

STATES OF JERSEY



Jersey

DRAFT ROAD TRAFFIC (No. 68) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 19th April 2021
by the Minister for Infrastructure
Earliest date for debate: 8th June 2021**

STATES GREFFE

REPORT

This report explains the policy reasons for the draft Road Traffic (No. 68) (Jersey) Regulations 202- (the “draft Regulations”) which would make amendments to the [Road Traffic \(Jersey\) Law 1956](#) (“the Law”).

Background

1. If approved by the Assembly, these draft Regulations would implement the States’ decision on Proposition P.30 of 2019 “[Cats: additional protection when involved in road traffic accidents](#)” –
“THE STATES are asked to decide whether they are of opinion –
to request the Ministers for Infrastructure and the Environment to consult on how cats could be given additional legal protection in the event of death or injury in a road traffic accident involving a motor vehicle, with the consultation to include consideration of the Road Traffic (Jersey) Law 1956, the Animal Welfare (Jersey) Law 2004 and other legislation as appropriate.”
2. The draft Regulations have been prepared in consultation with the States of Jersey Police, the Jersey Society for the Prevention of Cruelty to Animals, and the proposer of P.30/2019, Deputy J.M. Maçon of St. Saviour.
3. In addition to implementing P.30/2019, the draft Regulations also update and simplify the existing duty in Article 52 of the Road Traffic (Jersey) Law 1956 (“the Law”) to stop and report accidents. The attached draft Regulations substitute Article 52 in its entirety.

CATS – P.30/2019

4. The draft Regulations to implement P.30/2019 follow and develop the voluntary or advisory procedure that is already set out in paragraph 4(c) of the Jersey Highway Code which says –
“(c) If you are involved in an accident causing harm, damage, injury or death to a cat you, whenever possible and where it is safe to do so and are able to, should stop and inform the “Jersey Society for the Prevention of Cruelty to Animals” (JSPCA) by telephoning . . .”
5. The new provision relating to accidents involving cats is in the new Article 52(4). Under that provision, the driver of a motor vehicle on a public road who thinks he or she has hit or run over a cat must do 2 things. First, the driver must stop as soon as it is safe and reasonably practicable to do so. Second the driver must notify either a person who is responsible for caring for the cat or a body or person nominated by the Minister under Article 85 of the Law. In the Jersey Highway Code, which is made by the Minister under Article 85, the body nominated is the Jersey Society for the Prevention of Cruelty to Animals (“JSPCA”).
6. Failure to comply with the duty would be an offence, punishable with a maximum fine of £10,000 (level 3 on the standard scale), plus discretionary endorsement and disqualification of the driver’s licence.
7. Also, the new Article 52(8) would require the nominated body (i.e. the JSPCA) to make and keep a record of information given to it pursuant to the new

- requirement so that any person who has reasonable grounds (such as the person who is responsible for caring for the cat) may see it.
8. The maximum penalty for the new offence would be less than that for the main offence of failing to stop or report an accident (which is up to 6 months' imprisonment and an unlimited fine, plus discretionary disqualification and endorsement of the driver's licence) and it will be possible for the offence to be dealt with at a Parish Hall inquiry, which is not possible for the existing offence.
 9. When considering the proposed penalty (which has been approved by the Attorney General) it should be borne in mind that the new offence is less serious than the main offence because it applies a lesser duty to act after the accident, in that the vehicle concerned may be moved without the consent of the Police and there is no duty to exchange or give driver's details, either at the scene or to the nominated body, or to report the occurrence to the Police. Further, it applies where the accident involves a cat alone; where other damage or injury is caused, the main duty to stop and report would apply.
 10. Other aspects of the proposed new offence to be noted are –
 - (a) it will only apply where the accident with a cat involves a motor vehicle and occurs on a public road – the main offence of failing to stop and report an accident applies to accidents involving all types of vehicles;
 - (b) there is no requirement on the driver to give his or her name or details or to report the accident to the Police, nor to leave the motor vehicle *in situ*.

OTHER CHANGES TO THE DUTY TO REPORT ACCIDENTS

11. The existing duty to stop and report a road accident has been simplified and updated. There are some material changes to the existing duty as explained below.

Changes to duty to report an accident to the police

12. The new Article changes the existing default position where, after an accident involving injury or damage, the driver must stop and report the accident to the Police. Instead, the primary duty will be for the driver to stop and give the required details to a person at the accident scene. The requirement to inform the Police only arises if there is no one at the scene to give details to. In such a case, the driver's duty would be to inform the Police immediately and leave the vehicles *in situ* until the Police authorise their removal. See Article 52(2) and (3) in the attached draft Regulations.
13. The new provision is closer to the equivalent provision in section 170 of the Road Traffic Act 1988 which applies in England and Wales. However, there are 2 material differences between section 170 and the new provision. First, in section 170 the requirement to report to the Police is to do so as soon as practicable and, in any case, within twenty-four hours, not "*immediately*" as in Article 52. Second, in section 170, unlike Article 52, there is no requirement to leave the vehicle *in situ until the Police allow its removal*.

Removal of power of driver to require vehicle not to be moved

14. The new Article 52 would remove the provision in paragraph (1)(b) of the existing Article 52 that even where a driver stops after an accident and gives his

details to another driver or witness, that other person can insist that the vehicles are not moved until the Police have been informed and authorised removal.

15. This provision is apparently now little known or used and, possibly, unique to Jersey. Presumably the object of this provision is to preserve evidence of how the accident was caused. However, it is understood that this is not reflective of what happens now in practice and the States of Jersey Police do not see a need for its retention. Its removal is probably sensible if, indeed, it is seldom used nowadays and given that, in any event, it could in some cases lead to considerable inconvenience in view of current road conditions and traffic levels. The latter were probably not so much of an issue in 1956 when the Road Traffic (Jersey) Law was enacted.

Removal of special defence where failing to stop is not for avoiding civil or criminal liability

16. The new Article 52 removes the reverse burden of proof provision or special defence in the proviso to the existing Article 52(2). This provides that a person may be acquitted of a charge of failing to stop after an accident if he or she proves that failing to comply with the requirements of the Article was not with the intent of avoiding any civil or criminal liability arising out of the accident. This has been dropped from the revised Article following consultation with the Law Officers' Department.
17. Reverse burden provisions are those where a defendant must prove some material fact or state of affairs in order to establish a special defence to a criminal charge. Such provisions are now thought of as incompatible with the fair trial requirements in Article 6 of the European Convention on Human Rights (ECHR), which, amongst other things, requires that the burden of proof of criminal offences should be, throughout, on the prosecuting authorities.
18. In any event the special defence is of dubious merit and questionable intent, as it would seem to make it lawful to fail to comply with the requirements of stopping and reporting an accident if a person could show that there was a reason other than avoiding criminal or civil liability, such as being late for an important appointment, for the failure to comply; as mentioned, it may also be incompatible with Article 6 ECHR.
19. The other possible defences to such a charge will remain. For example, the driver can only be found guilty if the court is satisfied that he or she knew an accident had occurred. It is sometimes possible to argue that was not the case - i.e. the driver neither heard nor saw anything to suggest that an accident had happened. Alternatively, the driver may have stopped at the scene but not found anyone to exchange details with and only left after a reasonable period of time had elapsed.

The States are accordingly requested to adopt the Regulations.

Financial and manpower implications

There are no additional costs or manpower implications for the Government arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

The Draft Road Traffic (No. 68) (Jersey) Regulations 202- if made, would amend the duty on a driver of a vehicle to report if the vehicle is involved in a road accident by including a new duty on a driver to report when a motor vehicle hits a cat and by updating and clarifying the existing duty.

Regulation 1 substitutes existing Article 52 of the Road Traffic (Jersey) Law 1956.

Under the new Article 52(4), the driver of a motor vehicle who reasonably believes that a cat in a road has been struck by the vehicle must stop as soon as it is safe and reasonably practicable to do so. The driver must then notify either a person who is responsible for caring for the cat or a person or body specified in the Jersey Highway Code (“Highway Code”). The driver must state where the cat was struck and where the driver last saw the cat. Under the Highway Code, the driver of a vehicle which hits a cat must report the accident to the Jersey Society for the Prevention of Cruelty to Animals (“JSPCA”). Failure to comply with the duty in the new Article 52(4) is an offence and punishable with a maximum fine of £10,000 (level 3 on the standard scale). Under the new Article 52, where an accident is reported to the JSPCA, the JSPCA must keep a record of the information given and make that available to any person who seems to have reasonable grounds for requiring it.

The existing duty to report an accident involving a vehicle in a road is clarified and updated. The duty was last amended in 1963. The main changes are set out below –

- there is no longer a duty on the driver to stop if the only damage caused by the accident is to the driver’s vehicle provided that no person is injured or other property damaged (including land any anything attached to land) and no horse, cattle, ass, mule, sheep, pig, goat or dog is injured;
- except where the duty no longer applies as described above, the driver must, as now, stop if the vehicle causes injury to a person, damage to property or injury to any horse, cattle, ass, mule, sheep, pig, goat or dog, however the circumstances in which the accident must be reported to the police are updated and clarified;
- there is no duty to report such an accident to the police if the driver gives his or her name and address and other specified information such as insurance details to any person who has reasonable grounds to ask for it;
- however if no-one asks for the information or the driver refuses to give it on request, the driver must report the accident to the police;
- the provision enabling a person who could ask for the information to decide whether to ask for it or instead require the driver not to move the vehicle and report the accident to the police is removed;
- the provision setting out a reverse burden of proof or special defence is removed: this is the provision which enables a driver who has failed to stop to avoid a conviction for such failure if he or she can prove to a court that the failure was not done with the intention of avoiding any criminal or civil liability for, or arising out of, the accident – it is considered that this provision is no longer appropriate, rarely used and would defeat the purpose of the Article.

Regulation 2 amends Schedule 3 of the Law which sets out the offences in respect of which there is no power for a Centenier to levy summarily a fine of £200. Currently

under that Article, a Centenier has no such power in respect of the current offence of failing to stop and report an accident under Article 52. This remains unchanged. However, the Schedule is amended so that the Centenier does have such power in respect of the new offence of failing to stop to report an accident involving a cat.

Regulation 3 sets out the title of these Regulations and provides that they will come into force 7 days after the day they are made.



Jersey

DRAFT ROAD TRAFFIC (No. 68) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under the Order in Council of 26th December 1851¹ and Article 92 of the Road Traffic (Jersey) Law 1956² –

1 Interpretation

In these Regulations a reference to an Article or Schedule is a reference to an Article or Schedule in the Road Traffic (Jersey) Law 1956³.

2 Article 52 (duty of driver of vehicle in case of accident) substituted

For Article 52 there is substituted –

“52 Duty of driver of vehicle in case of accident

- (1) A driver of a vehicle must comply with paragraph (2), if owing to the presence of the vehicle on a road, an accident occurs involving any of the following –
 - (a) personal injury to any person;
 - (b) damage to –
 - (i) another vehicle, or
 - (ii) any other property (moveable or immovable) including land and anything constructed on, fixed to or growing on land; or
 - (c) injury is caused to any horse, cattle, ass, mule, sheep, pig, goat or dog.
- (2) The driver of the vehicle must stop and, if required by any person having reasonable grounds for doing so, must give the following information –
 - (a) the driver’s name and address and, if different, the name and address of the owner of the vehicle;
 - (b) the registration mark of the vehicle; and

- (c) whether, and the extent to which, there is in force in relation to the user of the vehicle a policy of insurance in respect of third party risks.
- (3) If, for any reason (including not being required by any person), the driver of the vehicle does not give the information referred to in paragraph (2)(a), the driver –
 - (a) must immediately inform a police officer of the occurrence of the accident; and
 - (b) must not move the vehicle without the consent of a police officer.
- (4) If a driver of a motor vehicle reasonably believes that a cat has been struck owing to the presence of the vehicle on a road, the driver must –
 - (a) stop the vehicle as soon as it is safe or reasonably practicable to do so; and
 - (b) notify a person or body described in paragraph (5) of –
 - (i) when the cat was struck, and
 - (ii) the location where the cat was last seen by the driver.
- (5) A person or body for the purpose of paragraph (4) is –
 - (a) a person who is responsible for care of the cat; or
 - (b) a person or body specified for the purpose of paragraph (4) in a code issued under Article 85.
- (6) If a person fails to comply with paragraph (1) or (3), that person commits an offence and is liable to a fine and imprisonment for 6 months.
- (7) If a person fails to comply with paragraph (4) that person commits an offence and is liable to a fine of level 3 on the standard scale.
- (8) A person or body referred in paragraph (5)(b) who is notified of information under paragraph (4) must –
 - (a) keep a record of when the cat was struck and when the cat was last seen; and
 - (b) make that information available to any person who seems to have reasonable grounds for requiring the information.
- (9) For the avoidance of doubt, in respect of an accident involving injury to an animal, this Article is without prejudice to any other action a person may take to avoid liability under Article 4 (cruelty and unnecessary suffering) and Article 5 (neglect and abandonment) of the Animal Welfare (Jersey) Law 2004⁴.”.

3 Schedule 3 (offences in respect of which there is no power to levy fines summarily) amended

In Schedule 3 for “Article 52 – failure to stop after an accident” there is substituted “Article 52(1) and (3) – failure to stop or report after certain accidents”.

4 Citation and commencement

These Regulations may be cited as the Road Traffic (No. 68) (Jersey) Regulations 202- and come into force 7 days after the day they are made.

ENDNOTES

Table of Endnote References

<u>1</u>	<i>chapter 23.350</i>
<u>2</u>	<i>chapter 25.550</i>
<u>3</u>	<i>chapter 25.550</i>
<u>4</u>	<i>chapter 02.050</i>