

Jersey Law 8/1962

“DRAINAGE (JERSEY) LAW, 1962”,

CONFIRMÉ PAR

Ordre se Sa Majesté en Conseil

en date du 23 mai 1962.

(Enregistré le 9 juin 1962.)

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DRAINAGE (JERSEY) LAW, 1962.

A LAW to make provision for the repair, maintenance and control of watercourses, to control the erection of buildings in relation to sewers and watercourses, and to amend in various respects the Law relating to sewers and watercourses, sanctioned by Order of Her Majesty in Council of the

23rd day of MAY, 1962.

(Registered on the 9th day of June, 1962).

STATES OF JERSEY.

The 9th day of November, 1961.

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

ARTICLE 1

INTERPRETATION

- (1) In this Law, unless the context otherwise requires –
- “the Board” means the Sewerage Board;
 - “culvert” includes a conduit or drain;
 - “drainage” includes defence against water and irrigation;

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“the Drainage Laws” means the Sewerage (Jersey) Laws, 1937 to 1961,¹ and this Law;

“highway authority” and “road” have the same meanings as in the Roads Administration (Jersey) Law, 1960²;

“land” includes water and any interest in land or water and any servitude or right in, to or over land or water;

“watercourse” includes all brooks, streams, ditches, cuts, culverts, dykes, sluices and passages through which water flows.

(2) This Law shall be construed as one with the Sewerage (Jersey) Laws, 1937 to 1961.³

(3) References in this Law to any enactment shall be construed as references to that enactment as amended by any other enactment, including this Law.

ARTICLE 2

GENERAL POWERS OF BOARD IN RELATION TO WATERCOURSES AND DRAINAGE WORKS

- (1) The Board shall have power –
- (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work;
 - (b) to improve any existing works, that is to say, to deepen, widen, straighten, divert or otherwise improve any existing watercourse, or remove obstructions to watercourses, or

¹ Tome 1937–1938, pages 223 and 537, Tome 1951–1953, page 651, Tome 1954–1956, page 1, Tome 1957–1960, page 325 and page 79 of this volume.

² Tome 1957–1960, 555.

³ Tome 1937–1938, pages 223 and 537, Tome 1951–1953, page 651, Tome 1954–1956, page 1, Tome 1957–1960, page 325 and page 79 of this volume.

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raise, widen or otherwise improve any existing drainage work;

- (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act not hereinbefore referred to, required for the drainage of any area.

(2) Where injury is sustained by any person by reason of the exercise by the Board of any of its powers under this Article, the Board shall be liable to make reasonable compensation to the injured person, and in the case of dispute the amount of the compensation shall be determined by arbitration.

ARTICLE 3

COMPULSORY PURCHASE OF LAND

Where it appears to the States that any land should be acquired by the public of the Island for the purpose of carrying into effect any of the provisions of the Drainage Laws, it shall be lawful for the States to acquire such land by compulsory purchase on behalf of the public in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961,⁴ and, in relation to the acquisition of any land as aforesaid, the Board shall be the acquiring authority within the meaning of the said Law.

ARTICLE 4

POWER TO CONSTRUCT AND ACQUIRE CULVERTS ON PRIVATE PROPERTY

The powers conferred on the Board by Article 2 of the Sewerage (Amendment) (Jersey) Law, 1953,⁵ to construct sewers, and to acquire sewers constructed in land not in public ownership, and to carry out any works on such land necessary for the inspection, maintenance and repair of the sewers so constructed or acquired, shall include a power to

⁴ Page 391 of this volume.

⁵ Tome 1951–1953, page 652.

construct culverts, and to acquire culverts constructed in land not in public ownership, and to carry out works on such land necessary for the inspection, maintenance and repair of the culverts so constructed or acquired, and accordingly the said Article 2 (with the exception of paragraph (2) thereof) shall have effect as if any reference therein to a sewer included a reference to a culvert.

ARTICLE 5

POWER TO REQUIRE PROPER MAINTENANCE OF WATERCOURSES

Where the Board is of opinion that any watercourse is in such a condition that the proper flow of water is impeded or that by reason of the condition of, or of any obstruction in, any watercourse, land is being injured by water or is in danger of being so injured, the Board may serve on the person responsible for the maintenance of the watercourse a notice requiring him to carry out such work as may be specified in the notice within such time as may be specified therein.

ARTICLE 6

SPECIAL PROVISIONS AS REGARDS THE TOWN OF ST. HELIER

In relation to the waters from the Grands Vaux and the Petits Vaux and to the Grand-douet, the Petit-douet and the Faux-bié (hereinafter referred to as “the Town Brooks”), the following provisions shall apply –

- (a) the said waters downstream from the site of the former Town Mills shall be directed through such watercourses as the Board may determine ;
- (b) the Town Brooks downstream from Tunnel Street shall be deemed to be public sewers for all the purposes of the Drainage Laws and in respect of so much thereof as passes through land not in public ownership the Board shall have the same rights as it has in respect of public sewers

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constructed or acquired in exercise of the powers conferred by Article 2 of the Sewerage (Amendment) (Jersey) Law, 1953⁶;

- (c) the riparian owners of the Town Brooks downstream from Tunnel Street shall cease to be responsible for the maintenance, upkeep and repair of the walls and vaults thereof, but the Board shall not be responsible for any damage caused as a result of the collapse of such walls or vaults, by whatever reason caused ;
- (d) no compensation shall be payable to any person by reason of the application of any of the provisions of this Article.

ARTICLE 7

CONTROL OF BUILDING IN RELATION TO SEWERS AND WATERCOURSES

Where any application is made to the Island Development Committee under Article 5 of the Preservation of Amenities (Jersey) Law, 1952,⁷ for consent to erect, make, extend or externally alter any building within an area shown on a map furnished to the said Committee by the Board for the purposes of this Article, then, in the consideration of such application, the said Committee shall consult with the Board and shall take into account any representations made by the Board as to the effect of the building on the sufficiency of the sewerage and drainage systems or with a view to the prevention of damage to, or hindrance to the repair and maintenance of, sewers and watercourses, and the limitation of damage by surface water.

⁶ Tome 1951–1953, page 652.

⁷ Tome 1951–1953, page 242.

ARTICLE 8

**USE OF PUBLIC SEWERS FOR CONVEYING SURFACE
WATER FROM ROADS**

(1) The use by a highway authority of a public sewer for the purpose of conveying surface water from a road shall be subject to the consent of the Board and, where such consent is given or is deemed to have been given, to compliance with any requirements of the Board.

(2) For the purposes of this Article, the consent of the Board shall be deemed to have been given to the use of a public sewer for the purpose aforesaid where the sewer is being used for that purpose immediately before the coming into force of this Law.

ARTICLE 9

POWERS OF BOARD EXTEND TO OUTFALLS

The powers of the Board in relation to public sewers and watercourses extend to the outfalls of public sewers and watercourses.

ARTICLE 10

ORDERS

(1) The Board may, by order, make such provision as it considers necessary for securing the efficient working and maintenance of sewerage and drainage systems and, in particular, and without prejudice to the generality of the foregoing, for any of the following purposes, that is to say –

- (a) for regulating the use and preventing the improper use of any sewer, watercourse or sewerage or drainage works, or for preserving any sewer, watercourse or sewerage or drainage works from damage or destruction:

Provided that no order for the purposes of this sub-paragraph shall be valid in so far as it prevents reasonable

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facilities being afforded for enabling a watercourse to be used by stock for drinking purposes ;

- (b) for regulating the opening of sluices and flood-gates in connexion with any sewerage or drainage works ;
- (c) for prohibiting or regulating the discharge into any sewer or watercourse of any solid, liquid or gaseous matter likely to injure the sewer or watercourse or to interfere with the free flow of its contents or to impede its maintenance or, in the case of a sewer, to affect prejudicially the treatment and disposal of its contents ;
- (d) for requiring growths in a watercourse to be cut and, when cut, to be removed therefrom.

(2) The Subordinate Legislation (Jersey) Law, 1960,⁸ shall apply to orders made under this Article.

(3) If any person acts in contravention of, or fails to comply with, the provisions of any order made under this Article, he shall be liable in respect of each offence to a fine not exceeding one hundred pounds or, where the offence is a continuing offence, one hundred pounds together with a further ten pounds for each day on which it is so continued.

ARTICLE 11

POWER TO ENTER AND SURVEY LANDS

(1) Any person authorized in that behalf by the Board may for any of the purposes of the Drainage Laws at all reasonable times, on the production if so required of evidence of his authority, enter and survey any lands and take levels thereof and inspect and examine into the condition of any sewerage or drainage work thereon.

⁸ Tome 1957–1960, page 519.

(2) If any person obstructs or impedes any person so authorized in the execution of his duties, he shall be liable in respect of each offence to a fine not exceeding fifty pounds.

ARTICLE 12

ENFORCEMENT OF NOTICES REQUIRING EXECUTION OF WORKS

(1) Where, by or under the Drainage Laws, any person is required to carry out any works and a notice has been served on him by the Board indicating the nature of the works to be executed and specifying the time within which they are to be executed, then, subject to the following provisions of this Article, if the person required by the notice to execute the works fails to execute the works indicated therein within the time limited thereby, the Board may execute the works and recover from that person as a civil debt the expenses reasonably incurred by it in so doing and, without prejudice to the right to exercise that power, he shall be liable to a fine not exceeding ten pounds and to a further fine not exceeding two pounds for each day on which the default continues.

(2) A person served with such a notice as aforesaid may appeal to the Court on any of the following grounds which are appropriate in the circumstances of the particular case, namely –

- (a) that the notice or requirement is not justified by the terms of the provision under which it purports to have been served or made ;
- (b) that there has been some informality, defect or error in, or in connexion with, the notice ;
- (c) that the Board has refused unreasonably to approve the execution of alternative works, or that the works required to be executed are otherwise unreasonable in character or extent, or are unnecessary ;

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- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose ;
- (e) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served ;
- (f) where the work is work for the common benefit of the land in question and other land, that some other person, being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works required.

(3) If and so far as an appeal under this Article is based on the ground of some informality, defect or error in, or in connexion with, the notice, the Court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds on which an appeal under this Article is brought include a ground specified in sub-paragraph (e) or (f) of paragraph (2) of this Article, the appellant shall serve a copy of the notice of appeal on each other person referred to, and in the case of any appeal under this Article may serve a copy of the notice of appeal on any other person having an estate or interest in the land in question, and on the hearing of the appeal the Court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work or as to the proportions in which any expenses which may become recoverable by the Board are to be borne by the appellant and such other person.

(5) In exercising its powers under paragraph (4) of this Article, the Court shall have regard –

- (a) as between an owner and occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required ; and

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(b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) In proceedings by the Board against any person for the recovery of any expenses which the Board is entitled to recover from him, it shall not be open to him to raise any question which he could have raised on an appeal under this Article.

(7) The decision of the Court on an appeal under this Article shall be final and without further appeal, but without prejudice to the right of the Court to refer the matter to the Superior Number of the Royal Court.

(8) Where a person served with such a notice as aforesaid appeals to the Court, paragraph (1) of this Article shall not apply unless the appeal is abandoned or dismissed, and shall, in that case, have effect as if for the reference therein to the time specified in the notice, there were substituted a reference to fourteen days from the date on which the appeal was abandoned or dismissed :

Provided that where land is being injured by water, the Board may, on the expiration of the time specified in the notice, execute the works indicated therein notwithstanding the bringing of an appeal against the notice by the person on whom it is served and, in such a case, the Board may, if the appeal is abandoned or dismissed, recover from that person as a civil debt the expenses incurred by it in so doing.

(9) In this Article, “the Court” means the Inferior Number of the Royal Court.

ARTICLE 13

SERVICE OF NOTICES

(1) Any notice required or authorized by or under the Drainage Laws to be served on a person being a corporation shall be duly served if it is served on the secretary or clerk of the corporation.

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(2) Subject to the provisions of this Article, any notice required or authorized by or under the Drainage Laws to be served on any person may be served either –

- (a) by delivering it to that person ; or
- (b) by leaving it at his proper address ; or
- (c) by registered post ; or
- (d) by the recorded delivery service.

(3) For the purposes of this Article, and of Article 12 of the Interpretation (Jersey) Law, 1954,⁹ in its application to this Article, the proper address of any person on whom such a notice as aforesaid is to be served shall, in the case of the secretary or clerk of a corporation, be that of the registered or principal office of the corporation, and, in any other case, be the usual or last-known place of abode of the person on whom the notice is to be served :

Provided that, where the person on whom such a notice as aforesaid is to be served has furnished an address for service in accordance with arrangements agreed to in that behalf, his proper address for the purposes aforesaid shall be the address furnished.

(4) If the name or the address of any owner, lessee or occupier of premises on whom any such notice as aforesaid is to be served cannot after reasonable enquiry be ascertained by the person seeking to serve the notice, the notice may be served by addressing it to the person on whom it is to be served by the description of “owner”, “lessee” or “occupier” of the premises (describing them) to which the notice relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

⁹ Tome 1954–1957, page 115.

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ARTICLE 14

CONSEQUENTIAL AMENDMENTS AND REPEALS

(1) The “Loi (1937) sur les Égouts”¹⁰ shall have effect subject to the amendments specified in the First Schedule to this Law, being amendments consequential on the provisions of this Law.

(2) The enactments mentioned in the Second Schedule to this Law are hereby repealed to the extent specified in the second column of that Schedule.

ARTICLE 15

SHORT TITLE AND COMMENCEMENT

(1) This Law may be cited as the Drainage (Jersey) Law, 1962, and this Law, so far as it relates to sewers and sewerage, and the “Lois (1937 à 1961) sur les Égouts” or the Sewerage (Jersey) Laws, 1937 to 1961, may be cited together as the “Lois (1937 à 1962) sur les Égouts” or the Sewerage (Jersey) Laws, 1937 to 1962.

(2) This Law, with the exception of Article 7, shall come into force on the promulgation thereof, and Article 7 shall come into force on the first day of the second month next following that in which it is promulgated.

¹⁰ Tome 1937–1938, page 223.

*FIRST SCHEDULE***(Article 14(I))****CONSEQUENTIAL AMENDMENTS TO THE “LOI (1937) SUR LES ÉGOUTS”¹¹**

For Article 3 there shall be substituted the following Article –

“ARTICLE 3

Dans la présente Loi, ‘égout public’ désigne –

- (a) tout égout construit ou en voie de construction, aux frais des États, soit en vertu des Lois, Règlements et Actes abrogés par l’Article 62 de la présente Loi, soit en vertu de la présente Loi ;
- (b) tout égout construit dans un chemin qui, au moment de la construction de l’égout, était un chemin public ;
- (c) tout autre égout construit dans un chemin public si le Comité déclare que l’égout est un égout public ;
- (d) tout égout construit ou acquis en vertu des dispositions de l’Article 2 de la Loi intitulée ‘Sewerage (Amendment) (Jersey) Law, 1953’¹² ;
- (e) le Grand-douet, le Petit-douet et le Faux-bié en aval de ‘Tunnel Street’.”

In sub-paragraph (c) of Article 4, for the word “ladite” there shall be substituted the word “la”.

¹¹ Tome 1937–1938, page 223.

¹² Tome 1951–1953, page 652.

SECOND SCHEDULE

(Article 14(2))

ENACTMENTS REPEALED

SHORT TITLE.	EXTENT OF REPEAL.
“Loi (1937) sur les Égouts” ¹¹	In Article 4, sub-paragraph (b). Articles 6, 7, 8, 10, 11 and 19. In Article 33, paragraph (2). In Article 36, paragraph (2). Article 53. In paragraph (I) of Article 54, the words “ou avec le Grand-douet, le Petit-douet ou le Faux-bié en aval de ‘Tunnel Street’ ”. Article 55. In paragraph (I) of Article 56, the words “ou dans le Grand-douet, le Petit-douet ou le Faux-bié en aval de ‘Tunnel Street’ ” in both places where they occur. Articles 57, 58 and 60. In Article 61, paragraphs (I) and (2). Article 63.

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“Loi (1938) modifiant la Loi Articles 3 and 5.
(1937) sur les Égouts”¹³

Sewerage (Amendment) (Jersey) In Article 2, paragraph (2).
Law, 1953.¹⁴

Articles 6 and 7.

“Loi (1954) (Amendement No. Article 2.
3) sur les Égouts”¹⁵

Sewerage (Amendment No. 4) The whole Law.
(Jersey) Law, 1958.¹⁶

Sewerage (Amendment No. 5) Article I.
(Jersey) Law, 1961.¹⁷

In Article 2, paragraph (2).

A.D. LE BROCCQ,

Deputy Greffier of the States.

¹³ Tome 1937–1938, page 537.

¹⁴ Tome 1951–1953, page 651.

¹⁵ Tome 1954–1956, page 1.

¹⁶ Tome 1957–1960, page 325.

¹⁷ Page 79 of this Volume.