

# STATES OF JERSEY



## **DRAFT ROAD WORKS (EMBARGO PERIODS AND PROTECTED ROADS) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 26th September 2017  
by the Minister for Infrastructure**

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**STATES GREFFE**





Jersey

# **DRAFT ROAD WORKS (EMBARGO PERIODS AND PROTECTED ROADS) (JERSEY) REGULATIONS 201-**

## **REPORT**

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### **1. Introduction**

The Road Works and Events (Jersey) Law 2016 (“the Law”), sponsored by the Department for Infrastructure (“Dfi”) was adopted by the States on 20th January 2016, sanctioned by Order of Her Majesty in Council on 4th May 2016, and registered by the Royal Court on 13th May 2016. The Law has been published as [L.11/2016](#). The Law creates for the first time a comprehensive framework for the control and management of road works and road-based events on the Island’s public roads.

The reasons for the implementation of the new Law are set out in detail in the report within [P.152/2015](#). The initial commencement Act (Road Works and Events (Jersey) Law 2016 (Appointed Day) Act 2016 ([R&O.121/2016](#))) commenced provisions relating to the holding of events in or near roads on 1st January 2017. A second Act will commence remaining provisions on 1st January 2018, relating to the regulation of road works on public roads, and the draft Act (*see* P.85/2017) is lodged alongside these draft Regulations and the Draft Road Works and Events (Consequential Provisions) (Jersey) Regulations 201- (*see* P.87/2017).

Article 9 of the Law places a duty on the Island’s highway authorities (Dfi and the Parishes) to manage their road networks (with respect to road works, etc.) so as to “secure the expeditious movement of traffic” (i.e. to minimise traffic disruption). In exercising this duty, the Law also states that highway authorities shall have particular regard to “the need to protect the structure of the road” as an important public asset.

In view of this, Part 6 of the Law provides the Island’s highway authorities with a number of restrictions that can be imposed on road works if they involve “breaking up” or “excavating” the road (termed “undertaker works”). Such works, usually by or for utility companies (termed “undertaker”) are carried out under “statutory powers” (conferred by either a licence or utility Law), and are generally in order to place or maintain buried utility supply infrastructure (termed “apparatus”).

The draft Regulations deal with 2 issues: firstly, they specify periods (termed “embargo periods”) during which certain undertaker works may not take place immediately after highway authority works (such as road reconstruction or resurfacing), except in limited circumstances. Secondly, they list certain roads (termed “protected roads”) or sections of road for which there is a presumption against undertaker works taking place, except to inspect, maintain, adjust, repair, alter, renew

or remove “existing” apparatus (this right is not affected). The presumption being against the use of the road as a route for entirely “new” utility infrastructure.

In contemplating such restrictions, the Law takes into account the statutory obligations under which utility companies operate and the important nature of the services they provide.

## **2. Regulation 2: Embargo periods**

### 2.1 Background

The ability of the highway authority to prevent or delay a road recently resurfaced or reconstructed (termed “substantial highway authority works”) from being dug up as a result of undertaker works is critical if they are going to be able to –

- protect the Public’s investment and ensure that the newly maintained road achieves its maximum service life;
- prevent repeated and avoidable traffic disruption in the same location; and
- focus road work programming such that undertaker works are done in a co-ordinated way in advance of the highway authority’s works.

Therefore, in keeping with road work legislation in other jurisdictions (such as the UK, etc.) Article 28(3) of the Law gives the Island’s highway authorities the power, following substantial highway authority works, to restrict undertaker works that involve breaking up or excavating the road (termed “embargoed undertaker works”); the restriction being for a defined period called the “embargo period”.

### 2.2 Basic rules and operation

If a highway authority wishes to implement an embargo, it must observe a number of notification requirements set out in Article 28(4), (5) and (7) of the Law. In particular, Article 28(4)(a) requires the highway authority to give at least 6 months’ advance notice that it intends, following completion of its substantial highway authority works, to prohibit undertaker works for the embargo period. This notice is to allow time for any planned undertaker works to be carried out before the highway authority’s works.

However, exemptions are made for emergency and urgent works, for example to repair damaged or faulty utility apparatus. Also, works which are in response to a request for a new customer service or supply which was not received by the utility company at a time when it was practicable for the works to be completed (i.e. before the highway authority’s works started). The highway authority is also free to waive the embargo restriction (and grant a road works permit) if it considers the circumstances of an application justify such an exemption. A decision by the highway authority to refuse a permit can be appealed in accordance with Article 63 of the Law, or be dealt with using an “alternative dispute resolution” process in accordance with Article 64. Where an undertaker loses an appeal, the Law’s Article 45 exempts them from liability arising from any failure to fulfil a statutory duty under utility Law (to the extent that such failure was attributable to the highway authority or the Minister’s decision).

Note: In circumstances where works are exempt from the embargo restriction or where the highway authority grants an exemption, the Law provides for a number of alternate remedies to ensure that the recently maintained road is reinstated to “like for like” condition. For example, Article 34 allows the highway authority to serve a notice on the undertaker to carry out an “enhanced reinstatement” (protecting the visual appearance of the new surface). Article 35 allows the highway authority to carry out the enhanced reinstatement itself and to recover its costs.

### 2.3 Proposed embargo periods

Article 28(1) of the Law states that the –

*“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;”.*

In pursuance of Articles 28(1) and 68, draft Regulation 2 sets out the embargo periods that can be applied by the highway authority. These are based on the importance of the surface that is to be maintained and the significance of the maintenance works undertaken. Broadly speaking however, the more costly the maintenance, the longer the embargo period.

Road surfaces are split into 2 types: “carriageway” (i.e. the part of a road for the carriage of motor vehicles), and “paved road other than the carriageway”. Due to the broad definition of “road” provided under Article 2 of the Law, the term “carriageway” includes “a paved cycle track”, which reflects their growing importance to the Island’s transport network. Likewise, “paved road other than the carriageway” includes lanes, footways, footpaths, alleys, passages, promenades and open spaces such as pedestrian areas or squares, etc. The main pre-condition is that the surface is “paved” (meaning paved with cement, concrete, asphalt or another hard or impermeable material).

The embargo periods set out in the draft Regulations (see **Table 1** below) are broadly in keeping with current UK legislation and DfI’s own policy-based rules (i.e. 3-year embargo on carriageways and one year on footways), agreed with utility company consent in 2005.

*Table 1: Proposed embargo periods with respect to paved road surfaces*

<b><i>Carriageway (to include paved cycle tracks)</i></b>	
5 years	In relation to new construction or reconstruction.
	In relation to surface treatments of high visual amenity, i.e. of a “prestige” or “artisan” nature (e.g. stone paving, cobbles, sets, or similar surface-bonded features, also surfaces of special colour, etc.).
3 years	In relation to resurfacing (including overlays and surface dressing).
<b><i>Paved road other than the carriageway (including a lane, footway, footpath, alley, passage or promenade, open space such as a pedestrian area or square, etc.)</i></b>	
5 years	In relation to surface treatments of high visual amenity, i.e. of a “prestige” or “artisan” nature (e.g. stone paving, cobbles, sets, or similar surface bonded features, also surfaces of special colour, etc.).
1 year	In relation to new construction, reconstruction, resurfacing (including overlay and surface dressing).

### 3. Regulation 3: protected roads

#### 3.1 Background

The right of utility companies to carry out undertaker works is established through utility legislation (i.e. [Drainage \(Jersey\) Law 2005](#), [Electricity \(Jersey\) Law 1937](#), [Jersey Gas Company \(Jersey\) Law 1989](#), [Telecommunications \(Jersey\) Law 2002](#), [Water \(Jersey\) Law 1972](#), etc.). Although each utility Law varies in its structure and content, the following common powers are established –

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

When a utility company decides to carry out undertaker works (in order to place new apparatus in a road), it inevitably brings with it the potential for further works. For example, over time the new apparatus in the road will need to be inspected (e.g. involving the opening of manholes, etc.); repaired (sometimes without warning as emergency works); and replaced (when age or capacity makes it unfit for purpose). Therefore, when apparatus is placed in a road, it leaves a legacy of future works, involving –

- Traffic disruption; and
- Road digging, leading to reduced road life and increased road maintenance.

**Note:** Research, both locally and in the UK and USA, indicates that utility trenching reduces the life of roads by between 30% and 40%, leading to increased maintenance, reduced performance and early replacement.

Although Part 3 of the Law introduces a permit-based regulatory framework that gives highway authorities control of the timing and manner of such works, the basic right of utility companies to use roads as a conduit for their apparatus is not affected. While in general it is accepted that such an arrangement is necessary if they are to provide essential services to each property, there are routes in the Island that are of such strategic traffic importance that the disruption associated with hosting buried apparatus is to be avoided wherever possible.

Therefore, in keeping with road work legislation in other jurisdictions (such as the UK, etc.) Article 29(1) of the Law states that –

*“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.”*

#### 3.2 Basic rules and operation

The effect of the States designating a road, or section of road, as protected is that undertakers (i.e. utility companies, etc.) will not have an automatic right to carry out undertaker works, except when it is to inspect, maintain, adjust, repair, alter, renew or remove existing buried apparatus (that right is not affected). Article 29(2) of the Law states that –

*“(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.”.*

There is therefore a presumption against new utility infrastructure being placed in a protected road.

An undertaker wishing to place new apparatus in a protected road would have to apply to the Minister for Infrastructure, who would give consideration to the technical and economic viability of the proposal in the context of possible alternatives. The aim in each case would be to balance technical/economic considerations against the likely long-term traffic impact and public cost of hosting new apparatus in the protected route.

In particular, DfI will be looking to protect routes dependent on critical highway structures such as La Route de Libération (which includes the Tunnel and the Underpass), where undertaker works could lead to unacceptable damage, increased maintenance/reduced service life, or a loss of function. Such routes to date have, to a great extent, been spared from use as a conduit of utility infrastructure, but it is important that this does not change.

In general, where a road or section of road is protected, then that protection will for the most part only apply to the carriageway (i.e. the part of a road for the carriage of motor vehicles), allowing an alternative route for apparatus in the footway or verge. In addition, lateral road crossings, such as to permit property connections, will be permitted where absolutely necessary.

### 3.3 Selection criteria

An assessment of the road network has been carried out based on the following assessment criteria –

- Does the road fulfil a strategic transport need (i.e. does it link a commercial centre to a port, or is it a key logistic route for the delivery of freight or services, etc.)?
- Is the road ostensibly clear of existing utility apparatus? (If the road is already heavily utilised, then the protection will be ineffectual.)

In addition, the designation will be used to protect critical highway structures, such as the Tunnel and the Underpass, that might be compromised by undertaker works.

### 3.4 Proposed protected roads

In pursuance of Article 29(1) of the Law, draft Regulation 3 designates the following roads as protected –

<b>Strategic Role</b>	<b>Road</b>	<b>Extent</b>
Town to La Collette	Commercial Buildings	all
	Le Quai aux Marchands	all
Town to Harbour	La Route du Port Elizabeth	all
Town to Airport	La Route de Beaumont (Beaumont Hill)	from its junction with La Rue du Craslin to its junction with L’Avenue de la Reine Elizabeth II
	L’Avenue de la Reine Elizabeth II	all
South Coast Trunk Link	La Route de la Libération	all

Strategic Role	Road	Extent
	The Esplanade	from its junction with La Route de la Libération to its junction with Victoria Avenue
	The Tunnel	all
	Victoria Avenue	all

#### 4. Collective Responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Infrastructure, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

#### 5. Financial and manpower implications

##### 5.1 Manpower

There are no additional manpower, revenue or capital requirements for the States or the Parishes arising from the adoption of the draft Regulations.

##### 5.2 Financial

In 2017, the Department of Infrastructure budgeted to spend £2,485,000 (capital) on planned main road maintenance resurfacing and £474,000 (revenue) on reactive maintenance (e.g. patching).

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

With, for example, a total of 10,900 m<sup>2</sup> (square metres) of road surface being excavated in 2014 (70% in main roads), the impact is significant.

Part 6 of the Law (RESTRICTIONS ON UNDERTAKER WORKS) has been designed to reduce the negative impact of trenching from undertaker works. While it is not possible to directly quantify the positive financial effect of these new restrictions, in the medium to long term they may be significant.

## Explanatory Note

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These Regulations are made under the Road Works and Events (Jersey) Law 2016 (“Law”). They deal with two issues. First, they specify periods (“embargo periods”) during which certain road works may not take place immediately after substantial highway authority works have taken place except in limited circumstances. Second, they list certain roads in which road works are not permitted except in limited circumstances.

*Regulation 1* is an interpretation provision.

*Regulation 2* specifies embargo periods. Under Article 28 of the Law, undertaker works which, broadly speaking, mean any road works involving digging up the road for purposes connected with utilities such as water, electricity, telecommunications or gas – cannot generally take place in a road for a period starting immediately after substantial road works by the highway authority have been completed in that road. The embargo period does not apply to emergency or urgent works, new services, certain repair works arising directly out of earlier works or works for which a highway authority has stated it is minded to grant permission because it thinks such works are necessary having regard to the particular circumstances of the case. Under *Regulation 2* different embargo periods apply depending on the kind of highway authority works that have been completed. The embargo period is 5 years from the date of completion of highway authority works that comprised construction or reconstruction of a carriageway used by motor vehicles or paved cycle tracks; 5 years where the highway authority works comprised specialist surfacing (such as stone paving or cobbles) of any other kind of paved road; 3 years where the highway authority works comprised resurfacing a carriageway used by motor vehicles or resurfacing paved cycle tracks; 1 year in the case of highway authority works that comprised construction, reconstruction or resurfacing of any other kind of paved road.

*Regulation 3* designates by name the roads in Jersey which are protected for the purposes of Article 29 of the Law. Under Article 29, a road can be designated only if it is considered to be of sufficient strategic importance to Jersey’s transport connections. The effect of a designation under Article 29 is that a highway authority must refuse to grant a permit to carry out undertaker works unless the works relate to existing apparatus situated in a road (in other words applications for a permit to allow the placing of new apparatus would be refused) or where the Minister for Infrastructure has given prior approval for the undertaker works.

*Regulation 4* sets out the title of these Regulations and provides that they will come into force on 1st January 2018. This is the same date that it is intended that the remainder of the Law will come into force by an Appointed Day Act.





Jersey

## **DRAFT ROAD WORKS (EMBARGO PERIODS AND PROTECTED ROADS) (JERSEY) REGULATIONS 201-**

### **Arrangement**

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#### **Regulation**

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Jersey

## **DRAFT ROAD WORKS (EMBARGO PERIODS AND PROTECTED ROADS) (JERSEY) REGULATIONS 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Articles 28, 29 and 68 of the Road Works and Events (Jersey) Law 2016<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations –

“carriageway” means either or both of the following –

- (a) the part of a road over which the public have a right of way for the passage of motor vehicles;
- (b) a paved cycle track;

“construction” means the new construction of some or all of the various layers that make up a paved road;

“cycle track” means that part of a road over which the public have a right of way for the passage of pedal cycles, whether or not such part is listed as a cycle track in the Cycle Tracks (Jersey) Order 2000<sup>2</sup>;

“enhanced surfacing” means the construction of a new layer to form the running surface of a paved road where such layer provides enhanced visual amenity or specialist workmanship such as stone paving, cobbles or other specialist features or colours;

“Law” means the Road Works and Events (Jersey) Law 2016<sup>3</sup>;

“paved” means paved with cement, concrete, asphalt or other hard or impermeable material;

“reconstruction” means the removal of some or all of the various layers that make up a paved road and their replacement;

“resurfacing” means the removal of the layer which is the running surface of a paved road and its replacement to restore surface integrity or skid resistance.

## 2 Embargo periods

The length of time referred to in the definition “embargo period” in Article 28(1) of the Law commencing on the date substantial highway authority works are completed is –

- (a) 5 years where the substantial highway authority works comprised construction (including enhanced surfacing) or reconstruction of a carriageway;
- (b) 3 years where the substantial highway authority works comprised resurfacing of a carriageway;
- (c) 5 years where the substantial highway authority works comprised enhanced surfacing of a paved road other than a carriageway;
- (d) 1 year where the substantial highway authority works comprised any of the following –
  - (i) construction (excluding enhanced surfacing),
  - (ii) reconstruction,
  - (iii) resurfacing,
 of a paved road other than a carriageway.

## 3 Protected roads

For the purposes of Article 29(1) of the Law the following roads specified in column 1 of the table, are, to the extent specified in column 2, designated as protected –

Road	Extent
Commercial Buildings	all
Le Quai aux Marchands	all
La Route du Port Elizabeth	all
L’Avenue de la Reine Elizabeth II	all
La Route de la Liberation	all
The Tunnel	all
Victoria Avenue	all
Esplanade	from its junction with La Route de la Liberation to its junction with Victoria Avenue
La Route de Beaumont (Beaumont Hill)	from its junction with La Rue du Craslin to its junction with L’Avenue de la Reine Elizabeth II

**4 Citation and commencement**

These Regulations may be cited as the Road Works (Embargo Periods and Protected Roads) (Jersey) Regulations 201- and shall come into force on 1st January 2018.

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- <sup>1</sup> *L.11/2016*  
<sup>2</sup> *chapter 25.550.02*  
<sup>3</sup> *L.11/2016*