

STATES OF JERSEY



DRAFT REMOVAL OF VEHICLES (PRIVATE LAND) (JERSEY) REGULATIONS 201- (P.36/2016): COMMENTS

**Presented to the States on 10th June 2016
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

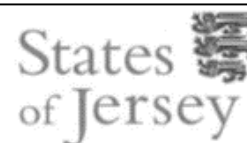
COMMENTS

1. On 23rd May 2016, the Environment, Housing and Infrastructure Scrutiny Panel was briefed on the [Draft Removal of Vehicles \(Private Land\) \(Jersey\) Regulations 201- \(P.36/2016\)](#). Also, prior to the briefing, the Panel had received written answers to specific questions it had posed to the Minister on the draft Regulations (see attached **Appendix**).
2. The Panel concluded that the draft Regulations were of public importance, but agreed not to pursue the topic further as it was content that the concerns it had previously held had been sufficiently dealt with by the Department. Nevertheless, the briefing provided an opportunity to put questions and elicit information on the draft Regulations which we believe will be of use to Members during the debate.
3. The draft Regulations seek to provide limited powers to Andium Homes and the Ports of Jersey to remove any vehicle parked on land that they administer, which is causing or is likely to cause a security risk, danger, nuisance or obstruction, and to dispose of the vehicle if it is not claimed by the owner. The draft Regulations set the procedures and timeframes to which Andium Homes and the Ports of Jersey must adhere when removing any vehicle that has been parked on their land without permission.
4. The Panel's main query was the rationale behind introducing a piece of legislation that only provided powers to Andium Homes and Ports of Jersey, and not to all private landowners. We were advised that similar powers were previously vested in the States of Jersey under the Road Traffic (Removal of Vehicles) (Jersey) Order 1963 and that, following the incorporation of Andium Homes and Ports of Jersey (and the transfer of land to those companies), it was necessary to approve Regulations in the form now proposed to vest similar powers in those 2 companies to effectively reinstate the previous position. Having regard to the assets and resources transferred to those 2 organisations, we were told that they were both well-equipped, with operators and contracts already in place and the resources available, to properly administer the removal of vehicles. The Panel was advised that whilst consideration had been given to the possibility of extending the Regulations to all private landowners, it was felt that there were a number of operational practicalities that needed to be dealt with before a legal framework could be introduced. Firstly we were told that, unlike Andium Homes and Ports of Jersey, the majority of private landowners would not have land available to which vehicles might be removed, and might therefore require access to facilities where removed vehicles might be stored securely. Secondly, other private landowners may not have resources available to deal with the removal of unauthorised vehicles, and would need assistance from an administered authority to undertake enquiries. As a result, there was a concern that Parishes may not currently have the capacity to deal with the work that this could entail.
5. The Panel was advised that the Department for Community and Constitutional Affairs was reviewing the broader issue of unauthorised vehicles, and work was ongoing to develop a solution which would be applicable to all private landowners. Furthermore, an officer group, which had been established to develop proposals, had been working with the Infrastructure Department,

Comité des Chefs de Police and other stakeholders, to review the operational detail that would need to be covered in the legal framework. It was anticipated that, once these matters had been addressed, the Minister for Home Affairs would bring forward draft legislation to the States Assembly.

6. The Panel questioned the timeline in which it was anticipated that the draft legislation for all private landowners would be forthcoming. The Panel was advised that the draft Regulations were triennial Regulations, having a limited lifespan of 3 years, and that it was anticipated that the new legislation would be brought forward in the intervening period. When the Panel raised this question at the briefing with the Minister for Housing and her officers, we were further advised that the intention was to bring the draft legislation for all private landowners to the States before the end of the current political term of office. Following the briefing, we sought clarity from the Minister for Home Affairs on this matter, who confirmed that it was her aim to seek to lodge the draft legislation for approval by the States Assembly within the next 12 months if possible, and if not, during the current term of the Assembly.
7. Another concern the Panel had with the draft Regulations was specifically in regard to the removal of abandoned vehicles, and as to how it would be determined whether a vehicle had been abandoned or not. The Panel was advised that Regulation 2 of the draft Regulations stated that an authorised officer had to be of the opinion that the position or condition of the vehicle or the circumstances in which the vehicle had been left were such that the vehicle had been abandoned. There was therefore an onus on the authorised officer to demonstrate that the vehicle had been abandoned. It was further advised that an action could be taken against the officer by the owner of the vehicle if it was felt that the vehicle had been wrongly removed.
8. The Panel also raised questions about what safeguards were in place to ensure that vehicle owners were aware that their vehicle was being left unauthorised on Andium Homes or Ports of Jersey land. We were advised that firstly, under Regulation 2(1)(d), a vehicle may only be removed from Andium Homes or Ports of Jersey land where there was a signage on the road where the vehicle is situated, or on a road in the vicinity, that states the land on which the vehicle is situated belongs to one of the organisations. Furthermore, Regulation 2(3) specifies that where an authorised officer of Andium Homes or Ports of Jersey requires a vehicle to be moved or removed, if the owner is present, the officer must show his or her authorisation to remove the vehicle if requested. Lastly, in regard to parking spaces, Regulation 3(1)(c)(i), (ii) and (iii) provides that there must be clear signage visible from the parking space indicating that the space is allocated for use by a particular person or class of person, and warning that any vehicle that is not authorised to be there shall be liable to be removed.
9. At the briefing, we were advised that Andium Homes was currently preparing signage for all of its facilities and would be rolling out the installation of the signs over a number of weeks, commencing 15th June (provided the draft Regulations are adopted by the States). Furthermore, as each facility has the signs installed, residents would be reminded in writing of the need to apply for, or renew, their permits before Andium actively started enforcement work.

10. The Panel also sought to establish whether Andium Homes would actively communicate the changes, proposed in the draft Regulations, to tenants. We were informed that the current Andium Homes Standard Tenancy Agreement contained a section on parking which stipulated areas where tenants were not authorised to park and the actions that would be taken if they were to do so. Furthermore, we were advised that Andium Homes would use the Andium Homes Tenants' Forum and residents' groups to communicate the new powers, as well as all social media feeds, the website and the Facebook page. Finally, each estate has an Andium Homes officer nominated as a liaison. These officers visit their communities regularly and engage with residents to address any issues they may have.
11. The Panel noted that within the draft legislation there were no requirements for warning notices, and it considered whether this was appropriate. It was advised that, although the legislation did not stipulate any requirements for these, Andium Homes issue their own warning notices out of choice, and would continue to issue them if the new legislation were introduced.
12. At the briefing, the Panel asked the Minister whether any consideration had been given to introducing fining powers under the draft Regulations. It was advised that, whilst there was no intention to introduce such powers during the period in which the triennial Regulations were in force, it was something that the Department for Community and Constitutional Affairs would consider in the future. For instance, in the context of the development of a legal framework for the removal of unauthorised vehicles on all private land, the intention would be to consider whether there was an appetite among private landowners for a civil penalties regime. We were informed that this would most likely be determined by a thorough consultation with key stakeholders.
13. In light of the briefing and the further correspondence we had with both the Minister for Housing and the Minister for Home Affairs, the Panel concluded that no further work needed to be undertaken by Scrutiny on the draft Regulations. However, the Panel also agreed that it was imperative that the Minister for Home Affairs ensures that the draft legislation for all private landowners is brought to the States within the current term of office and, preferably, within the next 12 months.
14. The Panel would like to take this opportunity to thank the Minister for Housing, the Minister for Home Affairs, and their Officers, for assistance during our review.



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3 May 2016

Dear David,

A handwritten signature in cursive script that reads "David".

Removal of Vehicles (Private Land) (Jersey) Regulations 201-

I am writing following your letter of 26th April in which you raise a number of questions about the draft Removal of Vehicles (Private Land) (Jersey) Regulations. I have set out my response to each of the questions you raise, which I hope will assist the Panel with its consideration of the draft Regulations.

1. Why is the law being brought in only for Andium and Ports of Jersey premises and not for all abandoned vehicles throughout the island?

The draft Regulations broadly reinstate the powers to remove unauthorised vehicles that Andium Homes and Ports of Jersey were able to exercise under the Road Traffic (Removal of Vehicles) (Jersey) Order 1963 when they were States bodies. The legal position changed following incorporation because they were no longer classified as public authorities, and therefore the provisions of the 1963 Order were not applicable.

Because Andium Homes and Ports of Jersey previously had powers to remove unauthorised vehicles, and have knowledge and resources to do so correctly, it is considered reasonable to reinstate equivalent provisions to those that the companies had under the 1963 Order.

The problem is particularly challenging for Andium Homes, which has to deal regularly with parking-related issues and vehicles abandoned on its land. You will be aware that the issue has been raised in the Assembly on several occasions since Andium Homes' incorporation in July 2014, and it is important to rectify the position so that tenants have the full benefit of parking spaces allocated to them.

Ports of Jersey have powers under existing legislation to remove unauthorised vehicles on their land¹. The Regulations will reinforce these powers and extend vehicle removal powers to other land owned and managed by the Ports of Jersey, but which does not fall within the administration of the airport or the harbours.

At the same time, work is ongoing to develop a solution which would be applicable to all private landowners. The possibility of extending legislative provisions to all private landowners was investigated before lodging the draft Regulations. The Department for Community and Constitutional Affairs, the Department for Infrastructure and the Law Draftsman, met with the Comité des Chefs de Police to discuss whether the Parish authorities might have been able to administer the system for all private landowners.

¹ The Aerodromes (Jersey) Regulations 1965 and the Harbours (Jersey) Regulations 1962

However, it was decided not to advance on this basis, for the time-being at least, because the Parishes identified a number of concerns about the practicalities of the legal framework, including the resources available to deal with the removal of unauthorised vehicles and the availability of land to remove vehicles to.

This wider piece of work continues with a view to developing a legal framework that will enable all private landowners to remove unauthorised vehicles from their land. It is anticipated that this would be brought forward by the Minister for Home Affairs in due course and an officer working group has been established to develop proposals.

2. Why will the law only be effective for 3 years?

The draft Regulations will have a limited lifespan of three years because it is anticipated that new legislation will be brought forward in the intervening period, which will encompass all private landowners, including Andium Homes and Ports of Jersey, as mentioned above.

A legal framework to enable the removal of unauthorised vehicles on private land is being developed and the framework is likely to be similar to that which has been formulated for Andium Homes and Ports of Jersey, taking into account the particular challenges that a private landowner may face, and including additional safeguards to ensure that private landowners follow the correct process when removing a vehicle.

3. When was the Road Traffic (Removal of Vehicles) (Jersey) Order 1963 last updated?

The Road Traffic (Removal of Vehicles) Jersey) Order 1963 was last updated in 1994, but there have not been any substantive changes to the Order since it was first enacted. The 1963 Order deals clearly with the removal of vehicles from public land and, rather than amend the Order to cover States-owned companies, it was decided to introduce regulations that reflected the private position of Andium Homes and Ports of Jersey, including additional safeguards as set out in answer to question 4.

4. The draft Regulations seek to provide Andium and Ports of Jersey with some additional safeguards around signage and the removal process. What are these additional safeguards?

There are a number of safeguards that have been added to the draft Regulations to ensure that vehicle owners are aware that their vehicle is being left unauthorised on Andium Homes or Ports of Jersey land.

Under Regulation 2 (1) (d) a vehicle may only be removed from Andium Homes or Ports of Jersey land where there is signage on the road where the vehicle is situated, or on a road in the vicinity, that states the land on which the vehicle is situated belongs to Andium Homes or Ports of Jersey as the case may be.

Moreover, Regulation 2 (3) provides that where an authorised officer of Andium Homes or Ports of Jersey requires a vehicle to be removed, if the owner is present, the officer must show his or her authorisation to remove the vehicle if requested.

If the owner the owner of a vehicle is present when Andium Homes or Ports of Jersey seek to remove the vehicle, and refuses to do so of their own volition, Regulation 2 (6) requires a police officer to be present at the removal of the vehicle in order to prevent any potential escalation of the disagreement between the authorised officer of Andium Homes or Ports of Jersey, and to ensure the vehicle is safely removed.

Finally, in respect of parking spaces, Regulation 3 (1) (c) (i) – (iii) provides that there must be signage clearly visible from the parking space indicating that the space is allocated for use

by a particular person or class of person (e.g. tenants or service users), and warning that any vehicle that is not authorised to be there shall be liable to be removed. It also states that the contact telephone number of the person who has custody of the removed vehicle must be displayed on the signage.

5. Where will the vehicles be stored once removed from the property(ies)?

Andium Homes and Ports of Jersey have compounds in which they can store vehicles that have been removed from their land. The problem is therefore easier for Andium Homes and Ports of Jersey to deal with than it might be for most other private landowners who are unlikely to have land available to store vehicles. This is one reason why the Regulations apply only to Andium Homes and Ports of Jersey at this stage.

6. What will happen to the vehicle after the storage period has expired?

In accordance with Regulation 4, after the six week storage period expired, and Andium Homes and Ports of Jersey had attempted to make contact with the owner of an abandoned vehicle, the vehicle may be sold or disposed of. Regulation 4 (7) is clear that a vehicle may only be disposed of where it appears the vehicle has been abandoned.

Regulation 4 (8) permits Andium Homes and Ports of Jersey to apply the proceeds of a vehicle's sale towards the satisfaction of any costs they may have reasonably incurred in connection with its disposal. In the event that either company incurs costs as a result of the disposal of a vehicle that cannot be satisfied through sale, the Regulations enable them to recover the costs from the last registered owner of the vehicle.

Regulation 4 (10) states that Andium Homes and Ports of Jersey must, having deducted the sum recoverable for their costs, pay the balance (if any) from the sale of a vehicle to the person to whom the vehicle had belonged to. After a period of one year, if the sum has not been claimed, it shall be credited to the States.

7. How do you identify the owners of the abandoned vehicles if the vehicle has foreign registration plates?

Regulation 4 (2) enables Andium Homes of Ports of Jersey to request the Inspector of Motor Traffic to supply the name and address of the person recorded as owning the vehicle.

However, if the vehicle is foreign registered or has no registration plates or generally cannot be identified from the vehicle register, Regulation 4 (6) specifies that Andium Homes and Ports of Jersey must insert a notice in the Jersey Gazette stating that it is their intention to sell or dispose of the vehicle on or after the date specified in the notice, being no later than 2 weeks from the date of notice and no earlier than 6 weeks from the date of the removal of the vehicle.

This is the same as the practice prescribed for Parish and States authorities under the Road Traffic (Removal of Vehicles) (Jersey) Order 1963.

8. The piece of legislation does not mention the legality of notices. Please can you advise which Law allows these companies to issue notices and fines?

There are no fining powers under the draft Regulations. The powers available to Andium Homes and Ports of Jersey are the removal of vehicles and their eventual sale or disposal after six week has elapsed.

The notice that Andium Homes or Ports of Jersey may issue under Regulation 4 (4) is a warning notice that the vehicle has been removed. The companies will be required to send a notice to the person believed to be the owner providing a description of the vehicle and the

location from it was removed. The notice must also state that it is the intention of the company to sell or dispose of the vehicle within 2 weeks of the notice being issued (though no earlier than six weeks from the date on which the vehicle was removed).

Moreover, the Regulations provide that the notice must provide the telephone number of the person who the owner should contact to recover the vehicle, and any other information that is necessary.

I hope the answers to these questions will assist the Panel with its consideration of the draft Regulations before debate by the Assembly on 24th May. If you require further information, or wish to meet with me and my officers to discuss points raised in the draft Regulations, I would be happy to meet at a convenient time.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anne', with a horizontal line underneath it.

**Deputy Anne Pryke
Minister for Housing**