

Jersey Law 13/1972

EXTINGUISHMENT OF ROADS (JERSEY) LAW, 1972.

A LAW to authorize the extinguishment of roads and to provide for matters incidental thereto, sanctioned by Order of the

22nd day of MARCH, 1972,

of the Counsellors of States on behalf of Her Majesty.

(Registered on the 26th day of May, 1972).

STATES OF JERSEY.

The 23rd day of November, 1971.

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 –

“applicant authority”, in relation to any application or order under this Law, means the highway authority making the application or on whose application the order is made or where appropriate, in the case of an application under paragraph (2) of Article 2 of this Law, the Island Development Committee;

“enactment” includes any enactment of the Parliament of the United Kingdom in so far as that enactment has effect in the Island;

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“highway authority” and “road” have the same meanings as in the Roads Administration (Jersey) Law, 1960;¹

“main road” has the same meaning as “grande route” in the “Loi (1914) sur la Voirie”;²

“the Royal Court” means the Superior Number of the Royal Court;

“statutory undertakers” means persons authorized by any enactment to carry on any undertaking for the supply of electricity, gas or water;

“telegraphic line” has the same meaning as in section two of the Telegraph Act, 1878 (of the United Kingdom).

(2) References in this Law to any other enactment shall be construed as references to that enactment as amended by any subsequent enactment.

ARTICLE 2

APPLICATION TO EXTINGUISH A ROAD TO BE MADE TO ROYAL COURT

(1) Where a highway authority considers that any road under its administration should be extinguished because –

- (a) it is unnecessary; or
- (b) it is in the public interest that it should be extinguished ;

the authority may apply to the Royal Court for an order authorizing the extinguishment of the road.

(2) Where the Island Development Committee represents to a highway authority that the extinguishment of any road under the

¹ Tome 1957–1960, page 556.

² Tomes IV–VI, page 338.

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administration of the highway authority is necessary or desirable in connexion with the proper development of any part of the Island, the highway authority may make application to the Royal Court for the necessary order or may instead require the Island Development Committee to make the necessary application.

(3) For the avoidance of doubt, it is hereby declared that an application made under this Article may relate to two or more roads which are connected with each other.

ARTICLE 3

CONSIDERATION OF APPLICATIONS AND MAKING OF ORDERS BY ROYAL COURT

(1) On the hearing by the Royal Court of an application under this Law, the applicant authority, the highway authority in the case of an application made by the Island Development Committee, any person on whom a notice is required to be served under the First Schedule to this Law, any person who normally uses the road and any other person, who would be aggrieved by the making of the order applied for, shall have a right to be heard.

(2) Subject to the following provisions of this Article, if the Royal Court is satisfied, after a view if necessary, that –

- (a) the road which forms the subject of the application is unnecessary; or
- (b) it is in the public interest that the road should be extinguished; or
- (c) it is necessary or desirable in connexion with the proper development of any part of the Island that the road should be extinguished.

the Court order the road to be extinguished.

(3) Where, by virtue of a licence granted under Article 4 of the Highways (Jersey) Law, 1956,³ anything is authorized to be placed below, on or above the road to which the application relates, the Royal Court may, on the application of the applicant authority and notwithstanding anything in the said Article 4, order the cancellation of the licence as from such date as the Court may determine.

(4) An order made under this Article may contain such incidental or consequential provisions as appear to the Royal Court to be necessary, including in particular –

- (a) where the Court orders the cancellation of a licence granted under Article 4 of the Highways (Jersey) Law, 1956,³ provision for requiring the payment of reasonable compensation to the holder of the licence; and
- (b) where the order relates to a by-road and the application for the order is made in circumstances to which paragraph (2) of Article 2 of this Law refers, provision for requiring the payment of, or the making of contributions towards, the cost of doing any work provided for by the order or of any increased expenditure to be incurred which is attributable to the doing of any such work, out of the General Revenues of the States.

(5) The Royal Court shall not make an order under this Article unless it is satisfied that the applicant authority has served the notices required by the First Schedule to this Law.

ARTICLE 4

APPARATUS OF STATUTORY UNDERTAKERS

The provisions of the Second Schedule to this Law shall apply where, in pursuance of an order made by the Royal Court under Article 3 of this Law, a road is extinguished and, immediately before the order is made, there is below, on or above the road any apparatus belonging to or used by any statutory undertakers for the purposes of their undertaking.

³ Tome 1954–1956, page 376.

ARTICLE 5

SAVING FOR THE POST OFFICE

(1) Where in pursuance of an order made by the Royal Court under Article 3 of this Law, a road is extinguished, the following provisions of this Article shall have effect in relation to so much or any telegraphic line belonging to or used by the Post Office as is under, in, upon, over, along or across the land which by reason of the extinguishment ceases to be a road (hereinafter in this Article referred to as “the affected line”) that is to say –

- (a) the power of the Post Office to remove the affected line shall be exercisable notwithstanding the making of the order, so however that the said power shall not be exercisable, as respects the whole or any part of the affected line, after the expiration of a period of three months from the date of the sending of the notice referred to in paragraph (2) of this Article, unless before the expiration of that period the Post Office has given notice to the applicant authority of its intention to remove the affected line or that part thereof, as the case may be;
- (b) The Post Office may by notice in that behalf to the said authority abandon the affected line or any part thereof and shall be deemed, as respects the affected line or any part thereof, to have abandon it at the expiration of the said period of three months unless before the expiration of that period the Post Office has removed it or has given notice of its intention to remove it;
- (c) the Post Office shall be entitled to recover from the said authority the expense of providing, in substitution for the affected line and any telegraphic line connected therewith which is rendered useless in consequence of the removal or abandonment of the affected line, a telegraphic line in such other place as it may require;

- (d) where under sub-paragraph (b) of this paragraph, the Post Office has abandoned the whole or any part of the affected line, it shall vest in the said authority and the provisions of the Telegraph Acts, 1863 to 1916 (of the United Kingdom) shall not apply in relation to it as respects anything done or omitted after the abandonment thereof.

(2) As soon as practicable after the making of an order under Article 3 of this Law, the applicant authority shall serve a notice on the Post Office informing it of the making of the order.

ARTICLE 6

OWNERSHIP AND SALE OF LAND FORMERLY USED AS A ROAD

(1) Where by virtue of an order made under Article 3 of this Law, a road is extinguished, the land which by reason of the extinguishment ceases to be a road shall –

- (a) in the case of a main road, be at the disposal of the States;
- (b) in the case of a by-road, be at the disposal of the parish concerned.

(2) It shall be lawful for the States or any parish to sell any land at their disposal by virtue of paragraph (1) of this Article, or any part thereof, to such persons and for such considerations as they may think fit.

ARTICLE 7

SERVICE OF NOTICES

(1) Any notice required or authorized by or under this Law 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, or, in the case of the Post Office, on the Post Office.

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(2) Subject to the provisions of this Article, any notice required or authorized by or under this Law 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, 1954,⁴ 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, in the case of the Post Office, be its principal local telecommunications office for Jersey 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.

⁴ Tome 1954–1956, page 115.

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ARTICLE 8

REPEAL

Article 14 of the “Loi (1914) sur la Voirie”⁵ is hereby repealed.

ARTICLE 9

SHORT TITLE

This Law may be cited as the Extinguishment of Roads (Jersey) Law, 1972.

⁵ Tome IV–VI, page 343.

*SCHEDULES**FIRST SCHEDULE***(Article 3)****NOTICES TO BE GIVEN BY APPLICANT FOR ORDER**

1. At least twenty-eight days before the day on which an application for an order under Article 3 of this Law is to be made in relation to a road, the applicant authority shall give notice of its intention to apply for the order, specifying the time and place at which the application is to be made and the terms of the order applied for (embodying a plan showing what will be the effect thereof) to –

- (a) the Island Development Committee;
- (b) the appropriate highway authority where the applicant authority is the Island Development Committee;
- (c) the owners and occupiers of all lands adjoining the road;
- (d) any statutory undertakers having apparatus below, on or above the road;
- (e) any person who is for the time being authorized to place anything below, on or above the road by virtue of a licence granted under the Highways (Jersey) Law, 1956.

2. The applicant authority shall also give notice of its intention to apply for an order –

- (a) by posting, and keeping posted throughout the fourteen days preceding the date on which the application is to be made, in prominent positions at each end of the road, placard notices containing similar information; and

- (b) by publishing in the Jersey Gazette on at least three occasions in the fourteen days preceding the day on which the application is to be made, a notice containing similar information (except that there may be substituted for the plan a statement of a place where the plan may be inspected free of charge at all reasonable hours).

SECOND SCHEDULE**(Article 4)****APPARATUS OF STATUTORY UNDERTAKERS**

1. Where a road is extinguished in pursuance of an order made under Article 3 of this Law, the statutory undertakers whose apparatus is below, on or above the road shall, subject to the provisions of this Schedule, have the same powers and rights in respect of that apparatus as if the order authorizing the road to be extinguished had not been made.

2. Where a road is extinguished in pursuance of an order made under Article 3 of this Law, the statutory undertakers whose apparatus is below, on or above the road may, and if reasonably requested so to do by the applicant authority shall –

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as they may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

Any works executed under this paragraph (including the provision of apparatus thereunder) are hereafter in this Schedule referred to as “undertakers’ works”.

3. Subject to the following provisions of this Schedule, the applicant authority shall pay to the statutory undertakers an amount equal to the cost reasonably incurred by them in or in connexion with –

- (a) the execution of undertakers’ works required in consequence of the extinguishment of the road; and
- (b) the doing of any other work or thing rendered necessary by the execution of undertakers’ works.

4. In the course of the execution of undertakers' works

- (a) apparatus of better type, of greater dimensions or of greater capacity is placed in substitution for existing apparatus of worse type, of smaller dimensions or of smaller capacity; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was placed;

and the placing of apparatus of that type, dimensions or capacity or the placing of apparatus at that depth, as the case may be, is not agreed by the applicant authority, or in default of agreement is not determined by arbitration, to be necessary, then, if it involves cost in the execution of the undertakers' works exceeding that which would have been involved if the apparatus placed had been of the existing type, dimensions or capacity, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory undertakers by virtue of paragraph 3 of this Schedule shall be reduced by the amount of that excess.

5. For the purposes of paragraph 4 of this Schedule –

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

6. If the execution of any undertakers' works involves the placing of apparatus in substitution for apparatus placed more than seven-and-a-half years earlier and, as a result, a financial benefit is conferred on

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the statutory undertakers by reason of the deferment of the time at which the original apparatus would have been renewed in the ordinary course, the amount which, apart from this paragraph, would be payable to the statutory undertakers, shall be reduced by the amount which represents that benefit.

7. Any question arising under this Schedule shall, in default of agreement between the parties concerned, be determined by arbitration.

E.J.M. POTTER

Greffier of the States.