



Jersey

DRAFT HERITAGE (LICENSING OF ARCHAEOLOGICAL EXCAVATIONS) (JERSEY) REGULATIONS 202-

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

THE STATES make these Regulations under Article 16 of the Heritage (Jersey) Law 202- –

1 Interpretation

In these Regulations –

- “applicant” has the meaning given in Regulation 4;
- “Chief Officer” has the meaning given in Article 1 of the Planning Law;
- “licence” means a licence granted by the Chief Officer under Regulation 5 and includes a modification of that licence;
- “licence holder” means a person to whom a licence has been granted;
- “Minister” means the Minister for the Environment;

2 Prohibition on conducting archaeological excavation without licence

- (1) A person who undertakes an archaeological excavation on land otherwise than in accordance with a licence issued under Regulation 5 commits an offence and is liable to a fine.
- (2) In determining the amount of a fine to be imposed on a person convicted of an offence under this Article, a court must have regard to any financial benefit that has accrued, appears likely to accrue or could have accrued to the person in consequence of the offence.

3 Exceptions to requirement to have licence

- (1) Regulation 2 does not apply to –
 - (a) a person who undertakes activity that is permitted under Article 55(3)(a) or
 - (b) of the Planning Law on a site of special interest;

- (b) a person who undertakes an archaeological excavation in accordance with conditions specified in the grant of planning permission under Article 19 of the Planning Law;
 - (c) a person who undertakes an archaeological excavation for, or under the direction of, Jersey Heritage solely for the purpose of securing an archaeological object or structure that is in imminent danger of destruction, loss or decay; or
 - (d) an archaeological excavation that –
 - (i) takes place on land and does not disturb the land below the ploughsoil; or
 - (ii) takes place on the foreshore, is within the surface of the foreshore and does not excavate into the hard-pack sub-surface.
- (2) In paragraph (2)(d), “ploughsoil” means the soil on land that is regularly used for agricultural purposes and that is disturbed for those purposes.

4 Application for licence

- (1) A person who intends to undertake an archaeological excavation (“an applicant”) must apply for a licence in the form required by the Chief Officer.
- (2) The application must –
 - (a) include the following information –
 - (i) the specific area in which the excavation will take place;
 - (ii) the nature of the excavation;
 - (iii) the expected duration of the excavation;
 - (iv) evidence that permission for the excavation has been granted by the landowner;
 - (v) the name of at least 1 individual responsible for the conduct of the excavation; and
 - (vi) any other information the Chief Officer requests; and
 - (b) be accompanied by the fee (if any) prescribed by the Minister.
- (3) A person who provides information connected with an application for a licence knowing that it is false or misleading commits an offence and is liable to a term of imprisonment for 2 years and to a fine.

5 Grant of licence

- (1) The Chief Officer may grant a licence to an applicant.
- (2) The licence must specify –
 - (a) the specific area in which the excavation will take place;
 - (b) the nature of the excavation;
 - (c) the period for which the licence is valid; and
 - (d) the name of the individual responsible for the conduct of the excavation.
- (3) The licence may contain any conditions that the Chief Officer considers necessary.
- (4) Before granting a licence the Chief Officer must publish, in a manner that brings it to the attention of details of persons affected –

- (a) the nature of the excavation and the specific area in which it will take place;
 - (b) the period and manner in which representations may be made about the excavation.
- (5) The Chief Officer must take account of any representations before deciding whether to grant the licence.
- (6) Before granting a licence, the Chief Officer must –
 - (a) take account of any representations received under paragraph (4)(b); and
 - (b) consult Jersey Heritage (and may consult with other experts that the Chief Officer considers appropriate).
- (7) If the Chief Officer refuses to grant the licence, they must provide written reasons with the refusal.

6 Modification and cancellation of licence

- (1) A licence holder may request that the licence is modified.
- (2) If the Chief Officer refuses to modify a licence, they must provide written reasons with the refusal.
- (3) The Chief Officer may modify or cancel a licence on their own initiative if they consider it necessary.
- (4) If the Chief Officer modifies or revokes a licence under paragraph (3), they must inform the licence holder and provide written reasons.

7 Review of decision of Chief Officer

- (1) This Regulation applies if the Chief Officer –to a decision of the Chief Officer to impose a particular condition in a licence or to refuse, revoke or vary a licence.
 - (a) refuses to grant a licence;
 - (b) imposes a condition in a licence;
 - (c) modifies a licence;
 - (d) cancels a licence.
- (2) If this Regulation applies, the applicant or licence holder may request that the Minister reviews the decision.
- (3) The request must –
 - (a) be made no later than the end of the period of 28 days beginning with the date of the decision;
 - (b) be in the form required by the Minister; and
 - (c) include the grounds on which the request is made.
- (4) As soon as practicable the Minister must determine whether to refuse the request for a review or whether to review the Chief Officer's decision and must give written reasons for their determination.
- (5) The Minister may replace the Chief Officer's decision with the Minister's own determination.

8 Appeal

- (1) An applicant or licence holder aggrieved by a decision of the Minister under Regulation 7 may appeal to the Royal Court.
- (2) The applicant or licence holder must appeal within 28 days after the date on which the Minister informed them of the decision.
- (3) After hearing an appeal the Royal Court may uphold or cancel the decision of the Minister.
- (4) If the Royal Court cancels the decision, it may substitute its own decision or remit the decision to the Minister to be remade.

9 Transitional provision

These Regulations do not apply to an excavation that is under way when these Regulations come into force.

10 Citation and commencement

These Regulations may be cited as the Heritage (Licensing of Archaeological Excavations) (Jersey) Regulations 202- and come into force on the same day as the Heritage (Jersey) Law 202-.