



Jersey

# **ROAD WORKS AND EVENTS (JERSEY) LAW 2016**

## **Official Consolidated Version**

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## ROAD WORKS AND EVENTS (JERSEY) LAW 2016

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## ROAD WORKS AND EVENTS (JERSEY) LAW 2016

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

Commencement [[see endnotes](#)]

### 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](#) –

- (a) the Minister acting under the [Drainage \(Jersey\) Law 2005](#);
- (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);
- (c) Jersey Gas Company Limited incorporated by the Loi (1918) sur la compagnie du gaz;
- (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;
- (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.<sup>1</sup>

- (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](#);
  - (d) any public parking place referred to in an Order under Article 59 of the [Road Traffic \(Jersey\) Law 1956](#);
  - (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](#) 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](#) or permitted by the [Customary Law \(Choses Publiques\) \(Jersey\) Law 1993](#), 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,

- (iii) 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 sub-paragraph (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 3 on the standard scale.<sup>2</sup>
- (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 3 on the standard scale.<sup>3</sup>

#### 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 3 on the standard scale.<sup>4</sup>
- (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 3 on the standard scale.<sup>5</sup>

## **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 3 on the standard scale.<sup>6</sup>

## **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 3 on the standard scale.<sup>7</sup>

## **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 3 on the standard scale.<sup>8</sup>

**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 3 on the standard scale.<sup>9</sup>
- (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 3 on the standard scale.<sup>10</sup>
- (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 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 3 on the standard scale.<sup>11</sup>
- (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 3 on the standard scale.<sup>12</sup>

**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 3 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.<sup>13</sup>
- (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](#).

**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 3 on the standard scale.<sup>14</sup>

**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](#).

#### 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](#); 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, 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 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.<sup>15</sup>

## **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](#) 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 Citation**

This Law may be cited as the Road Works and Events (Jersey) Law 2016.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	*Projet No (where applicable)
Road Works and Events (Jersey) Law 2016	<a href="#">L.11/2016</a>	1 January 2017: Parts 1, 12 and 13, specified provisions in Parts 14, 15 and specified provisions in Schedule 2 ( <a href="#">R&amp;O.121/2016</a> )  1 January 2018: remainder ( <a href="#">R&amp;O.118/2017</a> )	<a href="#">P.152/2015</a>
Criminal Justice (Miscellaneous Provisions) (No. 2) (Jersey) Regulations 2018	<a href="#">R&amp;O.77/2018</a>	18 July 2018	<a href="#">P.84/2018</a>

\*Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
70	spent, omitted
71	70
Schedule 1	spent, omitted
Schedule 2	spent, omitted

### Table of Endnote References

- <sup>1</sup> Article 1(1) *editorial change, definition “utility undertaker”, “Limited” deleted, “Limited” inserted instead*
- <sup>2</sup> Article 10(4) *amended by R&O.77/2018*
- <sup>3</sup> Article 11(3) *amended by R&O.77/2018*
- <sup>4</sup> Article 25(7) *amended by R&O.77/2018*
- <sup>5</sup> Article 25(10) *amended by R&O.77/2018*
- <sup>6</sup> Article 26(7) *amended by R&O.77/2018*
- <sup>7</sup> Article 27(5) *amended by R&O.77/2018*
- <sup>8</sup> Article 28(11) *amended by R&O.77/2018*
- <sup>9</sup> Article 30(10) *amended by R&O.77/2018*
- <sup>10</sup> Article 31(3) *amended by R&O.77/2018*
- <sup>11</sup> Article 32(6) *amended by R&O.77/2018*
- <sup>12</sup> Article 33(4) *amended by R&O.77/2018*
- <sup>13</sup> Article 37(9) *amended by R&O.77/2018*
- <sup>14</sup> Article 40(2) *amended by R&O.77/2018*

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<sup>15</sup> Article 54(2) *editorial change, “his her” deleted, “his or her” inserted instead*