amendment to road traffic legislation, again, mainly to remove overlapping legislation and to take account of the provisions in this Law.

*Article 70* repeals several enactments.

*Article 71* sets out the title of this Law and provides that it will come into force by one or more Appointed Day Acts.



Jersey

## DRAFT ROAD WORKS AND EVENTS (JERSEY) LAW 201-

### Arrangement

#### Article

<b>PART 1</b>		<b>51</b>
<hr/>		
	INTRODUCTORY	51
1	Interpretation .....	51
2	Meaning of “road” and “in a road” .....	54
3	Meaning of “highway authority” and “relevant highway authority” ..	55
4	Meaning of “road works” .....	56
5	Meaning of “highway authority works” and “contracted highway authority works” .....	56
6	Meaning of “specified road works” .....	56
7	Meaning of “undertaker works” .....	57
8	Definitions amended by Regulations .....	58
<b>PART 2</b>		<b>58</b>
<hr/>		
	DUTIES ON HIGHWAY AUTHORITIES AND ON PERSONS CARRYING OUT WORKS	58
9	General duty of highway authority in relation to road management..	58
10	General duty on persons carrying out road works.....	58
<b>PART 3</b>		<b>59</b>
<hr/>		
	ROAD WORKS PERMITS	59
11	Permit required for road works .....	59
12	Exempt works.....	60
13	Application for a permit .....	60
14	Grant or refusal of a permit .....	61
15	Permit conditions.....	61
16	Variation and suspension of permits .....	62
17	Revocation of a permit .....	63
18	Matters to be taken into account by highway authorities in exercising powers under Articles 14, 15, 16 and 17.....	64
19	Breach of permit conditions .....	64
20	Action which may be taken in response to unauthorized works .....	64

**PART 4** **65**

---

EMERGENCY AND URGENT WORKS 65

21 Meaning of “emergency works” .....65

22 Meaning of “urgent works” .....65

23 Duty to consult relevant highway authority before urgent works .....66

24 Duty to give notice of emergency and urgent works .....66

**PART 5** **66**

---

SAFETY, TRAINING AND SUPERVISION 66

25 Safety measures .....66

26 Qualifications of supervisors and operatives .....67

27 Appointment of contractors .....69

**PART 6** **69**

---

RESTRICTIONS ON UNDERTAKER WORKS 69

28 Embargoed undertaker works following substantial highway authority works.....69

29 Restriction on certain undertaker works in protected roads.....71

**PART 7** **71**

---

DAMAGE AND REINSTATEMENT 71

30 Damage to road, road assets and apparatus.....71

31 Duty on undertakers to reinstate .....73

32 Duty on undertakers to make good defects following reinstatement ..74

33 Standards of reinstatement or making good works .....75

34 Notice of enhanced reinstatement or making good works .....75

35 Powers of relevant highway authority to carry out reinstatement or making good works.....76

36 Duty where reinstatement or making good works affected by subsequent works .....76

**PART 8** **77**

---

APPARATUS 77

37 Apparatus records .....77

38 Duties where apparatus is not recorded properly.....78

39 Undertaker works likely to affect apparatus in the road .....79

40 Design, location and maintenance of apparatus.....79

41 Specific provisions relating to access frame covers.....79

**PART 9** **80**

---

ENFORCEMENT POWERS OF RELEVANT HIGHWAY AUTHORITY 80

42 Powers of relevant highway authority to carry out investigations and remedial works.....80

43 Inspectors .....81

<b>PART 10</b>	<b>83</b>
<hr/>	
LIABILITY	83
44	Liability of highway authorities ..... 83
45	Liability of undertakers ..... 83
<b>PART 11</b>	<b>83</b>
<hr/>	
POWERS TO MAKE REGULATIONS FOR CHARGING	83
46	Contributions by undertakers to maintenance costs of highway authority ..... 83
47	Charges by reference to the duration of road works and other factors ..... 84
<b>PART 12</b>	<b>84</b>
<hr/>	
EVENTS	84
48	Interpretation of this Part..... 84
49	Notification of event to highway authority and licence applications . 85
50	Grant or refusal of licence for events ..... 86
51	Conditions attached to grant of licence ..... 86
52	Recovery of costs ..... 87
53	Variation of licences..... 87
54	Revocation of a licence ..... 88
55	Access to premises ..... 88
56	Offences relating to licensed events ..... 88
<b>PART 13</b>	<b>89</b>
<hr/>	
RESTRICTION OF ROAD USE IN RESPECT OF WORKS OR EVENTS	89
57	Highway authority’s powers to restrict road use..... 89
58	Notice and consultation requirements ..... 89
59	Recovery of costs for things done under Articles 57 and 58..... 90
60	Effect of this Law on other enactments..... 90
<b>PART 14</b>	<b>91</b>
<hr/>	
MATTERS RELATING TO DECISIONS, DETERMINATIONS, PROCEEDINGS AND PENALTIES	91
61	Meaning of “decision” ..... 91
62	Time of decision taking effect..... 91
63	Appeals..... 91
64	Alternative dispute resolution ..... 92
65	Recovery of costs and arbitration..... 92
66	Codes of practice and determinations by the Minister ..... 92
67	Fixed penalty offences ..... 94
<b>PART 15</b>	<b>95</b>
<hr/>	
MISCELLANEOUS AND CLOSING	95
68	Regulations and Orders ..... 95
69	Savings, transitional and consequential provisions ..... 96

70	Repeal .....	96
71	Citation and commencement.....	96

---

## **SCHEDULE 1** **97**

---

### AMENDMENTS TO UTILITY LEGISLATION 97

#### PART 1 – ELECTRICITY (JERSEY) LAW 1937 AMENDED 97

1	Interpretation.....	97
2	Article 1 substituted .....	97
3	Article A2 inserted.....	97
4	Article 2 amended.....	97
5	Article 3 amended.....	98
6	Article 4 amended.....	98
7	Article 5 repealed.....	98
8	Article 6 substituted .....	98
9	Article 7 repealed.....	98
10	Article 8 amended.....	98
11	Article 13 substituted .....	98
12	Article 14 amended.....	99
13	Article 15 amended.....	99
14	Article 16 repealed.....	99
15	Article 17 amended.....	99
16	Article 31 repealed.....	99
17	Article 33 amended.....	99
18	Article 36 repealed.....	99
19	Article 37 substituted .....	100

#### PART 2 – JERSEY GAS COMPANY (JERSEY) LAW 1989 AMENDED 100

20	Interpretation.....	100
21	Article A46 inserted.....	100
22	Article 46 substituted .....	100
23	Article 47 amended.....	101
24	Articles 48, 49, 50, 51 and 52 repealed.....	101
25	Article 53 substituted .....	101
26	Article A54 inserted.....	101
27	Article 81 substituted .....	102

#### PART 3 – TELECOMMUNICATIONS (JERSEY) LAW 2002 AMENDED 102

28	Interpretation.....	102
29	Article 25A inserted.....	102
30	Article 26 amended.....	102
31	Article 47 amended.....	102

#### PART 4 – WATER (JERSEY) LAW 1972 AMENDED 103

32	Interpretation.....	103
33	Article A2 inserted.....	103
34	Article 2 amended.....	103

#### PART 5 – WATER POLLUTION (JERSEY) LAW 2000 103

35	Article 46 amended.....	103
----	-------------------------	-----



PART 6 – WATER RESOURCES (JERSEY) LAW 2007	104
36 Article 42 amended .....	104
PART 7 – POSTAL SERVICES (JERSEY) LAW 2004 AMENDED	104
37 Article 46(3) substituted.....	104
PART 8 – DRAINAGE (JERSEY) LAW 2005 AMENDED	104
38 Interpretation .....	104
39 Article 35 amended .....	104
40 Article 44 amended .....	104
41 Article 52 amended .....	104
<b>SCHEDULE 2</b>	<b>106</b>
AMENDMENTS TO ROAD TRAFFIC LEGISLATION	106
1 Highways (Jersey) Law 1956 amended.....	106
2 Road Traffic (Jersey) Law 1956 amended .....	106





Jersey

## DRAFT ROAD WORKS AND EVENTS (JERSEY) LAW 201-

A **LAW** to make provision for the regulation of road works and events affecting roads and related matters.

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

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

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

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

### PART 1

#### INTRODUCTORY

#### 1 Interpretation

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

“access frame cover” means a structure at road surface level covering access to any cable, conduit, duct, drain or pipe referred to in the definition “apparatus”;

“apparatus” means, other than highway apparatus, any cable, conduit, duct, drain or pipe (whether or not in active use) for supplying, delivering, disposing or conveying, as the case may be, electricity, gas, telecommunications, water or sewage including any structure for lodging or providing access to any such cable, conduit, drain or pipe;

“beach” means a sea beach, whether above or below the mean high water mark;

“building” includes a structure of any material and constructed in any manner;

“building construction or maintenance” means the construction or maintenance of the whole or part of a building, including its repair, rebuilding, alteration, addition, exterior cleaning, painting or other maintenance, removal or demolition;

- 
- “code of practice” has the meaning in Article 66(2);
- “contracted highway authority works” has the meaning in Article 5;
- “Court” means the Royal Court;
- “decision” shall be construed in accordance with Article 61;
- “emergency works” has the meaning in Article 21;
- “event” means any of the following –
- (a) a competition, including any kind of road race;
  - (b) a fête, parade, concert or other entertainment;
  - (c) anything of a similar nature that is prescribed;
- “function” includes a power or a duty;
- “haulage or lifting operation” means any operation requiring the use of a motor vehicle for the purpose of transporting or lifting an object;
- “highway apparatus” means a cable or duct owned by a highway authority that is connected to any equipment used for the management of traffic;
- “highway authority” has the meaning in Article 3;
- “highway authority works” has the meaning in Article 5;
- “licence holder” means the holder of a licence granted under Article 50;
- “maintenance” without prejudice to the generality of that term includes picking up litter and other debris in a road, including sea-weed;
- “Minister” means the Minister for Transport and Technical Services;
- “motor vehicle” means a mechanically propelled vehicle (and any trailer attached to the vehicle) intended or adapted for use on a road;
- “permit” means a permit granted under Article 14, whether or not varied under Article 16;
- “permit holder” means a person to whom a permit has been granted under Article 14;
- “permit works” means such road works as are required under Article 11 to be carried out under a permit;
- “prescribed” means prescribed by Order;
- “reinstatement” in relation to a road that has been broken up or excavated or otherwise has had its surface disturbed includes all such works as are requisite for securing that it does not remain broken up or excavated or its surface disturbed, and “reinstatement works” shall be construed accordingly;
- “reinstatement or making good works” means works carried out by an undertaker pursuant to a duty under Article 31 or 32, as the case may be;
- “relevant highway authority” has the meaning in Article 3;
- “road” has the meaning in Article 2;
- “road asset” means any of the following in relation to a road –

- (a) safety features such as road markings, high friction surfacing, humps, studs and features intended to assist people with a disability;
- (b) safety, traffic management and monitoring equipment such as traffic signs, street lighting, bollards, barriers, traffic signals and control equipment;
- (c) street furniture such as post boxes, phone boxes, bus stops, grit bins, taxi stands, public lavatories, fountains, memorials, sculptures, seating, planters and waste receptacles;
- (d) road-side and roundabout verges including grass and tree areas and any related features;
- (e) highway apparatus;

“road works” has the meaning in Article 4;

“specified road works” has the meaning in Article 6;

“traffic sign” means –

- (a) any object or device (whether fixed or portable), including lights; or
- (b) any line or mark,

on any road for conveying to traffic, including pedestrian traffic where appropriate, warnings, information, requirements, restrictions or prohibitions of any description prescribed or authorized under this Law or any other enactment;

“trained operative” has the meaning in Article 26(4);

“tree” includes a shrub or other similar plant;

“undertaker” means the authority, body or person by whom a statutory power to execute any undertaker works is exercisable, and, for this purpose, “statutory power” includes a power in a licence granted under an enactment;

“undertaker works” has the meaning in Article 7;

“urgent works” has the meaning in Article 22;

“utility undertaker” means any of the following undertakers, including, where relevant, any subsidiary within the meaning of the Companies (Jersey) Law 1991<sup>1</sup> –

- (a) the Minister acting under the Drainage (Jersey) Law 2005<sup>2</sup>;
- (b) Jersey Electricity PLC, formerly Jersey Electricity Company Limited, registered by Act of the Royal Court dated 5th April 1924, under the Laws governing Limited Liability Companies (1861 to 1922)<sup>3</sup>;
- (c) Jersey Gas Company Limited incorporated by the Loi (1918) sur la compagnie du gaz<sup>4</sup>;
- (d) The Jersey New Waterworks Company Limited registered by Act of the Royal Court dated 11th February 1882 in accordance with the provisions of the Loi (1861) sur les Sociétés à Responsabilité Limitée<sup>5</sup>;
- (e) Jersey Post International Limited, registered on 22nd September 2005, registered number 91247;

- (f) Jersey Telecom Limited, registered on 1st July 2002, registered number 83487;

“works”, where not specifically referring to undertaker works, specified road works, contracted highway authority works, or highway authority works, means any of those descriptions of works, as the context requires.

- (2) In this Law, references to a person carrying out works exclude a person contracted to carry out works on behalf of another person except –
- (a) in the case of highway authority contracted works where, except as described in sub-paragraph (b), references to a person carrying out such works are to the contractor carrying out such works on behalf of the highway authority and not to the highway authority;
  - (b) in Article 25, in the case of highway authority contracted works, where references to a person carrying out such works are to both the contractor carrying out such works on behalf of a highway authority and to the highway authority on whose behalf such works are being carried out;
  - (c) in Articles 11(1) and 19(1) where specified.

## 2 Meaning of “road” and “in a road”

- (1) In this Law, “road” means the whole or part of a road, including anything described in paragraph (2), and which –
- (a) is repairable at the expense of the States or a parish;
  - (b) the States or a parish has powers to maintain; or
  - (c) a person, body or other authority has powers to maintain, such person, body or other authority being specified by the States in Regulations.
- (2) The things described for the purposes of paragraph (1) are –
- (a) any of the following –
    - (i) any supporting structure such as an embankment, retaining wall, bridge, viaduct, tunnel or subway,
    - (ii) any part of anything described in clause (i), such as a carriageway, footpath, footway, verge, roundabout, vehicle lay-by, bus-stop, parking place, or pedestrian crossing facility;
  - (b) any of the following to the extent not included in sub-paragraph (a) –
    - (i) a lane, footway, footpath, alley, passage or promenade,
    - (ii) a cycle path or cycleway;
  - (c) any park within the meaning of the Policing of Parks (Jersey) Regulations 2005<sup>6</sup>;
  - (d) any public parking place referred to in an Order under Article 59 of the Road Traffic (Jersey) Law 1956<sup>7</sup>;
  - (e) any other open space not in private ownership to which the public has access, including a beach.
- (3) In this Law “in a road” includes below, on or above the surface of a road.

**3 Meaning of “highway authority” and “relevant highway authority”**

- (1) In this Law, “highway authority” means any person, body or authority described in paragraph (2) responsible under another enactment for repairing a road or otherwise having powers for maintaining a road.
- (2) Those persons, bodies or authorities are –
  - (a) the States, including any Minister or department of the States;
  - (b) a parish;
  - (c) any other person, body or authority specified by the States in Regulations.
- (3) In this Law, “relevant highway authority” –
  - (a) in relation to works, means the highway authority which is responsible for the road in which such works are, or intended to be, carried out; and
  - (b) in relation to an event, means the highway authority –
    - (i) which is responsible for the road in which such an event takes place, or is intended to take place, or
    - (ii) which is responsible for a road in the vicinity of which such an event takes place or is intended to take place, the event being one for the purpose of which any of the following is required –
      - (A) the restriction or prohibition on the use of the road by vehicles or by vehicles of any particular class or description,
      - (B) the suspension of the operation of any enactment, or the modification of its effect, relating to the use of the road by vehicles or pedestrians, including the driving, standing or parking of motor vehicles,
      - (C) the prohibition or regulation of foot or vehicular traffic, including diversions or other temporary changes to traffic flow or restrictions on the standing or parking of motor vehicles.
- (4) A relevant highway authority may delegate, either partly or wholly, the functions of the relevant highway authority under this Law to any other highway authority in relation to any of the following –
  - (a) a road or roads specified by name or description;
  - (b) works specified individually or by description;
  - (c) an event or events specified individually or by description,notwithstanding anything in the Loi (1914) sur la Voirie<sup>8</sup> or any other enactment to the contrary.
- (5) A delegation under paragraph (4) shall be made, and may be amended, modified, varied or revoked at any time, in writing by the highway authority making the delegation and shall be subject to such conditions, exceptions or qualifications as that highway authority may specify in writing at any time.

- 
- (6) In relation to functions that have been delegated under paragraph (4), the highway authority to which such functions are delegated for the time being shall be the relevant highway authority for the purposes of this Law.
  - (7) The delegation of any function under this Article does not prevent the exercise of that function by the highway authority which made the delegation.

#### **4 Meaning of “road works”**

In this Law “road works” means any of the following –

- (a) contracted highway authority works;
- (b) specified road works;
- (c) undertaker works.

#### **5 Meaning of “highway authority works” and “contracted highway authority works”**

In this Law –

- (a) “highway authority works” means any activities carried out in a road by, or on behalf of, a highway authority for the provision, improvement or maintenance of a road or road assets;
- (b) “contracted highway authority works” means any highway authority works carried out by a contractor on behalf of a highway authority.

#### **6 Meaning of “specified road works”**

- (1) In this Law “specified road works” means such activities described in paragraph (3) as may be prescribed carried out by such persons as may be prescribed.
- (2) In prescribing activities and persons for the purposes of paragraph (1), the Minister may –
  - (a) prescribe an activity that is included within an activity described in paragraph (3); and
  - (b) prescribe persons generally or by description.
- (3) The activities for the purposes of paragraph (1) are the activities described in in sub-paragraphs (a) and (b) (excluding highway authority works and undertaker works) carried out in a road and involving the temporary occupation or use of space in the road other than for normal traffic movement (including pedestrian traffic, where appropriate) or other than for activity incidental to such normal traffic movement –
  - (a) activities for the purpose of any of the following –
    - (i) building construction or maintenance in an area adjoining or near a road,
    - (ii) the placing or occupation of anything in a road, such placing or occupation being authorized under Article 3 or 4 of the Highways (Jersey) Law 1956<sup>9</sup> or permitted by the Customary



Law (Choses Publiques) (Jersey) Law 1993<sup>10</sup>, as the case may be,

- (iii) the construction and repair of privately owned road side walls, including road side stabilisation works on private land such as netting, pinning, rock bolting, cutting and clearing on road side slopes, banks or rock faces,
- (iv) tree maintenance, tree felling and hedge maintenance (including branchage); and
- (b) activities comprising any of the following –
  - (i) construction in a road at the entrance to any site for building construction or maintenance in an area adjoining or near a road,
  - (ii) the placing, loading and unloading of skips in a road,
  - (iii) the placing and removal of scaffolding or building materials in a road,
  - (iv) haulage or lifting operations,
  - (v) survey work for any activity falling within the definition “road works”,
  - (vi) either or both of the following –
    - (A) the use of vehicles,
    - (B) the storage of materials,
 for the purpose of any activity falling within sub-paragraph (a) or any other clause in this sub-paragraph.

## 7 Meaning of “undertaker works”

In this Law “undertaker works” means –

- (a) any of the following activities carried out in a road and authorized under an enactment other than this Law –
  - (i) inspecting apparatus with a view carrying out, or determining whether to carry out, any activity referred to in clause (ii),
  - (ii) maintaining, adjusting, repairing, altering, renewing, placing or removing apparatus or changing its position in a road,
  - (ii) work incidental to anything described in clause (i) or (ii) including, without prejudice to the generality of that term –
    - (A) breaking up or excavating or otherwise disturbing the surface of the road,
    - (B) excavating, trenching or otherwise disturbing any sewer, drain or tunnel under the road, and
    - (C) tunnelling or boring under the road; and
- (b) to the extent not included within paragraph (a), any of the following activities –
  - (i) reinstatement or making good works,
  - (ii) making good damage or remedying defects under Article 41(2),

- (iii) remedial works under Article 42(3)(a).

## **8 Definitions amended by Regulations**

The States may by Regulations amend Articles 1 to 7.

## **PART 2**

### **DUTIES ON HIGHWAY AUTHORITIES AND ON PERSONS CARRYING OUT WORKS**

## **9 General duty of highway authority in relation to road management**

- (1) A highway authority shall use its best endeavours, so far as may be reasonably practicable having regard to its other obligations, its policies and objectives, to manage the network of roads for which it is responsible (“road network”) –
  - (a) to secure the expeditious movement of traffic on its road network; and
  - (b) to facilitate the expeditious movement of traffic on roads for which another highway authority is responsible.
- (2) In exercising its duty under paragraph (1) a highway authority shall have particular regard to –
  - (a) the interests of safety;
  - (b) the need to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), including inconvenience caused by the frequency of different works or events taking place in the same road or vicinity;
  - (c) the need to protect the structure of the road and, to the extent it is within the highway authority’s knowledge, the integrity of apparatus in it; and
  - (d) the impact of –
    - (i) any works on events or other works, and
    - (ii) events on any works or other events,having regard to such matters as the highway authority considers relevant.
- (3) The duty under paragraph (1) extends to co-ordination and consultation with another highway authority where any works in, or events in or in the vicinity of, a road for which the highway authority is responsible affect a road for which the other highway authority is responsible.

## **10 General duty on persons carrying out road works**

- (1) A person carrying out road works (“first person’s works”) shall use his or her best endeavours in relation to such works to co-operate with –
  - (a) the highway authority responsible for any road affected by the first person’s works;

- (b) any other person carrying out any works affected by the first person's works; and
- (c) any undertaker with apparatus in the road that may be affected by the first person's works,

for the purpose of facilitating the exercise by the highway authority of its duty under Article 9, or, in relation to another person carrying out road works, that person's duty under paragraph (2) of this Article, or, in the case of an undertaker, the undertaker's duties under Part 8 in relation to the apparatus.

- (2) A person who carries out road works shall use his or her best endeavours to ensure that the works –
  - (a) are executed having regard to –
    - (i) the interests of safety,
    - (ii) the need to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
    - (iii) the need to protect the structure of the road and the integrity of apparatus in it; and
  - (b) are carried out as quickly and efficiently as is practicable in the circumstances without prejudice to the matters listed in subparagraph (a).
- (3) A code of practice may give practical guidance on the matters mentioned in paragraphs (1) and (2).
- (4) A person carrying out road works who fails to comply with paragraph (1) or (2) is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (5) In proceedings against a person for an offence under this Article relating to apparatus, it is a defence for the person to show that the failure to comply with the duty under paragraph (1) or (2) was attributable to –
  - (a) the person not knowing the position, or not knowing the existence, of the apparatus; or
  - (b) the person not knowing the identity or address of the person to whom the apparatus belongs,

and that the person's ignorance was not due to any negligence on the person's part or to any failure to make inquiries which the person ought reasonably to have made.

### **PART 3**

#### **ROAD WORKS PERMITS**

##### **11 Permit required for road works**

- (1) A person, including another person contracted on that person's behalf, shall not carry out road works unless such works are –

- (a) authorized by a permit granted under this Part; or
  - (b) exempt by virtue of an Order under Article 12.
- (2) Paragraph (1) does not apply to a person carrying out emergency or urgent works under Part 4.
- (3) A person who carries out road works in contravention of paragraph (1) shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

## 12 Exempt works

- (1) The Minister may prescribe road works as exempt from the requirement to have a permit under Article 11.
- (2) An Order under paragraph (1) may prescribe –
- (a) specific individual works;
  - (b) works by description;
  - (c) works with reference to a named road or road specified by description.
- (3) An Order under paragraph (1) shall not apply to works which involve any of the following –
- (a) the breaking up or excavation or other disturbance of the surface of the road;
  - (b) the closure of a road normally used by vehicular traffic;
  - (c) the use of portable traffic lights.

## 13 Application for a permit

- (1) A person who wishes to carry out permit works shall apply to the relevant highway authority for a permit.
- (2) If there is more than one relevant highway authority, an application (which may be the same application) shall be made to each relevant highway authority.
- (3) An application under this Article shall be made within such time limit as the Minister may determine.
- (4) An undertaker who –
- (a) is required under Article 31(6) to carry out permanent reinstatement following the completion of interim reinstatement;
  - (b) is required under Article 32(1) to make good defects; or
  - (c) is required under Article 32(3) to make good further defects,
- shall apply for a separate permit for each such works that the undertaker is required to carry out.
- (5) An application for a permit shall be in such form and accompanied by such information and documents as the Minister may determine, or if the Minister has made no such determination, as the relevant highway authority may determine.

- 
- (6) A person who makes an application under this Article shall pay such fee as the Minister may prescribe.

#### **14 Grant or refusal of a permit**

- (1) Upon receipt of an application under Article 13 and such further information or documents as may be required for the purpose of determining the application, the highway authority may, subject to paragraph (4), grant a permit or refuse to grant such a permit.
- (2) Where the highway authority refuses to grant a permit it shall give the applicant a notice in writing of reasons for that decision, setting out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (3) In refusing a permit, the highway authority shall have regard to any guidance contained in a code of practice.
- (4) This Article is subject to Articles 28 and 29.

#### **15 Permit conditions**

- (1) A permit granted under Article 14 shall be subject to such standard conditions that are applicable to that permit at the date it is granted.
- (2) Standard conditions shall be determined by the Minister after consultation with the other highway authorities and may be varied by the Minister at any time after further consultation with the other highway authorities.
- (3) Where a permit is subject to standard conditions that are subsequently varied by the Minister, the permit shall be subject to such varied standard conditions only if the permit holder agrees.
- (4) In determining conditions for the purposes of this Article, different conditions may apply to different cases or classes of permit with reference to such criteria as may be determined by the Minister, including, without prejudice to the generality of the foregoing, different categories or description of road.
- (5) A highway authority may, having regard to the particular circumstances of the proposed permit works to which the permit relates, make a permit subject to such other conditions as it thinks fit to the extent that such other conditions do not conflict with the standard conditions.
- (6) Any conditions to which a permit is subject under paragraph (5) shall be notified in writing by the highway authority to the permit holder and set out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (7) Conditions under this Article may relate to such matters as the Minister or the highway authority, as the case may be, thinks expedient, and, without prejudice to the generality of the foregoing, to any of the following –
- (a) time limits for completion of the permit works or any part of the permit works, including specified dates on which permit works or

- 
- any specified part of the permit works must be started or be completed;
- (b) time limits for giving notices to the highway authority relating to completion or cancellation of the permit works or any part of the permit works;
  - (c) restrictions on the times during which permit works may be carried out;
  - (d) traffic management in relation to the permit works, such as use of specific traffic signs and other measures intended to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians);
  - (e) safety procedures or any other matter relating to safety;
  - (f) consultation with those likely to be affected by the proposed permit works;
  - (g) publicity for the permit works;
  - (h) measures to be taken in conjunction with any other person who has applied for a permit or who is a permit holder, such person being involved with or affected by the permit works which are the subject of the permit;
  - (i) except in relation to undertaker works, the giving of a security against –
    - (i) potential damage to road assets, or
    - (ii) costs for maintenance directly arising from the permit works;
  - (j) a requirement to obtain insurance;
  - (k) prior approval of the relevant highway authority of the individual to act as qualified supervisor or trained operative for the purposes of Article 26 or of the individual contractor for the purposes of Article 27;
  - (l) requirements for such reinstatement or making good works authorized by the permit as may be specified to be carried out by persons supplied by, and working for, the relevant highway authority.

## **16 Variation and suspension of permits**

- (1) A permit holder may apply to the highway authority which granted his or her permit to vary the permit within such time limit as may be determined by the Minister.
- (2) In this Article, references to varying a permit include revoking, substituting or amending any condition of a permit that is not a standard condition and suspending work done under a permit.
- (3) The highway authority may, of its own volition give notice to the permit holder that it intends to vary a condition of a permit that is not a standard condition.

- 
- (4) An application under paragraph (1) shall be in such form and accompanied by such information and documents as the Minister may determine and be accompanied by such fee as may be prescribed.
  - (5) Subject to paragraph (6), a notice under paragraph (3) shall give the permit holder adequate opportunity to make representations with respect to the proposed variation.
  - (6) Paragraph (5) shall not apply where the highway authority considers that it is not practicable to give an opportunity to make representations because the circumstances are such that the variation is urgently required.
  - (7) The highway authority may, by written notice to the permit holder –
    - (a) vary a permit in such manner as it thinks fit following receipt of an application under paragraph (1) or following a notice given under paragraph (3) and, where applicable, consideration of any representations under paragraph (5); or
    - (b) refuse to vary a permit following receipt of an application under paragraph (1).
  - (8) If the highway authority –
    - (a) refuses to vary a permit following an application under paragraph (1);
    - (b) varies a permit following a notice given under paragraph (3) or other than as requested in an application under paragraph (1),

it shall, in the notice under paragraph (7), give the permit holder a statement of reasons for the decision and set out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.

## **17 Revocation of a permit**

- (1) A highway authority may revoke a permit by written notice to the permit holder if –
  - (a) the highway authority is satisfied that –
    - (i) any information provided in connection with the application for the permit, or an application to vary the permit, was false or misleading in a material particular,
    - (ii) there has been a failure to comply with any condition of the permit, or
    - (iii) there has been a significant change in circumstances since the permit was granted, those circumstances being such as to justify revocation; or
  - (b) the permit holder requests or agrees to the revocation of the permit.
- (2) A notice of revocation under paragraph (1)(a) shall be accompanied by a statement of the highway authority's reasons for the decision and set out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.

**18 Matters to be taken into account by highway authorities in exercising powers under Articles 14, 15, 16 and 17**

When exercising any of its powers under Articles 14, 15, 16 and 17, a highway authority shall, so far as it is consistent with its general duty under Article 9, have regard to the following –

- (a) the extent to which the fulfilment of any statutory duty by an undertaker under any enactment, including this Law, would be affected; and
- (b) the extent to which the exercise by another body of any powers under any enactment, including this Law, would be affected.

**19 Breach of permit conditions**

- (1) A person who contravenes or causes the contravention of any condition of a permit, including a person contracted to carry out works on another person's behalf, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under paragraph (1) to the extent that contravention of a condition of a permit is attributable to the carrying out of urgent or emergency works under Part 4.

**20 Action which may be taken in response to unauthorized works**

- (1) Where a person –
  - (a) carries out permit works which are not authorized by a permit; or
  - (b) breaches a condition of a permit,the relevant highway authority may, by written notice to the person, require that person to take such reasonable steps as are specified in the notice to remedy the breach or to minimise or discontinue any obstruction in the road in which the permit works are situated.
- (2) A notice under paragraph (1) shall specify the permit works to which it relates and notify the person of the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (3) If a person fails to comply with such a notice within such reasonable period as is specified in the notice, the highway authority may take the steps specified in the notice and such reasonable steps as it considers appropriate and recover from the person the costs reasonably incurred by it in doing so.



---

**PART 4**  
**EMERGENCY AND URGENT WORKS**

**21 Meaning of “emergency works”**

- (1) In this Law, “emergency works” means road works carried out by an undertaker, such road works being required, at the time they are carried out, to put an end to or to prevent the occurrence of circumstances then existing or imminent which are likely to cause danger to persons or damage to property.
- (2) In determining whether circumstances are existing or imminent for the purposes of paragraph (1), it is sufficient if the undertaker responsible for the road works reasonably believes that such circumstances are existing or imminent.
- (3) Where road works comprise some road works that fall within paragraph (1) and other road works that do not, the term “emergency works” shall be taken to include the road works that do not so fall to the extent that such road works cannot be reasonably severed from the road works that do fall within paragraph (1).

**22 Meaning of “urgent works”**

- (1) In this Law, “urgent works” means road works carried out by an undertaker, such road works being required, at the time they are carried out –
  - (a) to put an end to or prevent the existing or imminent occurrence of any of the following –
    - (i) an unplanned interruption of any supply or service provided by an undertaker,
    - (ii) an unplanned failure of any apparatus necessary for any supply or service provided by an undertaker,
    - (iii) a substantial financial loss to an undertaker in relation to an existing supply or service; or
  - (b) to reconnect supplies or services where an undertaker would be under a civil or criminal liability if the reconnection is delayed.
- (2) In determining whether the road works are required to put an end to or prevent the circumstances described in sub-paragraph (a) of paragraph (1), it is sufficient if the undertaker responsible for the road works reasonably believes that such circumstances are existing or imminent.
- (3) Where road works comprise some road works that fall within paragraph (1) and other road works that do not, the term “urgent works” shall be taken to include the road works that do not so fall to the extent that such road works cannot be reasonably severed from the road works that do fall within paragraph (1).

**23 Duty to consult relevant highway authority before urgent works**

- (1) An undertaker, shall, in so far as reasonably practicable, consult the relevant highway authority before carrying out urgent works with a view to agreeing any steps that might be taken to reduce the impact of such works having regard to the highway authority's duties under Article 9 and the undertaker's duties under Article 10.
- (2) Breach of the duty under paragraph (1) by an undertaker may be treated as evidence of breach of a duty of that undertaker under Article 10.

**24 Duty to give notice of emergency and urgent works**

- (1) An undertaker carrying out emergency or urgent works shall notify the relevant highway authority of such works within 2 hours after the start of such works, or, if that is not possible for any reason, as soon as possible after that and in any event by 10.30 a.m. the next working day.
- (2) A notice under paragraph (1) shall state –
  - (a) the undertaker's intention to carry out the works, or, as the case may be, that the works have begun and the location of the works;
  - (b) the likely duration of the works; and
  - (c) such other matters as the Minister may determine.
- (3) An undertaker who fails to comply with paragraph (1) is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (4) Where, in any proceedings under this Law, the question arises whether works are emergency or urgent works, it is for the undertaker alleging that they were to prove on the balance of probabilities the matters relating to the undertaker's reasonable belief referred to in Article 21(2) or 22(2), as the case may be.

**PART 5****SAFETY, TRAINING AND SUPERVISION****25 Safety measures**

- (1) A person carrying out road works and a highway authority carrying out highway authority works shall ensure that, in relation to such works –
  - (a) any part of the road which is broken up or opened, or is obstructed by machinery, equipment or materials used in connection with the works, is adequately guarded and lit; and
  - (b) such traffic signs as are reasonably required for the guidance or direction of persons using the road are placed, maintained and operated as necessary,  
having regard, in particular, to the needs of people with a disability.
- (2) For the purposes of complying with paragraph (1) –
  - (a) a code of practice may set out guidance; and

- 
- (b) the relevant highway authority may give specific directions to a person carrying out road works.
- (3) A highway authority may give such specific directions to a person as it thinks fit under paragraph (2)(b), having regard to the particular circumstances of the proposed road works that are being (or intended to be) carried out and may, for this purpose, give a direction which is inconsistent with a code of practice referred to in paragraph (2)(a).
- (4) Any specific directions under paragraph (2)(b) shall be notified in writing by the highway authority to the person carrying out (or intending to carry out) the proposed road works.
- (5) A notice under paragraph (4) shall set out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (6) Compliance by a person with a specific direction given to the person under paragraph (2)(b) shall be taken as evidence of compliance with the person's duty under paragraph (1) and conversely, failure by a person to comply with such a direction shall be taken as evidence of failure to comply with that duty.
- (7) A person carrying road works who fails to comply with paragraph (1) is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (8) If it appears to a highway authority that a person has failed to comply with paragraph (1) in relation to road works, the highway authority may take such steps as it thinks appropriate to ensure that the requirements referred to in that paragraph are satisfied and may recover from the person the costs incurred by it in so doing.
- (9) Failure by a highway authority carrying out highway authority works to comply with the duty under paragraph (1) may be treated as evidence of breach by the highway authority of its duty under Article 9(1).
- (10) If a person without lawful authority or excuse –
- (a) takes down, alters or removes any fence, barrier, traffic sign or light erected or placed pursuant to paragraph (1); or
  - (b) extinguishes a light so placed,
- the person commits an offence and is liable to a fine of level 4 on the standard scale.

## **26 Qualifications of supervisors and operatives**

- (1) This Article applies to any person carrying out any of the following –
- (a) undertaker works;
  - (b) contracted highway authority works;
  - (c) highway authority works other than contracted highway authority works; or
  - (d) such specified road works as the Minister may prescribe for the purposes of this Article.

- 
- (2) A person to whom this Article applies shall ensure that, except in such cases as the Minister may prescribe –
- (a) the carrying out of the works is supervised by a qualified supervisor who is available to give assistance but who is not necessarily present at the site of the works at all times whilst activities in connection with or as part of the works are being done there; and
  - (b) a trained operative is present at the site of the works at all times whilst activities in connection with or as part of the works are being done there.
- (3) If, at any time, during the carrying out of works, the requirements of paragraph (2) are not met, the person to whom this Article applies shall ensure that such works are suspended until such time as those requirements are met.
- (4) For the purposes of this Article –
- (a) “qualified supervisor” means a person holding such qualifications or having had such training, or both, as the Minister may prescribe; and
  - (b) “trained operative” means a person holding such qualifications or having had such training, or both, as the Minister may prescribe.
- (5) In making an Order for the purposes of paragraph (4), the Minister may make such provision as he or she thinks fit including –
- (a) approval of bodies conferring qualifications and the withdrawal of such approval;
  - (b) the circumstances in which a qualification may be conferred;
  - (c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.
- (6) A highway authority may, by written notice, require a person carrying out any works described in paragraph (1)(a), (b) or (d) to give the highway authority, within such reasonable time as may be specified in the notice, any of the following –
- (a) the name of the person who is currently, and any other person who has previously been, the qualified supervisor for the purpose of compliance with paragraph (2);
  - (b) the name of the person who is currently, and any other person who has previously been, a trained operative for the purpose of compliance with paragraph (2);
  - (c) evidence of the qualifications and training of the person named under sub-paragraph (a) or (b) which shows that the person is a qualified supervisor or trained operative, as the case may be.
- (7) A person who fails to comply with –
- (a) paragraph (2) or (3); or
  - (b) a notice under paragraph (6),
- is guilty of an offence and liable to a fine of level 4 on the standard scale.

**27 Appointment of contractors**

- (1) This Article applies to a person carrying out such works as the Minister may prescribe for the purposes of this Article.
- (2) A person to whom this Article applies shall ensure that works are not carried out by a contractor on that person's behalf unless the contractor is currently approved in accordance with an Order under paragraph (3).
- (3) The Minister may by Order make such provision as he or she thinks fit concerning the approval of contractors for the purposes of this Article, including, without limitation to the generality of the foregoing –
  - (a) who may give such approval;
  - (b) conditions subject to which approval may be given;
  - (c) procedures for approval and subsequent reviews;
  - (d) the form and manner of an application for approval, including any application fee;
  - (e) revocation or suspension of approval;
  - (f) provision for appeals against revocation or suspension of approval.
- (4) The Minister shall ensure that a list of contractors currently approved under this Article is made available to highway authorities and utility undertakers and published on a web-site maintained by the States of Jersey.
- (5) A person who fails to comply with paragraph (2) is guilty of an offence and liable to a fine of level 4 on the standard scale.

**PART 6****RESTRICTIONS ON UNDERTAKER WORKS****28 Embargoed undertaker works following substantial highway authority works**

- (1) For the purposes of this Article –

“embargoed undertaker works” means undertaker works involving the breaking up or excavation or other disturbance of the surface of a road other than any of the following –

  - (a) emergency or urgent works;
  - (b) undertaker works for which the relevant highway authority has indicated that it is minded to grant a permit under Article 14;
  - (c) undertaker works which are in response to a request for a new service or supply to a customer which was not received at a time when it was practicable for the works to be completed before an embargo period; or
  - (d) reinstatement or making good works.

“embargo period” means the period commencing on the date substantial highway authority works are completed and ending immediately after the expiry of such length of time as the States may by Regulations specify;

---

“substantial highway authority works” means highway authority works involving any of the following in relation to a road –

- (a) construction or reconstruction;
  - (b) resurfacing; or
  - (c) alteration of the surface level or width.
- (2) A highway authority shall, if requested by an undertaker, indicate whether it is minded to grant a permit for works to be carried out during the whole or part of an embargo period but it may indicate that it is minded to grant a permit only where it thinks that it is necessary for such works to be carried out having regard to the particular circumstances of the case.
  - (3) A highway authority may give notice that, following completion of such substantial highway authority works as are specified in the notice in such road as is specified in the notice, embargoed undertaker works are prohibited in such road, or part of such road as is specified in the notice, for the embargo period.
  - (4) A notice under paragraph (3) shall –
    - (a) specify the date that the substantial highway authority works are expected to start being a date not less than 6 months from the date of the notice; and
    - (b) specify the date that such works are expected to be completed.
  - (5) If substantial highway authority works are not started, or not expected to start, on the date specified by notice under paragraph (3), the highway authority shall give notice, as soon as reasonably practicable, of –
    - (a) the likely period for the delay; and
    - (b) the proposed new start date.
  - (6) The highway authority may give more than one notice under paragraph (5).
  - (7) Following the giving of a notice under paragraph (3), and, if applicable paragraph (5), the highway authority shall give notice of the date of the start of the embargo period.
  - (8) A notice under this Article shall be given by such reasonable means as the highway authority thinks fit in order to bring the notice to the attention of –
    - (a) the public; and
    - (b) any person having apparatus or equipment in the road specified in the notice.
  - (9) The requirement under paragraph (8) shall be taken to have been satisfied by publication in the Jersey Gazette of the notice, but this is not the only way in which the requirement may be satisfied.
  - (10) The States may, by Regulations, amend any of the definitions in paragraph (1).
  - (11) An undertaker who carries out embargoed undertaker works that are prohibited by notice under this Article is guilty of an offence and liable to a fine of level 4 on the standard scale.

**29 Restriction on certain undertaker works in protected roads**

- (1) The States may by Regulations where they consider a road, or part of a road, to be of sufficient strategic importance to Jersey's transport connections, designate the whole or part of that road as protected.
- (2) A highway authority shall refuse to grant a permit under Article 14 to carry out undertaker works in a protected road unless the works comprise –
  - (a) anything described in the definition “undertaker works” in relation to existing apparatus situated in a road; or
  - (b) the works are approved in advance by the Minister.

**PART 7****DAMAGE AND REINSTATEMENT****30 Damage to road, road assets and apparatus**

- (1) For the purposes of this Article –
  - (a) “damage” includes, without prejudice to the generality of that term, any of the following –
    - (i) in relation to a road –
      - (A) permanent staining or marking of the road surface,
      - (B) causing depressions or scores in, or breaking up or otherwise disturbing, the road surface (other than anything incidentally caused to any soft, natural surface such as sand or earth),
      - (C) weakening the road's surface or structure;
    - (ii) in relation to apparatus and highway apparatus –
      - (A) its permanent removal or removal of any part of it including removal of surrounding material intended for the protection or support of such apparatus,
      - (B) the encasement of such apparatus with inappropriate material,
      - (C) cracking, cutting, scoring, snapping, crushing, or removing such apparatus,
      - (D) blocking the road's surface drainage system,
- but does not include anything that is intended to be an integral part of any works being carried out; and
- (b) “incident” means any explosion, ignition, discharge or similar occurrence of gas, electricity, water or any other thing required for the purposes of a supply or service provided by an undertaker, such gas, electricity, water or other thing being –
  - (i) at the time of, or immediately before, the explosion, ignition, discharge or similar occurrence in the undertaker's apparatus in a road, or

- 
- (ii) in such apparatus before the explosion, ignition, discharge or similar occurrence and subsequently having escaped from it in circumstances which contributed to the explosion, ignition, discharge or similar occurrence.
- (2) If a person carrying out works damages, or causes the damage of, any road, road asset or apparatus, the person shall, as soon as reasonably practicable, inform –
- (a) the relevant highway authority, in the case of a road or road asset; or
- (b) the owner of the apparatus,
- as the case may be.
- (3) Where a road, road asset or apparatus has been damaged by, or such damage has been caused by, a person carrying out works, the relevant highway authority or owner of apparatus, as the case may be, may serve a written notice on such a person regardless of whether or not a notice under paragraph (2) has been served on the relevant highway authority or owner of the apparatus.
- (4) Where a road, road asset or apparatus has been damaged as a result of an incident, the relevant highway authority or owner of the apparatus, as the case may be, may serve a written notice on the undertaker whose apparatus in the road contained the gas, electricity, water or other thing which was involved in the incident.
- (5) A notice under paragraph (3) or (4) may require the person to –
- (a) make good the damage to the satisfaction of the relevant highway authority or owner of the apparatus serving the notice within such reasonable period as is specified in the notice; or
- (b) pay the relevant highway authority or owner of the apparatus such sum as that highway authority or owner has reasonably incurred in making good the damage.
- (6) A notice under paragraph (3) or (4) shall set out the person’s right of appeal under Article 63 and, where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (7) A person carrying out works as referred to in paragraph (3) or an undertaker whose apparatus contained the gas, electricity, water or other thing which was involved in the incident as referred to in paragraph (4) (each such person being the “primary person”) is liable for damage under this Article –
- (a) whether or not the damage is attributable to misconduct or negligence on the part of the primary person or any other person for whom the primary person is responsible;
- (b) notwithstanding that the primary person is acting in pursuance of a statutory duty under another enactment.
- (8) However the primary person’s liability under this Article does not extend to damage which is attributable to misconduct or negligence on the part of –
- (a) the person suffering the damage, or any other person for whom the person suffering the damage is responsible; or



- (b) a third party for whom neither the primary person nor the person suffering the damage is responsible.
- (9) For the purposes of paragraphs (7) and (8), the persons for whom a person is responsible are the person's –
  - (a) employees; and
  - (b) contractors, including the contractor's employees, sub-contractors and employees of sub-contractors.
- (10) A person who fails to comply with paragraph (2) or with any requirement contained in a notice served on the person under paragraph (3) or (4) is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (11) To the extent that any other Article in this Law makes provision for an undertaker to be liable for damage, this Article is subject to that other Article except in the case of Article 41(1).
- (12) To the extent that any provision in any other enactment makes provision for a person to be liable for the same damage for which the person is liable under this Law, the provision in the other enactment shall not apply to that person.
- (13) Subject to paragraph (12), this Article does not otherwise affect any liability for damage arising other than under this Law.

### **31 Duty on undertakers to reinstate**

- (1) An undertaker carrying out undertaker works shall reinstate the road in which such works are carried out in accordance with the standards required under Article 33 and the provisions of this Article.
- (2) The reinstatement required by paragraph (1) may be permanent or interim.
- (3) The undertaker shall begin reinstatement as soon as is reasonably practicable after the completion of any part of the undertaker works and shall carry on and complete the reinstatement as soon as is reasonably practicable.
- (4) Notwithstanding any provision in this Article that may be construed otherwise, the undertaker shall ensure that the state of a road at any time before completion of the permanent reinstatement is such that it is not likely to cause danger to any person.
- (5) The undertaker shall, within 5 working days from the date on which reinstatement is completed give notice to the relevant highway authority of that completion –
  - (a) stating whether the reinstatement is permanent or interim; and
  - (b) providing such information as may be determined by the Minister.
- (6) If the reinstatement is interim, the undertaker shall complete the permanent reinstatement as soon as is reasonably practicable and in any event within 12 months of the completion of the interim reinstatement or within such longer period as the relevant highway authority may allow.
- (7) The undertaker shall replace line markings on a road as soon as is reasonably practicable and at any event within 5 working days of

completion of the works whether as part of an interim or permanent reinstatement.

- (8) The undertaker shall ensure that the interim or permanent reinstatement of the road includes, in particular, the reinstatement of features designed to assist people with a disability.
- (9) Where paragraph (6) applies, the undertaker shall, within 5 working days from the date on which the permanent reinstatement required by that paragraph is completed give notice to the relevant highway authority of that completion and give such other information as may be determined by the Minister.
- (10) For the purposes of paragraphs (5) and (9), the Minister may determine when reinstatement is taken to be completed.
- (11) Any period of time specified in paragraph (5), (6), (7) or (9) may be –
  - (a) varied in any particular case with the written agreement of the relevant highway authority; or
  - (b) amended by the Minister, by Order.
- (12) An undertaker who fails to comply with paragraph (5) or (9) is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (13) An undertaker who fails to comply with any other provision in this Article is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (14) A person is not guilty of an offence under paragraph (13) by virtue of paragraph (3), (6), or (7) if he or she proves that any delay was in order to avoid hindering the execution of other works to be undertaken immediately or shortly afterwards.

### **32 Duty on undertakers to make good defects following reinstatement**

- (1) An undertaker shall make good any defect arising in interim or permanent reinstatement if the defect arises before the date that is 3 years after notice is given by the undertaker under Article 31(5) or (9), as the case may be, of completion of a permanent reinstatement.
- (2) An undertaker shall, within 5 working days from the date of the completion of the making good required by paragraph (1), give notice to the relevant highway authority of that completion and give such other information as may be determined by the Minister.
- (3) If, following making good any defect that is referred to in paragraph (1), a further defect arises in that reinstatement during the period ending on the date that is 3 years after notice is given under paragraph (2) of completion of the making good required by paragraph (1), the undertaker shall make good such further defect.
- (4) An undertaker shall, within 5 working days from the date of the completion of the making good required by paragraph (3), give notice to the relevant highway authority of that completion, giving such other information as may be determined by the Minister.
- (5) An undertaker shall comply with paragraph (1) or (3) as soon as is reasonably practicable and in any event within any such period as the

---

Minister may determine or, if the relevant highway authority specifies another period in a specific case, that period.

- (6) An undertaker who fails to comply with paragraph (1), (3) or (5) is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (7) An undertaker who fails to comply with paragraph (2) or (4) is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (8) The period of time specified in paragraph (2) or (4) may be –
  - (a) varied in any particular case with the written agreement of the relevant highway authority; or
  - (b) amended by the Minister, by Order.
- (9) The States may, by Regulations, amend the period of time specified in paragraphs (1) and (3).
- (10) In this Article “defect” includes any damage caused by the reinstatement or making good works to any part of the surrounding road, whether or not that part of the road was included in any previous reinstatement or making good works carried out by the undertaker.

### **33 Standards of reinstatement or making good works**

- (1) An undertaker carrying out reinstatement or making good works shall comply with whichever of the following applies to such works –
  - (a) such requirements as may be determined by the Minister; or
  - (b) such requirements as are set out in a notice issued by the highway authority under Article 34.
- (2) Without prejudice to the generality of paragraph (1), requirements referred to in that paragraph may set out the specification of materials to be used and the standards of workmanship and performance to be achieved and may refer to different descriptions of excavations or road and set out different requirements according to whether a reinstatement is interim or permanent.
- (3) The Minister may determine the circumstances in which a highway authority may issue a notice under Article 34 and, in making such a determination, give such guidance as he or she thinks fit concerning appropriate requirements that may be included in a notice under paragraph (1)(b).
- (4) An undertaker who fails to comply with paragraph (1) is guilty of an offence and liable to a fine of level 4 on the standard scale.

### **34 Notice of enhanced reinstatement or making good works**

- (1) A relevant highway authority may, prior to or at any time when an undertaker is under a duty to carry out reinstatement or making good works, serve written notice on the undertaker that such reinstatement or making good works as are specified in the notice shall do either or both of the following –

- 
- (a) include such specific works (of any description) as are specified in the notice;
    - (b) comply with such specification of materials, standard of workmanship and performance standards as are specified in the notice.
  - (2) A notice may be served under paragraph (1) if either or both of the following applies –
    - (a) the relevant highway authority reasonably considers that, by reason of carrying out the undertaker works, or as the case may be, the reinstatement or making good works, such works as are specified in the notice are required in order to preserve any existing features (including visual benefits) in or adjacent to the part of the road to which the duty to reinstate or make good applies;
    - (b) the relevant highway authority reasonably considers that more stringent requirements than those determined by the Minister under Article 33(1)(a) are needed in order to minimise the risk of defects occurring in the reinstatement or making good works.
  - (3) A notice under paragraph (1) shall set out the undertaker's right of appeal under Article 63 and, where applicable, refer the person to any relevant code of practice issued or approved for the purposes of Article 64.

### **35 Powers of relevant highway authority to carry out reinstatement or making good works**

- (1) A relevant highway authority may at any time prior to, or during a time when an undertaker is under a duty to carry out reinstatement or making good works, serve notice on the undertaker that the relevant highway authority will itself carry out such reinstatement or making good works as are specified in the notice.
- (2) Such reinstatement or making good works may include such specific works of any description that the highway authority would have had grounds for including in a notice under Article 34 to the undertaker.
- (3) An undertaker served with a notice under paragraph (1) is relieved of the duty under Article 31 or 32, as the case requires, to the extent that such reinstatement or making good works that it would otherwise be required to do under Article 31 or 32 are specified in the notice.
- (4) A highway authority who carries out works specified in a notice under paragraph (1) may recover from the undertaker the reasonable costs of such works.

### **36 Duty where reinstatement or making good works affected by subsequent works**

- (1) Where, following an investigation under Article 42(2), a highway authority determines that an undertaker has complied with the undertaker's statutory duties under Article 31 or 32, as the case may be, then to extent that the reinstatement or making good works have been disturbed by the

investigation, the undertaker shall no longer be under a duty under those Articles with respect to such disturbance.

- (2) Subject to paragraph (4), if reinstatement or making good works by an undertaker are dug out to any extent in the course of any subsequent road works or highway authority works, the duty of that undertaker under Articles 31 and 32 shall cease to that extent.
- (3) Subject to paragraph (4), if any reinstatement or making good works by an undertaker cease to comply with the standards required under Article 33, by reason of any subsequent undertaker works, the person carrying out the subsequent undertaker works becomes subject to the duty under Article 31 or Article 32, as the case may be, in respect of such reinstatement or making good works instead of that undertaker.
- (4) Paragraphs (2) and (3) do not apply to the extent that reinstatement or making good works are dug out in in the course of an investigation by a highway authority under Article 42(2) following which the highway authority determines that the undertaker's duties have not been complied with under Article 31 or 32, as the case may be.
- (5) Where successive road works affect reinstatement or making good works, then, as between earlier and later successive works –
  - (a) paragraphs (2) and (3) apply in relation to the cessation or transfer of the responsibility of the person for the time being subject to the duty under Article 31 or 32, as the case may be; and
  - (b) if reinstatement or making good works cease to comply with any standards required in relation to the works under Article 33, it shall be presumed, until the contrary is proved, that this was caused by the later or last of the successive road works.

## **PART 8**

### **APPARATUS**

#### **37 Apparatus records**

- (1) An undertaker shall, to the extent determined by the Minister and in such form and manner as the Minister may determine, keep a record of apparatus that the undertaker owns and which is situated in a road.
- (2) A determination under paragraph (1) may specify the extent to which the requirement to keep a record applies to apparatus which is situated in a road immediately before the date that this Article comes into force.
- (3) An undertaker shall state in the record the location of each item of apparatus, its nature and (if known) whether it is for the time being in use.
- (4) An undertaker shall record the information described in paragraph (3) in relation to an item of apparatus as soon as reasonably practicable after –
  - (a) placing it in a road or altering its position in a road; or
  - (b) becoming aware that any such information in the record is incorrect.

- (5) On making an entry to the record under paragraph (4)(b), an undertaker shall make such modifications to the record as are necessary to ensure the information in the record is correct in relation to that entry.
- (6) The Minister may determine that an undertaker (“first undertaker”) of such description as may be specified in the determination is exempt from the requirement under paragraph (1) and, in respect of apparatus owned by such an undertaker, another undertaker (“other undertaker”) with responsibilities (whether contractual or statutory) with respect to the apparatus shall comply instead with the requirements of this Article.
- (7) The other undertaker referred to in paragraph (6) may charge the first undertaker a fee for compliance with this Article in respect of apparatus owned by the first undertaker, such fee, if levied, being no more than the reasonable cost of compliance with this Article in respect of such apparatus.
- (8) An undertaker shall make a record kept by the undertaker under this Article, or a copy of all or part of such a record, available to any person who is authorized under this Law or any other enactment to carry out works in a road or to another person appearing to the undertaker to have a sufficient interest in the record.
- (9) An undertaker who fails to comply with any provision of this Article –
  - (a) is guilty of an offence and liable to a fine of level 4 on the standard scale; and
  - (b) is liable to pay compensation to any person in respect of damage or loss incurred by that person in consequence of the failure.
- (10) In any criminal or civil proceedings arising out of any failure to comply with any provision of this Article it is a defence for the undertaker to show that all reasonable care was taken by the undertaker, including any contractors working on behalf of the undertaker, to secure that no such failure occurred.
- (11) The requirements of this Article are without prejudice to the requirements under Article 5 of the Drainage (Jersey) Law 2005<sup>11</sup>.

### **38 Duties where apparatus is not recorded properly**

- (1) If an undertaker (“first undertaker”) in the course of carrying out undertaker works, finds apparatus belonging to another undertaker (“second undertaker”) which, to the first undertaker’s knowledge, is not marked or is wrongly marked on records which have been made available to the first undertaker, the first undertaker shall take such steps as are reasonably practicable to inform the second undertaker (or if different, the undertaker who is required instead to comply with Article 37 in respect of that apparatus following a determination under Article 37(6)) of its location and (so far as appears from an external inspection of its nature) whether it is in use.
- (2) If the first undertaker is not able to identify the second undertaker, the first undertaker shall, instead, inform the Minister of the location of the apparatus and (so far as appears from an external inspection of its nature) whether it is in use.

- (3) The Minister may make a record of the apparatus in respect of which information is given to him or her under paragraph (2) and may make it available to any person who is authorized under this Law or any other enactment to carry out works in a road or to another person appearing to the Minister to have a sufficient interest in the record.
- (4) A person who fails to comply with any provision of this Article is guilty of an offence and liable to a fine of level 3 on the standard scale.

### **39 Undertaker works likely to affect apparatus in the road**

- (1) Where undertaker works are likely to affect another undertaker's apparatus in the road, the undertaker carrying out the works shall take all reasonably practicable steps –
  - (a) to give the other undertaker reasonable facilities for monitoring the execution of the undertaker works; and
  - (b) to comply with any requirement of the other undertaker which is reasonably necessary for the protection of the apparatus or for securing access to it.
- (2) Breach of the duty under paragraph (1) by an undertaker may be treated as evidence of breach of a duty of that person under Article 10.

### **40 Design, location and maintenance of apparatus**

- (1) An undertaker shall use its best endeavours to ensure that any apparatus that is placed in a road and belonging to it is designed, located and kept in efficient working condition in such a way that –
  - (a) any risk to the safety of persons using the road is minimized;
  - (b) persons using the road are inconvenienced as little as possible (having regard, in particular, to the needs of people with a disability); and
  - (c) the function and integrity of –
    - (i) the road structure, and
    - (ii) any road asset,in the vicinity of apparatus are maintained.
- (2) An undertaker who fails to comply with paragraph (1) is guilty of an offence and liable to a fine of level 4 on the standard scale.

### **41 Specific provisions relating to access frame covers**

- (1) This Article applies where an undertaker is not otherwise under a duty under this Law to make good any damage or remedy any defect in a road caused by an access frame cover for which the undertaker is responsible.
- (2) If damage or a defect in a road is caused by an access frame cover, such damage or defect occurring within 0.5m, or such other measurement as may be specified under paragraph (5), of the edge of the access frame cover, the undertaker shall, as soon as reasonably practicable, make good

such damage or remedy such defect to the reasonable satisfaction of the relevant highway authority.

- (3) The undertaker shall comply with the duty under paragraph (2) as soon as is reasonably practicable and in any event within any such period as the Minister may determine or, if the relevant highway authority specifies another period in a specific case, that period.
- (4) Breach of the duty under paragraph (2) may be treated as evidence of the breach of duty under Article 40(1)(c).
- (5) The States may, by Regulations, amend paragraph (2) by specifying such other measurement as they think fit and different measurements may be specified for different circumstances.

## PART 9

### ENFORCEMENT POWERS OF RELEVANT HIGHWAY AUTHORITY

#### **42 Powers of relevant highway authority to carry out investigations and remedial works**

- (1) In this Article “statutory duties” mean any of the following duties –
  - (a) the duty under Article 31 to carry out reinstatement;
  - (b) the duty under Article 32 to make good defects following reinstatement;
  - (c) the duty under Article 33 to comply with standards for reinstatement or making good works;
  - (d) the duty under Article 40 concerning the design and location of apparatus and keeping it in efficient working condition.
- (2) A relevant highway authority may carry out such investigation as appears to it to be reasonably necessary, including any breaking up or otherwise disturbing the surface of a road, to determine whether an undertaker is complying, or has complied, with any of the undertaker’s statutory duties.
- (3) If the relevant highway authority determines that the undertaker has not complied, or is not complying with, the undertaker’s statutory duties, the relevant highway authority may, by written notice –
  - (a) require the undertaker to carry out such remedial work as is specified in the notice within such period as may be specified in the notice; and
  - (b) require the undertaker to pay such reasonable costs as are specified in the notice that were incurred by the highway authority in carrying out the investigation.
- (4) Where a time limit is specified elsewhere in this Law in respect of a duty with which the relevant highway authority has determined that the undertaker has not complied, or is not complying, the period for compliance specified in the notice under paragraph (3) shall be not less than the period specified for compliance with that duty, starting from the date that the notice is given.



- (5) A notice under paragraph (3) shall set out in writing the reasons for the notice, the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.
- (6) If the undertaker fails to comply with a notice given to it under paragraph (3), the relevant highway authority may carry out the remedial work and recover from the undertaker the reasonable costs in doing so.
- (7) If it appears to a relevant highway authority that a failure by an undertaker to carry out the undertaker's statutory duties is causing danger to users of the road, the relevant highway authority may carry out the remedial work without first giving notice under paragraph (3) and may recover from the undertaker the reasonable costs in doing so.
- (8) A relevant highway authority who carries out remedial work under paragraph (7) shall give notice to the undertaker as soon as is reasonably practicable stating the reason for taking immediate action.
- (9) Remedial work carried out by the relevant highway authority under paragraph (7) shall be treated as if it were work carried out by the undertaker and accordingly, the undertaker shall be liable under this Law in respect of that work.
- (10) A code of practice may give practical guidance on the exercise of a highway authority's powers under this Article.
- (11) This Article is without prejudice to a relevant highway authority's powers under Article 35.

### **43 Inspectors**

- (1) A person holding such qualifications or having had such training or both, as the Minister may prescribe, may be authorized in writing by a highway authority, generally or in relation to a specific matter, to carry out any inspection or investigation that the person considers reasonably necessary for either or both of the following –
  - (a) enabling the highway authority to exercise any function under this Law; and
  - (b) ascertaining whether a person has complied, or is complying, with any of the person's duties under this Law.
- (2) A person authorized under paragraph (1) is referred to in this Article as an "inspector".
- (3) In making an Order for the purposes of paragraph (1), the Minister may make such provision as he or she thinks fit including –
  - (a) approval of bodies conferring qualifications and the withdrawal of such approval;
  - (b) the circumstances in which a qualification may be conferred;
  - (c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.

- 
- (4) For the purposes of carrying out any investigation or inspection under this Article, an inspector may do any of the following –
- (a) take such measurements and photographs and make such recordings as the inspector considers necessary;
  - (b) require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any inspection to answer (in the absence of persons other than a person nominated by him or her to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of the person's answers;
  - (c) require the production of, inspect, and take copies of, or of any entry in, any books or documents;
  - (d) require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities, as are necessary to enable the inspector to carry out an inspection, including exercising any power under this paragraph;
  - (e) by notice in writing served on a person under any duty under this Law, require the person to provide the inspector at such time or times or at such intervals in respect of such period or periods as may be specified in the notice, with such information or documents as the inspector may reasonably require.
- (5) An inspector shall not exercise any powers under this Article for the purpose of investigating a matter which is the subject of a police inquiry save in conjunction with the police officer conducting the inquiry.
- (6) Nothing in this Article shall be taken to compel the production by any person of information or a document which the person would, on grounds of legal professional privilege, be entitled to refuse to disclose or produce in any proceedings in the Court.
- (7) Where any person from whom provision of a document is required under paragraph (4) claims a lien on the document produced by that person, the provision shall be without prejudice to the lien.
- (8) No statement or answer given by a person in pursuance of a requirement imposed under paragraph (4) shall be admissible in criminal proceedings except proceedings under paragraph (9) or (11).
- (9) A person shall be guilty of an offence if without reasonable excuse, the person –
- (a) fails to provide any document which he or she is required to provide under paragraph (4);
  - (b) in response to a requirement under paragraph (4), fails to provide any information or to answer any question;
  - (c) obstructs an inspector in the exercise of the inspector's powers under paragraph (4); or
  - (d) fails to provide such reasonable facilities and assistance as an inspector may require when the inspector is exercising his or her powers under paragraph (4).

- (10) A person who is guilty of an offence under paragraph (9) shall be liable to imprisonment for a term of 6 months and to a fine.
- (11) A person who –
- (a) in response to a requirement under paragraph (4), knowingly or recklessly provides information or gives an answer which is false or misleading in a material particular; or
  - (b) intentionally alters, suppresses or destroys any document that has been specified in a notice under paragraph (4),
- is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

## **PART 10**

### **LIABILITY**

#### **44 Liability of highway authorities**

A highway authority, and any person acting as an officer, servant or agent of a highway authority, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Law or any enactment made or purportedly made under this Law unless –

- (a) it is shown that the act or omission was in bad faith; or
- (b) the liability arises in respect of an act or omission that is unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>12</sup>.

#### **45 Liability of undertakers**

An undertaker shall not be taken to have failed to fulfil a statutory duty under any enactment to provide any service or to carry out any activity to the extent that such failure is attributable to any action taken by a highway authority or the Minister exercising functions under this Law.

## **PART 11**

### **POWERS TO MAKE REGULATIONS FOR CHARGING**

#### **46 Contributions by undertakers to maintenance costs of highway authority**

- (1) The States may, by Regulations, make provision requiring an undertaker carrying out undertaker works to contribute to the costs incurred or likely to be incurred by the relevant highway authority in maintaining the road in which such undertaker works are carried out.
- (2) The Regulations may provide for a general contribution calculated in such manner as is set out in the Regulations and may provide for –

- (a) the amount of contribution to vary according to the nature of the road, the description and extent of the undertaker works and such other factors as the States consider relevant; and
  - (b) apportionment of costs where undertaker works are carried out by more than one person.
- (3) Regulations shall make provision to ensure that an undertaker is not liable for any contribution pursuant to Regulations under this Article in respect of any costs it has incurred in complying with a notice under Article 34 or recovered by the highway authority under Article 35 and that, where such a contribution has been made, it is refunded to the undertaker.

#### **47 Charges by reference to the duration of road works and other factors**

- (1) In this Article “road” means any road in respect of which the Minister is the highway authority.
- (2) The States may, by Regulations, make provision for requiring a person carrying out road works to pay a charge to the Minister determined in such manner as is specified in the Regulations, such charge being related to the duration of the road works.
- (3) Without prejudice to the generality of paragraph (2) the Regulations may –
  - (a) specify different rates of charges determined by one or more of the following –
    - (i) the area of road surface affected by the works,
    - (ii) the place and time at which the road works are executed,
    - (iii) the description of works, and
    - (iv) such other factors as the States consider to be relevant;
  - (b) make provision for the determination of the duration of works;
  - (c) make provision as to the time of making payment of charges;
  - (d) make provision for such other matters as the States consider to be necessary or expedient for the purpose of the Regulations.

## **PART 12**

### **EVENTS**

#### **48 Interpretation of this Part**

For the purposes of this Part –

- (a) references to the purposes of an event include the conduct of the event, the viewing of the event, preparations for the event, trials or practices for the event, and ensuring the safety or convenience of members of the public who may be at or near the event or at the location of the event;
- (b) the highway authority in relation to a beach is the Minister.

**49 Notification of event to highway authority and licence applications**

- (1) A person who wishes to –
- (a) hold an event in a road; or
  - (b) hold an event in the vicinity of a road, the event being one for the purpose of which any of the following is required –
    - (i) the restriction or prohibition on the use of any road by vehicles or by vehicles of any particular class or description,
    - (ii) the suspension of the operation of any enactment, or modification of its effect, relating to the use of the road by vehicles or pedestrians, including the driving, standing or parking of motor vehicles,
    - (iii) the prohibition or regulation of foot or vehicular traffic, including diversions or other temporary changes to traffic flow or restrictions on the standing or parking of motor vehicles,

shall notify the relevant highway authority of the person's intention before the start of the event and may apply for a licence for any of the things described in this paragraph.

- (2) Notification of the person's intention and any application for a licence shall be made within such time limits and in such form and accompanied by such documents and information as the Minister may determine, or, if the Minister has made no such determination, as the relevant highway authority may determine.
- (3) No notification is required to be made under paragraph (1) for an event taking place in –
- (a) a park, within the meaning of the Policing of Parks (Jersey) Regulations 2005<sup>13</sup>; or
  - (b) any other open space, other than a carriageway for vehicular traffic, to which the public has access,

if the event is reasonably unlikely to affect the reasonable use or enjoyment of that park or open space for other members of the public in the vicinity of the event.

- (4) A person who fails to make a notification required under paragraph (1) shall be guilty of an offence and liable to a fine of level 2 on the standard scale.
- (5) Nothing in this Part relieves a person from an obligation to seek permission from the Bailiff for the organization or provision of a public entertainment under the Unlawful Public Entertainments (Jersey) Regulations 2013<sup>14</sup>, or for the holding of any event for which the Bailiff's permission is required under any other enactment or under customary law, and any decision by a highway authority whether to grant a licence following an application under this Article shall not raise any presumption concerning the grant or otherwise of the Bailiff's permission.
- (6) At the same time as a person gives a notification to the highway authority under paragraph (1), the person shall inform the Bailiff of the notification.

**50 Grant or refusal of licence for events**

- (1) Following an application for a licence under Article 49, the relevant highway authority may grant a licence or refuse to grant a licence.
- (2) A licence may be granted for any of the following by the relevant highway authority –
  - (a) the holding of the event;
  - (b) the suspension of the operation of any enactment, or modification of its effect, relating to the use of the road by vehicles or pedestrians, including the driving, standing or parking of motor vehicles;
  - (c) the prohibition or regulation of foot or vehicular traffic, including by diversions or other temporary changes to traffic flow or restrictions on the standing or parking of motor vehicles.
- (3) The highway authority shall, before granting a licence under paragraph (1), consult any other highway authority responsible for a road the use of which may be affected by anything done under the licence.
- (4) A licence granted under paragraph (1) may be for, or in relation to, a single event or an event that occurs periodically.
- (5) If there is more than one highway authority of the roads that may be the subject of anything described in sub-paragraph (a) to (c) of paragraph (2), the highway authorities of the roads may, but are not required to, grant a joint licence for the purposes of the event.
- (6) If a joint licence is given under paragraph (5), any reference to the exercise of a highway authority's powers under this Part may be construed as a reference to the highway authorities granting the licence jointly.
- (7) Where the highway authority refuses to grant a licence it shall give the applicant a written notice of reasons for that decision, setting out the person's right of appeal under Article 63, and where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.

**51 Conditions attached to grant of licence**

The highway authority may impose such conditions on a licence granted under Article 50 as the highway authority considers to be expedient or necessary for the purpose of the event and may, in particular, without prejudice to the generality of the foregoing, require the licence holder to do any of the following things to the satisfaction of the highway authority and at the expense of the licence holder –

- (a) make arrangements for the safety of –
  - (i) persons involved in the organization or control of the event,
  - (ii) participants in the event,
  - (iii) spectators at the event,
  - (iv) police officers and event marshals, and
  - (v) members of the general public;
- (b) make arrangements for the placing of materials on any road of which it is the highway authority;

- (c) take out insurance, to the satisfaction of the highway authority, against public liability, or ensure that such insurance has been taken out, in relation to any act or omission of the organizer, or of a participant in the event, or of an event marshal;
- (d) publish one or more notices, in such manner as the highway authority may specify, to bring to the attention of the public of Jersey the event and the licence granted under Article 50 for the purposes of the event;
- (e) pay in advance part or all of any costs incurred by the highway authority or police officers pursuant to any arrangements referred to paragraph (a) or (b).

## **52 Recovery of costs**

The costs of a highway authority or of police officers in relation to anything done pursuant to arrangements referred to in Article 51 (a) or (b) may be recovered from the licence holder as a debt owing respectively to the highway authority or the States, as the case may be.

## **53 Variation of licences**

- (1) A licence holder may, at any time before the start of an event which is the subject of a licence apply to the highway authority which granted the licence to vary it.
- (2) In this Article, references to varying a licence include revoking, substituting or amending any condition of a licence and postponing the start of the event.
- (3) The highway authority may, of its own volition, give notice to the licence holder that it intends to vary a licence granted by it.
- (4) An application under paragraph (1) shall be within such time limits and in such form and accompanied by such information and documents as the Minister may determine, or if the Minister has made no such determination, as the relevant highway authority may determine.
- (5) A notice under paragraph (3) shall give the licence holder adequate opportunity to make representations with respect to the proposed variation.
- (6) The highway authority may –
  - (a) vary a licence in such manner as it thinks fit by notice to the licence holder following receipt of an application under paragraph (1) or of its own volition following the giving of a notice under paragraph (3) and consideration of any representations under paragraph (5); or
  - (b) refuse to vary a licence following receipt of an application under paragraph (1).
- (7) If the highway authority –
  - (a) refuses to vary a licence following an application under paragraph (1); or
  - (b) varies a licence following a notice given under paragraph (3) or other than as requested in an application under paragraph (1),

---

it shall give the licence holder a written notice of reasons for the decision and, at the same time, notify the licence holder of his or her right of appeal under Article 63 and, where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.

#### **54 Revocation of a licence**

- (1) A highway authority may revoke a licence granted under Article 50 (whether or not varied under Article 53) if –
  - (a) the highway authority is satisfied that –
    - (i) any information provided in connection with the application for the licence, or an application to vary the licence, was false or misleading in a material particular,
    - (ii) there has been failure to comply with any condition of the licence or any other term of the licence has not been complied with, or
    - (iii) there has been a significant change in circumstances since the licence was granted, those circumstances being such as to justify revocation; or
  - (b) the licence holder requests or agrees to the revocation of the licence.
- (2) On revoking a licence under paragraph (1)(a), the highway authority shall give the licence holder a written notice of reasons for the decision and, at the same time, notify the licence holder of his her right of appeal under Article 63 and, where applicable, refer the person to any code of practice issued or approved for the purposes of Article 64.

#### **55 Access to premises**

Except to the extent that a police officer or a licence holder considers it necessary to prohibit, restrict or regulate vehicular traffic or the movement of pedestrians for safety reasons, nothing in this Part shall authorize the restriction of such access as is reasonably required for vehicles or any pedestrian to any premises that are situated on or adjacent to a road which is subject to anything done under a licence granted under Article 50.

#### **56 Offences relating to licensed events**

- (1) A person who at or near an event for which a licence is granted under this Part –
  - (a) fails to obey any reasonable direction of a police officer, the relevant highway authority or the licence holder;
  - (b) enters any area while it is closed to the public, unless with the permission of a police officer, the relevant highway authority, or the licence holder;
  - (c) damages or interferes with barriers or other materials placed for the purposes of the event;
  - (d) uses a vehicle in contravention of any restriction, prohibition or other regulation of traffic specified in a licence; or



- (e) otherwise contravenes, or causes the contravention, of any condition of the licence,  
is guilty of an offence and liable to a fine of level 2 on the standard scale.
- (2) A police officer, the relevant highway authority or the licence holder, may, for the purposes of an event, remove from any place any person who is liable under paragraph (1) or any vehicle or animal under the person's control.
- (3) In this Article "licence holder" includes any person authorized by the licence holder.

## PART 13

### RESTRICTION OF ROAD USE IN RESPECT OF WORKS OR EVENTS

#### **57 Highway authority's powers to restrict road use**

- (1) A highway authority may, if it considers it necessary or expedient, do any of the following in respect of any works or event taking place in or near a road of which it is the relevant highway authority –
  - (a) restrict or prohibit the use of a road by vehicles or by vehicles of any particular class or description;
  - (b) suspend the operation of any enactment, or modify its effect, relating to the use of the road by vehicles or pedestrians, including the driving, standing or parking of motor vehicles;
  - (c) prohibit or regulate foot or vehicular traffic, including making diversions or other temporary changes to traffic flow or restrictions on the standing or parking of motor vehicles;
  - (d) designate any area in the vicinity of that road as a parking place.
- (2) The powers of a highway authority may be exercised under this Article whether or not, in relation to works, the highway authority has granted a permit under Article 14, or, in relation to an event, a licence under Article 50.
- (3) Any person who fails to comply with a restriction, prohibition or designation imposed under this Article is guilty of an offence and liable to a fine of level 2 on the standard scale.

#### **58 Notice and consultation requirements**

- (1) So long as any restriction, prohibition, regulation or designation imposed under Article 57 is in force, the highway authority concerned shall issue a notice stating its effect and describing any alternative routes available for traffic, such notice being kept posted in a conspicuous manner –
  - (a) at each end of the part of the road to which the restriction, prohibition or regulation relates;
  - (b) at the points at which it will be necessary for vehicles to diverge from the road; and

- (c) at the area designated as a parking place.
- (2) Subject to paragraph (5), a highway authority shall not exercise the powers under Article 57(1)(b) unless –
  - (a) where the highway authority is not the Minister, the Minister has been consulted;
  - (b) any other highway authority who may be affected by the exercise of the powers has been consulted;
  - (c) notice in accordance with paragraph (3) has been given of the suspension or modification.
- (3) A notice under paragraph (2)(c) shall be given –
  - (a) by such reasonable means as the highway authority thinks fit in order to bring the notice to the attention of the public; and
  - (b) in advance of the suspension or modification taking effect, such period of advance notice being determined by the highway authority as appropriate in all the circumstances of the case.
- (4) The requirement under paragraph (3) shall be taken to have been satisfied by publication in the Jersey Gazette of the notice, but this is not the only way in which the requirement may be satisfied.
- (5) The requirement in paragraph (2)(1)(c) does not apply when –
  - (a) the powers to be exercised are in relation to emergency or urgent works; and
  - (b) the modification or suspension takes effect for a period not exceeding 48 hours.

### **59 Recovery of costs for things done under Articles 57 and 58**

Without prejudice to any other provision in this Law, the expenses incurred by a highway authority under Articles 57 and 58 in relation to any works or event may be recovered by the highway authority from the person carrying out the works or licence holder for the event or, if there is no licence holder, the person responsible for the event, as a debt owing to the highway authority or the States, as the case may be.

### **60 Effect of this Law on other enactments**

To the extent that doing anything under a licence or anything in accordance with the provisions of this Law in relation to works suspends or modifies any enactment relating to the use of a road by vehicles or pedestrians, including the driving, standing or parking of motor vehicles, that enactment shall be suspended or have the effect as modified.

---

**PART 14****MATTERS RELATING TO DECISIONS, DETERMINATIONS,  
PROCEEDINGS AND PENALTIES****61 Meaning of “decision”**

In this Part, “decision” means any of the following –

- (a) notice under Article 14(2) of the refusal of the grant of a permit;
- (b) notice under Article 15(6) of the imposition of permit conditions;
- (c) notice under Article 16(7)(b) of a refusal by a highway authority to vary a permit or of the variation of a permit;
- (d) notice under Article 17(1)(a) of revocation of a permit;
- (e) notice under Article 20(1) of action to be taken in response to unauthorized works;
- (f) notice under Article 25(4) of specific directions given by a highway authority to a permit holder;
- (g) an indication under Article 28(2) by a highway authority that it is not minded to grant a permit;
- (h) notice under Article 30(3) or (4) requiring making good damage to road asset or apparatus or requiring the payment of sums;
- (i) notice under Article 34(1) of enhanced standards of reinstatement required;
- (j) notice under Article 42(3) requiring undertaker to carry out remedial work for breach of duty;
- (k) notice under Article 50(7) of a refusal by a highway authority concerning the holding of an event;
- (l) notice under Article 53(7) of a refusal to vary a licence or a decision by a highway authority to vary a licence other than as requested;
- (m) notice under Article 54(1) of revocation of a licence.

**62 Time of decision taking effect**

A decision shall take effect on such date as may be specified in the notice setting out the decision unless the Court orders otherwise or the date is varied in accordance with any dispute resolution procedure.

**63 Appeals**

- (1) A person aggrieved by a decision may, within 2 months of the date of the decision, or within such longer period as the Court may allow, appeal to the Court on the ground that the decision is unreasonable having regard to all the circumstances of the case.
- (2) The Court shall allow such longer period for appeal for the purposes of paragraph (1) as it thinks fit if, in the Court’s view, the person has, having regard to his or her duty under Article 64, reasonably attempted to settle

the dispute through mediation or alternative forms of dispute resolution before initiating proceedings.

- (3) On hearing the appeal, the Court may do any of the following –
  - (a) confirm, reverse or vary the decision against which the appeal is brought;
  - (b) make such interim order as it thinks fit; and
  - (c) make such order as to the costs of the appeal as it thinks fit, including any order with respect to the payment of costs.

#### **64 Alternative dispute resolution**

- (1) On or before a person initiates proceedings under Article 63, the person shall, if the Minister has issued or approved a code of practice for the purposes of this Article, have regard to whether and to what extent recourse to mediation or another form of dispute resolution could reasonably be expected to settle the dispute other than through the normal hearing process of the Court.
- (2) In making any order or direction in proceedings referred to in Article 63, the Court shall, to the extent it thinks relevant, have regard to the extent to which a person has complied with his or her duty under paragraph (1).

#### **65 Recovery of costs and arbitration**

- (1) Where a person is entitled under certain circumstances under any provision of this Law to recover costs or expenses incurred by him or her, any dispute as to the existence of those circumstances or as to the amount recoverable may be determined by arbitration.
- (2) Either party to the dispute shall have the right to refer the dispute to independent arbitration by a single arbitrator.
- (3) The Arbitration (Jersey) Law 1998<sup>15</sup> shall apply to a reference to arbitration under this Article as if that reference were contained in an arbitration agreement between the parties.

#### **66 Codes of practice and determinations by the Minister**

- (1) The Minister may issue or approve one or more codes of practice for the purposes of giving guidance on any matter in or under this Law or for any other purpose referred to in this Law and shall ensure that such code or codes are made available to the public free of charge and published on a website maintained by the States of Jersey.
- (2) In this Law “code of practice” means a code issued or approved under paragraph (1) as revised from time to time.
- (3) In this Law, except where the context provides otherwise, for the purpose of determining whether a person has complied with any duty under this Law –

- 
- (a) compliance by a person with a code of practice to the extent that the code is relevant to that duty shall be taken as evidence of compliance with that duty; and
  - (b) failure by a person to comply with a code of practice to the extent that the code is relevant to that duty shall be taken as evidence of failure to comply with that duty.
- (4) A determination by the Minister under any of the following provisions shall be set out in a code of practice –
- (a) Article 13(3) and (5) (time limits, forms, information and required documents concerning permit applications);
  - (b) Article 15(2) and (4) (standard permit conditions);
  - (c) Article 16(1) and (4) (time limits, forms, information and required documents concerning permit variations);
  - (d) Article 24(2)(c) (matters to be included in a notice of emergency and urgent works);
  - (e) Article 31(5)(b) (information required to accompany notice of reinstatement);
  - (f) Article 31(9) (information to accompany notice of permanent reinstatement following an interim reinstatement);
  - (g) Article 31(10) (when reinstatement is taken to be completed);
  - (h) Article 32(2) or (4) (information to accompany completion of making good defects following a reinstatement);
  - (i) Article 32(5) (period of time for making good defects following a reinstatement);
  - (j) Article 33(1)(a) (requirements for reinstatement or making good works);
  - (k) Article 33(3) (circumstances for issuing an Article 34 notice);
  - (l) Article 37(1) (manner and form of records of apparatus);
  - (m) Article 37(6) (undertaker records);
  - (n) Article 41(3) (time for making good any damage or defect caused by access frame covers);
  - (o) Article 49(2) (time limits, forms, information and required documents concerning applications for licences for events);
  - (p) Article 53(4) (time limits, forms, information and required documents concerning applications for variations to licences for events).
- (5) The Minister shall not issue or approve a code of practice, or any variation to a code of practice –
- (a) setting out a determination under a provision referred to in paragraph (4)(a) to (n) without prior consultation with –
    - (i) the utility undertakers (excluding subsidiaries), and
    - (ii) the other highway authorities;
  - (b) setting out a determination under a provision referred to in paragraph (4)(o) and (p), without prior consultation with the other highway authorities; or

- (c) giving guidance on the exercise of a highway authority's powers under Article 42 without prior consultation with –
  - (i) the utility undertakers (excluding subsidiaries), and
  - (ii) the other highway authorities,

unless, in the case of a variation, the Minister considers the variation not to be of material significance.

## **67 Fixed penalty offences**

- (1) In this Article –
  - (a) “fixed penalty offence” means an offence under any of the following –
    - (i) Article 11(3) (unauthorized road works),
    - (ii) Article 19(1) (breach of permit conditions),
    - (iii) Article 24(3) (failure to give notice of emergency or urgent works),
    - (iv) Article 25(7) (failure to take safety measures),
    - (v) Article 26(7), to the extent that it applies to persons undertaking works referred to in Article 26(1)(a), (b) or (d) (failure to comply with requirements concerning supervisors and operatives),
    - (vi) Article 31(12) (failure to comply with notice requirements in respect of notice of reinstatement), and
    - (vii) Article 32(2) or (4) (failure to comply with notice requirements in respect of duty to make good);
  - (b) “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.
- (2) Subject to paragraphs (8) and (9) the effect of a fixed penalty notice is that –
  - (a) no proceedings for the fixed penalty offence to which the notice relates shall be commenced before the end of the period specified in Regulations under this Article for the payment of the penalty; and
  - (b) no such proceedings shall be commenced if payment of the penalty is made before the end of that period.
- (3) The States may, by Regulations, make provision for fixed penalty notices.
- (4) Regulations under this Article shall specify –
  - (a) the description of persons who may issue fixed penalty notices;
  - (b) the contents of a fixed penalty notice, such contents to include a statement of the effect of a fixed penalty notice;
  - (c) the amount of the penalty and the period for payment;
  - (d) a discounted amount of the penalty to be payable if paid within a specified period; and
  - (e) the method by which a fixed penalty shall be paid.

- 
- (5) Regulations under this Article shall also include provision for –
    - (a) withdrawal of fixed penalty notices wrongly given and refunds for any amount wrongly paid;
    - (b) the application by highway authorities of fixed penalties received by them;
    - (c) the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties received; and
    - (d) the notification to the Attorney General of any fixed penalty notices issued.
  - (6) Regulations under this Article may –
    - (a) prescribe circumstances in which a fixed penalty notice shall not be given; and
    - (b) make such other provision as the States consider necessary or expedient for the purpose of fixed penalty notices.
  - (7) The fact that a fixed penalty notice has been issued to a person shall not affect the right of the Attorney General to prosecute that person for any offence under this Law or to direct that the person be so prosecuted and, in such event, the fixed penalty notice shall be deemed to be withdrawn.
  - (8) Where a person has paid a penalty pursuant to a fixed penalty notice in relation to an offence for which the person is subsequently prosecuted, the amount of such penalty shall be refunded to the person.

## **PART 15**

### **MISCELLANEOUS AND CLOSING**

#### **68 Regulations and Orders**

- (1) The Minister may make Orders for prescribing any matter which is to be prescribed under this Law.
- (2) Any Regulations or Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States, or, as the case may be, the Minister making the Order, to be expedient for the purposes of the Regulations or the Order.
- (3) Orders may be made for or with respect to the following matters –
  - (a) requiring fees to be paid under this Law;
  - (b) the amounts and payment of those fees.
- (4) In prescribing such fees, the Minister may take into consideration such matters as he or she thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Minister or of highway authorities in discharging their functions under this Law.
- (5) An Order may do either or both of the following –
  - (a) authorize any matter or thing to be from time to time determined, applied or regulated by any specified person or body;

- (b) create an offence punishable by a penalty not exceeding level 3 on the standard scale.

#### **69 Savings, transitional and consequential provisions**

- (1) Nothing in this Law, or done under this Law, shall affect the operation of customary law or any enactment, unless expressly so provided by or under this Law.
- (2) Article 70 shall not affect the operation of any provision repealed by that Article in respect of –
  - (a) an event which has been authorized but not held or ended;
  - (b) works which have been authorized under an enactment and have been commenced but not ended,at the date the repeal took effect.
- (3) Where a provision continues in force under paragraph (2), that provision shall continue until the event or works has or have come to an end and any road closure or other arrangement made for the purposes of the event or works has come to an end.
- (4) The States may, by Regulations, amend any enactment, including this Law, for the purpose of making such transitional, consequential, incidental, supplementary and savings provisions as they consider necessary or expedient in consequence of any provision of this Law.
- (5) Schedules 1 and 2 shall have effect.

#### **70 Repeal**

The following enactments are repealed –

- (a) the Public Utilities Road Works (Jersey) Law 1963<sup>16</sup>;
- (b) the Motor Vehicle Races (Jersey) Law 1946<sup>17</sup>;
- (c) the Entertainments on Public Roads (Jersey) Law 1985<sup>18</sup>.

#### **71 Citation and commencement**

This Law may be cited as the Road Works and Events (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.



**SCHEDULE 1**

(Article 69)

**AMENDMENTS TO UTILITY LEGISLATION****PART 1 – ELECTRICITY (JERSEY) LAW 1937 AMENDED****1 Interpretation**

In this Part, “principal Law” means the Electricity (Jersey) Law 1937<sup>19</sup>.

**2 Article 1 substituted**

For Article 1 of the principal Law there shall be substituted the following Article –

**“1 Interpretation**

In this Law –

‘Company’ means Jersey Electricity PLC, formerly The Jersey Electricity Company Limited, registered by Act of the Royal Court dated 5th April 1924 in accordance with the provisions of the Laws governing Limited Liability Companies (1861 to 1922)<sup>20</sup>;

‘Regulations’ means the Electricity Safety, Quality and Continuity Regulations 2002 (S.I. 2002/2665) of the United Kingdom as for the time being in force.”.

**3 Article A2 inserted**

In the principal Law after the sub-heading “Powers” and before Article 2 there shall be inserted the following Article –

**“A2 Relationship with other enactments**

Nothing in or done under this Law shall relieve the Company from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>21</sup> or any other enactment.”.

**4 Article 2 amended**

In Article 2 of the principal Law the words “, and accordingly” up to and including “Jersey Electricity Undertaking” shall be deleted.

**5 Article 3 amended**

In Article 3 of the principal Law, the words “, under the supervision of the competent authority,” shall be deleted.

**6 Article 4 amended**

In Article 4 of the principal Law, the words “, and subject to” up to and including the words “public roads, streets or lanes” shall be deleted.

**7 Article 5 repealed**

Article 5 of the principal Law shall be repealed.

**8 Article 6 substituted**

For Article 6 of the principal Law there shall be substituted the following Article –

**“6 Mains and lines to conform with Regulations**

All mains and transmission lines shall be laid in compliance with the Regulations.”.

**9 Article 7 repealed**

Article 7 of the principal Law shall be repealed.

**10 Article 8 amended**

For the first paragraph of Article 8 of the principal Law from the words “The Company shall” up to and including the words “exist in the said public roads.” there shall be substituted the following paragraph –

“The Company shall also have the right to erect poles, suspended lamps, pillars, lamp posts and other appliances upon the public roads, streets or lanes, and to carry overhead lines and other appliances necessary for the carrying on of its undertaking over and along the public roads, provided that such overhead lines and appliances comply with the Regulations.”.

**11 Article 13 substituted**

For Article 13 of the principal Law there shall be substituted the following Article –

**“13 Protection from interference of telecommunication systems**

The Company shall take all reasonable precautions for securing that any installation, alteration or change in the mode of operation of any electric line, plant or apparatus does not interfere with the operation of any

telecommunication system run under a licence under the Telecommunications (Jersey) Law 2002<sup>22</sup>.”.

**12 Article 14 amended**

In Article 14 of the principal Law –

- (a) the words “of the English Electricity Commissioners for the time being in force” shall be deleted;
- (b) for the words “said Regulations of the English Electricity Commissioners” there shall be substituted the words “Regulations”.

**13 Article 15 amended**

In Article 15 of the principal Law –

- (a) the existing text shall be numbered paragraph (1);
- (b) after paragraph (1) there shall be added the following paragraph –
  - “(2) In paragraph (1) ‘competent Authorities’ refers to any highway authority responsible for a public road, street or lane in which the works referred to in paragraph (1) are to take place.”.

**14 Article 16 repealed**

Article 16 of the principal Law shall be repealed.

**15 Article 17 amended**

In Article 17 of the principal Law, the words “of the English Electricity Commissioners for the time being in force” shall be deleted.

**16 Article 31 repealed**

Article 31 of the principal Law shall be repealed.

**17 Article 33 amended**

In Article 33 of the principal Law for the words “– (a) as to whether the Regulations” up to and including the words “English Electricity Acts have been complied with or not,” there shall be substituted the words “as to whether the Regulations have been complied with”.

**18 Article 36 repealed**

In Article 36 of the principal Law shall be repealed.

**19 Article 37 substituted**

For Article 37 of the principal Law there shall be substituted the following Article –

**“37 Intentional damage**

- (1) A person who intentionally removes, destroys, damages or otherwise interferes with any main, transmission line, street lamp, or other appliance of the Company for supplying electricity, shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.
- (2) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>23</sup>.”.

**PART 2 – JERSEY GAS COMPANY (JERSEY) LAW 1989 AMENDED****20 Interpretation**

In this Part, “principal Law” means the Jersey Gas Company (Jersey) Law 1989<sup>24</sup>.

**21 Article A46 inserted**

In Part 9 of the principal Law before Article 46 there shall be inserted the following Article –

**“A46 Relationship with other enactments**

Nothing in or done under this Part shall relieve the Company from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>25</sup> or any other enactment.”.

**22 Article 46 substituted**

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

**“46 Power to take up streets and other powers**

The Company may –

- (a) take up streets;
- (b) open and break up drains and tunnels in or under those streets;
- (c) lay down, repair, alter, modify or remove pipes, appliances or structures, mains, drains, tunnels and other works;
- (d) erect pillars, lamps and other works in the streets,

and do all other acts which the Company from time to time deems necessary for supplying gas to inhabitants or for purposes ancillary to the objects of the Company.”.

**23 Article 47 amended**

In Article 47(7) of the principal Law for the words “and for this purpose” up to and including the words “competent authority” there shall be substituted the following words –

“and for this purpose –

- (a) those powers shall be exercised under the supervision of the parish where the work is to be undertaken; and
- (b) the Company shall do as little damage as possible in the exercise of those powers and give compensation for any damage caused by the Company in exercise of those powers.”.

**24 Articles 48, 49, 50, 51 and 52 repealed**

Articles 48, 49, 50, 51 and 52 shall be repealed.

**25 Article 53 substituted**

For Article 53 of the principal Law there shall be substituted the following Article –

**“53 Street improvements**

- (1) Nothing in this Law shall interfere with the right of the Minister or the parish to alter the level of, deviate or improve, in any manner the Minister or the parish thinks fit, a street in which mains or pipes have been laid by the Company.
- (2) The Company shall, at the end of 15 days after receiving notice in writing from the Minister or the parish, as the case may be, proceed to alter the position of those mains or pipes in the manner and to the extent prescribed by the notice, or, in the case of dispute, as shall be determined by the court or by arbitration.
- (3) In acting under paragraph (2), the Company shall ensure that there is not less than 2 feet of cover over a main.
- (4) The expenses of alterations in their mains or pipes shall be repaid to the Company by the States or the parish, as the case may be.”.

**26 Article A54 inserted**

In Part 10 of the principal Law before Article 54 there shall be inserted the following Article –

**“A54 Relationship with other enactments**

Nothing in or done under this Part shall relieve the Company from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>26</sup> or any other enactment.”.

**27 Article 81 substituted**

For Article 81 of the principal Law there shall be substituted the following Article –

**“81 Damage to pipes etc**

- (1) A person who intentionally removes, destroys or damages a pipe, pillar, post, plug or other property of the Company used in connection with the supply of gas or wastes or improperly uses gas supplied by the Company, shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.
- (2) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>27</sup>.”.

**PART 3 – TELECOMMUNICATIONS (JERSEY) LAW 2002 AMENDED****28 Interpretation**

In this Part “principal Law” means the Telecommunications (Jersey) Law 2002<sup>28</sup>.

**29 Article 25A inserted**

In the principal Law, after Article 25 there shall be inserted the following Article –

**“25A Relationship with other enactments**

Nothing in or done under this Part shall relieve any person from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>29</sup> or any other enactment.”.

**30 Article 26 amended**

Article 26(2) of the principal Law shall be deleted.

**31 Article 47 amended**

In Article 47 of the principal Law –

- (a) in paragraph (1), for the words “not exceeding 6 months” up to and including the words “standard scale or both” there shall be substituted the words “of 2 years and a fine”;
- (b) after paragraph (2) there shall be added the following paragraph –
  - “(3) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>30</sup>.”.

#### **PART 4 – WATER (JERSEY) LAW 1972 AMENDED**

##### **32 Interpretation**

In this Part “principal Law” means the Water (Jersey) Law 1972<sup>31</sup>.

##### **33 Article A2 inserted**

In Part 2 of the principal Law before Article 2 there shall be inserted the following Article –

###### **“A2 Relationship with other enactments**

Nothing in or done under this Law shall relieve the Company from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>32</sup> or any other enactment.”.

##### **34 Article 2 amended**

In Article 2(1) of the principal Law the words “Subject to” up to and including the words “Law 1963,” shall be deleted.

#### **PART 5 – WATER POLLUTION (JERSEY) LAW 2000**

##### **35 Article 46 amended**

In Article 46 of the Water Pollution (Jersey) Law 2000<sup>33</sup> –

- (a) the existing text shall be numbered paragraph (1);
- (b) after paragraph (1) there shall be added the following paragraph –
  - “(2) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>34</sup>.”.

---

**PART 6 – WATER RESOURCES (JERSEY) LAW 2007****36 Article 42 amended**

In Article 42 of the Water Resources (Jersey) Law 2007<sup>35</sup> –

- (a) the existing text shall be numbered paragraph (1);
- (b) after paragraph (1) there shall be added the following paragraph –
  - “(2) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>36</sup>”.

**PART 7 – POSTAL SERVICES (JERSEY) LAW 2004 AMENDED****37 Article 46(3) substituted**

For Article 46(3) of the Postal Services (Jersey) Law 2004<sup>37</sup> there shall be substituted the following paragraph –

- “(3) Nothing in this Article shall relieve a public postal operator from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>38</sup> or any other enactment.”.

**PART 8 – DRAINAGE (JERSEY) LAW 2005 AMENDED****38 Interpretation**

In this Part “principal Law” means the Drainage (Jersey) Law 2005<sup>39</sup>.

**39 Article 35 amended**

In Article 35 of the principal Law, after paragraph (2) there shall be added the following paragraph –

- “(3) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>40</sup>”.

**40 Article 44 amended**

In Article 44 of the principal Law after paragraph (3) there shall be added the following paragraph –

- “(4) This Article is subject to Article 30(12) of the Road Works and Events (Jersey) Law 201-<sup>41</sup>”.

**41 Article 52 amended**

For Article 52 of the principal Law there shall be substituted the following Article –



---

**“52 Relationship with other enactments**

Nothing in or done under this Law shall relieve any person from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201-<sup>42</sup> or any other enactment.”

**SCHEDULE 2**

(Article 69)

**AMENDMENTS TO ROAD TRAFFIC LEGISLATION****1 Highways (Jersey) Law 1956 amended**

In Article 2 of the Highways (Jersey) Law 1956<sup>43</sup> –

- (a) the existing text shall be numbered paragraph (1);
- (b) after paragraph (1) there shall be added the following paragraphs –
  - “(2) Nothing in this Law shall apply to –
    - (a) undertaker works carried out by a utility undertaker, including any undertaker works carried out by another person under licence from the utility undertaker;
    - (b) specified road works;
    - (c) emergency or urgent works.
  - (3) In paragraph (2), ‘undertaker works’, ‘utility undertaker’, ‘specified road works’, ‘emergency works’ and ‘urgent works’ have the same meanings as in the Road Works and Events (Jersey) Law 201-<sup>44</sup>.
  - (4) Nothing in this Law shall relieve a person from an obligation to obtain any permit, consent, permission or authorization required under the Road Works and Events (Jersey) Law 201- , or any other enactment.”.

**2 Road Traffic (Jersey) Law 1956 amended**

- (1) In this paragraph “principal Law” means the Road Traffic (Jersey) Law 1956<sup>45</sup>.
- (2) Article 67 of the principal Law shall be repealed.
- (3) In Article 68 of the principal Law –
  - (a) in paragraph (1) for the words “paragraph (2)” there shall be substituted the words “paragraphs (2) and (3)”;
  - (b) after paragraph (2) there shall be added the following paragraph –
    - “(3) This Article does not apply where a highway authority issues a notice under Article 58(2)(c) of the Road Works and Events (Jersey) Law 201-<sup>46</sup>.”.

---

1	<i>chapter 13.125</i>
2	<i>chapter 22.080</i>
3	<i>L.1/1861</i>
4	<i>L.1/1918</i>
5	<i>L.1/1861 (repealed)</i>
6	<i>chapter 22.600.50</i>
7	<i>chapter 25.550</i>
8	<i>chapter 25.950</i>
9	<i>chapter 25.150</i>
10	<i>chapter 11.150</i>
11	<i>chapter 22.080</i>
12	<i>chapter 15.350</i>
13	<i>chapter 22.600.50</i>
14	<i>chapter 11.700</i>
15	<i>chapter 04.080</i>
16	<i>L.7/1963 (chapter 25.500)</i>
17	<i>L.1/1947 (chapter 25.300)</i>
18	<i>L.15/1985 (chapter 25.050)</i>
19	<i>chapter 27.100</i>
20	<i>L.1/1861</i>
21	<i>P.152/2015</i>
22	<i>chapter 06.288</i>
23	<i>P.152/2015</i>
24	<i>chapter 27.300</i>
25	<i>P.152/2015</i>
26	<i>P.152/2015</i>
27	<i>P.152/2015</i>
28	<i>chapter 06.288</i>
29	<i>P.152/2015</i>
30	<i>P.152/2015</i>
31	<i>chapter 27.700</i>
32	<i>P.152/2015</i>
33	<i>chapter 27.800</i>
34	<i>P.152/2015</i>
35	<i>chapter 27.960</i>
36	<i>P.152/2015</i>
37	<i>chapter 06.145</i>
38	<i>P.152/2015</i>
39	<i>chapter 22.080</i>
40	<i>P.152/2015</i>
41	<i>P.152/2015</i>
42	<i>P.152/2015</i>
43	<i>chapter 25.150</i>
44	<i>P.152/2015</i>
45	<i>chapter 25.550</i>
46	<i>P.152/2015</i>