



Jersey

DRAFT HERITAGE (JERSEY) LAW 202-

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Jersey

DRAFT HERITAGE (JERSEY) LAW 202-

A **LAW** to provide for the securing of Jersey's archaeological heritage, the reporting, recording and preservation of objects of archaeological and historical significance to Jersey, and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

In this Law –

“archaeological object” has the meaning given in Article 2;

“code of practice” means a code of practice prepared and published under Article 12;

“find” means –

- (a) an archaeological object; or
- (b) 2 or more archaeological objects that are found together or within the same archaeological context;

“human remains” means the bodies, or parts of bodies, of once living *Homo sapiens* or *Homo neanderthalensis*, or other specimens of the genus *Homo*;

“Inquests Law” means Inquests and Post-Mortem Examinations (Jersey) Law 1995

“Jersey” includes the territorial waters of Jersey;

“Jersey Heritage” means The Jersey Heritage Trust;

“Jersey national antiquity” has the meaning given in Article 3;

“Minister” means the Minister for Sustainable Economic Development;

“Planning Law” means the Planning and Building (Jersey) Law 2002;

“treasure trove” has the meaning given in Article 4.

2 Archaeological object

- (1) “Archaeological object” means an object found on or under the land, foreshore or seabed of Jersey that –
- (a) has been created or modified by human activity and that –
 - (i) at least 300 years old; or
 - (ii) is not 300 years old but is, or appears to be, of historical interest;
 - (b) is historical human remains or ancient animal remains; or
 - (c) is treasure trove
- (2) Paragraph (1) includes an object that is –
- (a) is found in or on a wreck;
 - (b) was found by someone other than the person who currently has possession of it.

3 Jersey national antiquity

“Jersey national antiquity” means an archaeological object that is, whether considered alone or as part of a larger find –

- (a) so closely connected with Jersey national life and history that its loss would be a misfortune;
- (b) of outstanding aesthetic importance;
- (c) of outstanding significance for the study of any branch of Jersey art, learning or history; or
- (d) otherwise of cultural interest.

4 Treasure trove

In this Law, and without prejudice to the customary law, “treasure trove” means an object –

- (a) that is more than 50% gold or silver;
- (b) that has been deliberately hidden with the intention that it is to be recovered; and
- (c) whose owner, or whose owner’s heirs, are unknown.

PART 2

REPORTING AND PROTECTION OF ARCHAEOLOGICAL OBJECTS

5 Reporting of objects

- (1) A person who finds an archaeological object must report finding it to Jersey Heritage within 14 days, beginning on the day after the day on which the archaeological object is found.

- (2) When reporting the finding of an archaeological object, the person must inform Jersey Heritage of the location where the archaeological object was found.
- (3) If requested by Jersey Heritage, the person must deposit the archaeological object with Jersey Heritage.
- (4) Paragraphs (1) and (3) also apply to a person who acquires an archaeological object other than by finding it, in which case that acquisition must be reported within 28 days, beginning on the day after the day on which the person becomes aware that they have acquired an archaeological object.
- (5) A person commits an offence if that person, without reasonable excuse –
 - (a) fails to report, in accordance with paragraph (1) or (4), the finding or acquisition of an object that the person believes, or has reason to believe, is an archaeological object;
 - (b) when reporting the finding of an archaeological object refuses to inform Jersey Heritage of the location where it was found; or
 - (c) if requested by Jersey Heritage to deposit an archaeological object, refuses to do so.
- (6) A person who commits an offence under paragraph (5), that person is liable to a term of imprisonment for 12 months and to a fine.
- (7) A person commits an offence and is liable to imprisonment for 2 years and to a fine if that person knowingly provides false or misleading information when reporting the finding or acquisition of an archaeological object.
- (8) In determining the amount of a fine to be imposed on a person convicted of an offence under this Article, the 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.

6 Exception to obligation to report

- (1) Article 6 does not apply if –
 - (a) the person reports the finding of the archaeological object to an authority referred to in paragraph (2); or
 - (b) the code of practice specifies that the finding of the archaeological object does not need to be reported.
- (2) The persons are –
 - (a) for human remains, the States of Jersey Police;
 - (b) for explosives or munitions, the States of Jersey Police or the coastguard;
 - (c) for archaeological objects found in or on wrecks, the Receiver appointed under the [Shipping \(Jersey\) Law 2002](#).

7 Protection of object

- (1) Before a relevant decision is made, a person –
 - (a) must not discard, damage or destroy an object that the person knows or has reason to believe is an archaeological object; and
 - (b) must take reasonable measures to preserve the object.
- (2) A “relevant decision” is –

- (a) a determination by Jersey Heritage under Article 8 that the object is not an archaeological object;
 - (b) a determination by Jersey Heritage under Article 8 that an archaeological object does not appear to be a Jersey national antiquity;
 - (c) a finding by the Viscount under Article 20B of the [Inquests and Post-Mortem Examinations \(Jersey\) Law 1995](#) that an object is not treasure trove or an archaeological object is not a Jersey national antiquity.
- (3) A person who, without reasonable excuse, contravenes paragraph (1)(a) or (b) commits an offence and is liable to a fine.
- (4) In determining whether a person has taken reasonable steps to preserve an object, the court may take into account any instructions Jersey Heritage provided to the person in relation to the treatment or preservation of the object and any guidance provided in a code of practice.

PART 3

TREASURE TROVE AND JERSEY NATIONAL ANTIQUITIES

8 Initial assessment of whether object is treasure trove or Jersey national antiquity

- (1) If a person has reported the finding or acquisition of an object to Jersey Heritage, Jersey Heritage must, within a reasonable time assess –
- (a) whether it is an archaeological object;
 - (b) whether it may be treasure trove;
 - (c) if it is an archaeological object, whether it may be a Jersey national antiquity.
- (2) If Jersey Heritage considers that the object may be treasure trove it must inform the Receiver General, the Viscount and the person who reported finding or acquiring it, no later than 28 days after the day on which it makes that decision so that a ruling can be made under the Inquests Law as to whether the object is treasure trove.
- (3) If Jersey Heritage considers that the object is an archaeological object and may be a Jersey national antiquity (but not treasure trove) it must inform the Viscount and the person who reported finding or acquiring it no later than 28 days after the day on which it makes that decision so that a ruling can be made under the Inquests Law as to whether the archaeological object is a Jersey national antiquity.
- (4) If Jersey Heritage does not consider that object may be treasure trove or that an archaeological object may be a Jersey national antiquity it must return the object or archaeological object to the person who reported it and if the person does not want it, Jersey Heritage may dispose of it.
- (5) The Minister may, by Order, make further provision in relation to the procedure Jersey Heritage must follow.

9 Jersey national antiquities belong to Public of the Island

- (1) Unless Article 10 applies, a Jersey national antiquity belongs to the Public of the Island.

- (2) The Minister is responsible for ensuring that Jersey national antiquities are preserved and protected.

10 Jersey national antiquity that is treasure trove

If a Jersey national antiquity is treasure trove, it is held by the Minister in trust for the Crown.

11 Reward

- (1) If there is a ruling under the Inquests Law that an archaeological object is a Jersey national antiquity but not treasure trove, the Minister may pay a reward to the finder, the landowner and any other person the Minister considers appropriate.
- (2) If there is a ruling under the Inquests Law that an archaeological object is a Jersey national antiquity Jersey and treasure trove, having consulted with the Receiver General and taken account of their views, the Minister may pay a reward to the finder, the landowner and any other person the Minister and the Receiver General consider appropriate.
- (3) The reward must not exceed the market value of the Jersey national antiquity.
- (4) A reward must not be paid in respect of human remains.
- (5) The States may make Regulations to provide for –
 - (a) the procedure for making and determining an application for a reward;
 - (b) the amount of the reward;
 - (c) the persons to whom a reward may or may not be paid;
 - (d) Jersey national antiquities for which a reward may or may not be paid;
 - (e) the review of a decision about whether to pay a reward or the amount of the reward.
- (6) In this Article –

“finder” means a person named as a finder in the findings of an inquest conducted under Article 20A of the Inquests Law;

“landowner” means a person named as a landowner in the findings of an inquest conducted under Article 20A of the Inquests Law.

12 Code of Practice

- (1) The Minister –
 - (a) must prepare and publish a code of practice that provides practical guidance in respect of the reporting and protection of archaeological objects; and
 - (b) may amend that code.
- (2) The code of practice may specify archaeological objects that do not need to be reported under Article 5.
- (3) When preparing and publishing, or re-publishing, the code of practice the Minister must consult –
 - (a) Jersey Heritage; and
 - (b) any other person or body the Minister considers appropriate.

- (4) A failure to comply with the code of practice prepared and published under paragraph (1) does not directly render a person liable to proceedings of any kind, but the code is admissible in proceedings and may be taken into account by –
 - (a) a court considering a question of compliance with this Law or Regulations or Orders made under it;
 - (b) the Minister in determining the amount of a reward, if any, to be paid to a person in respect of an object, including a reduction of the reward.

PART 4

HISTORIC ENVIRONMENT RECORD

13 Historic environment record

- (1) Jersey Heritage must maintain a historic environment record for Jersey.
- (2) A “historic environment record” is a system for storing and making available to the public information about –
 - (a) a site or building that is included on the List of Sites of Special Interest maintained under Article 51 of the Planning Law because of the special geological, archaeological, architectural, artistic, cultural or historical interest that attaches to the building or site;
 - (b) a conservation area designated under Article 56A of the Planning Law;
 - (c) other sites in Jersey that Jersey Heritage considers to be of archaeological, architectural, artistic, cultural or historical interest;
 - (d) objects that Jersey Heritage considers to be archaeological objects –
 - (i) the finding or acquisition of which are reported under this Law;
 - (ii) that have been found in the course of archaeological investigations; or
 - (iii) that are otherwise brought to the attention of Jersey Heritage;
 - (e) historic place names;
 - (f) the way in which the historic, archaeological or architectural development of Jersey, or any part of it, has contributed to its present character and about how that character may be preserved;
 - (g) historical, architectural, archaeological or scientific investigations or studies relating to –
 - (i) sites or objects referred to in paragraphs (a) to (d); or
 - (ii) the development, preservation or present character of any part of Jersey.
- (3) Nothing in this Article prevents Jersey Heritage from using the historic environment record to store and make available to the public other archaeological, architectural, artistic, cultural or historical information that Jersey Heritage considers should be preserved.
- (4) Information is required to be included in the historic environment record only if Jersey Heritage has the information and considers it suitable for inclusion in the record.
- (5) Jersey Heritage must take the steps it considers reasonable to –
 - (a) obtain information for inclusion in the historic environment record; and

- (b) keep information in the historic environment record up to date.

PART 5

FURTHER PROVISIONS RELATING TO PRESERVATION AND PROTECTION OF JERSEY'S HERITAGE

14 Compliance with international obligations and standards

The States may make Regulations to comply with –

- (a) international agreements that extend to Jersey and concern the protection or preservation of Jersey's heritage or of objects of archaeological, historical or cultural significance; or
- (b) internationally agreed provisions that concern the protection or preservation of objects of archaeological, historical or cultural significance and that the States considers it appropriate to apply in Jersey.

15 Protection of heritage

- (1) The States may make Regulations to facilitate the preservation and protection of Jersey's heritage.
- (2) Without limiting paragraph (1), Regulations made under this Article may provide for the protection and preservation of language, buildings and intangible heritage and culture.

16 Licensing of archaeological excavations

- (1) The States may make Regulations to provide for the licensing of an archaeological excavation.
- (2) Regulations made under paragraph (1) may provide for –
 - (a) the granting, modifying and revocation of licenses; and
 - (b) the review and appeal of decisions granting, modifying or revoking licences.
- (3) In this Article –
 - “archaeological excavation” means an intrusive investigation on or under land or the seabed (whether or not the investigation involves the removal of the surface of the land or seabed) for the purpose –
 - (a) of searching generally for archaeological objects; or
 - (b) of searching for, exposing or examining a particular structure or thing of archaeological interest;
 - “land” includes the foreshore.

PART 6

FINAL AND MISCELLANEOUS PROVISIONS

17 Relationship with customary law

This Law is without prejudice to the customary law.

18 Limitation of civil liability

- (1) A person or body to whom this Article applies is not liable in damages for anything done or omitted in carrying out any function under this Law, or Regulations or Orders made under it.
- (2) This Article applies to the Minister, the Viscount, Jersey Heritage, and any person or body consulted by the Minister or Jersey Heritage when carrying out a function under this Law, or Regulations or Orders made under it.
- (3) Paragraph (1) does not apply –
 - (a) if it is shown that the act was done in bad faith; or
 - (b) to prevent an award of damages made in respect of an act on the grounds that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

19 Offences by bodies corporate and others

- (1) In this Article –

“relevant offence” means an offence under this Law, or Regulations made under it, that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

“relevant person” means –

 - (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
 - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
 - (i) a general partner; or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate; and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
 - (d) a person purporting to act in any capacity described in sub-paragraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and

liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (3) Paragraph (4) applies if a relevant offence –
 - (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to neglect on the part of a relevant person.
- (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

20 Regulations

- (1) The States may make Regulations to this Law to –
 - (a) amend, insert or delete a definition;
 - (b) specify another body or organisation instead of, or as well as, Jersey Heritage to carry out functions given to it under this Law;
 - (c) amend or supplement the provisions relating to the reporting and protection of archaeological objects, including offences and penalties.
- (2) When making Regulations under this Law, the States may –
 - (a) create offences but may not make provision imposing a penalty of imprisonment of more than 2 years for a criminal offence;
 - (b) confer a power or impose a duty on the Minister to make, by Order, any provision that may be made by the Regulations;
 - (c) make provision for prescribing and regulating the payment and recovery of expenses and provide for the payment of fees and charges.
- (3) The provision that may be made by Regulations does not include provision –
 - (a) imposing or increasing taxation;
 - (b) taking effect from a date earlier than that of the making of the Regulations containing the provision;
 - (c) amending the [Human Rights \(Jersey\) Law 2000](#); or
 - (d) making any provision inconsistent with this Law.

21 [Inquests and Post-Mortem Examinations \(Jersey\) Law 1995](#) amended

After Part 4 of the Inquest and Post-Mortem Examinations (Jersey) Law 1995 there is inserted –

PART 4A

INQUEST CONCERNING TREASURE TROVE AND JERSEY NATIONAL ANTIQUITY

20A Inquest concerning treasure trove and Jersey national antiquity

- (1) When the Viscount is notified under Article 8(2) or (3) of the Heritage (Jersey) Law 202- that an object may be treasure trove or an archaeological object may be a Jersey national antiquity, the Viscount must hold an inquest into whether

the object is treasure trove or the archaeological object is a Jersey national antiquity (or both).

- (2) The inquest must be held without a jury unless the Viscount thinks there is sufficient reason for it to be held with a jury.
- (3) The following Articles apply to the inquest –
 - (a) Article 7 (jury);
 - (b) Article 8 (inquest without a jury);
 - (c) Article 9 (summoning of witnesses);
 - (d) Article 11 (proceedings at inquest);
 - (e) Article 12 (protection of witnesses and counsel);
 - (f) Article 13(1) (adjournment of inquest);
 - (g) Article 16 (Court may order fresh inquest to be held).
- (4) For the purposes of applying the Articles referred to in paragraph (3), references to the deceased and cause of death are to be read as references to the object or archaeological object and the circumstances in which it was found.

20B Findings of inquest under Article 20A

The Viscount or jury must give their ruling in writing, which must include –

- (a) where the object was found;
- (b) when the object was found;
- (c) the person who found the object;
- (d) the owner of the land on which the object was found;
- (e) if the inquest is concerned with whether the object is treasure trove, whether it is treasure trove;
- (f) if the inquest is concerned with whether an archaeological object is a Jersey national antiquity, whether it is a Jersey national antiquity;
- (g) whether any of the people who found the object or the owners of the land on which the object was found breached Articles 6 or 8 of the Heritage (Jersey) Law 202-; and
- (h) any other findings of fact that the Viscount or jury considers relevant.

20C Outcome of inquest under Article 20A

- (1) If the Viscount or jury rules that an archaeological object is a Jersey national antiquity (whether or not it is also found to be treasure trove), it must be transferred to the Minister defined in Article 1 of the Heritage (Jersey) Law 202-.
- (2) If the Viscount or jury rules that the archaeological object is not a Jersey national antiquity but is treasure trove, it must be given to the Receiver General, or to a person nominated by the Receiver General.
- (3) If Viscount or jury rules that an archaeological object is not a Jersey national antiquity and is not treasure trove–

- (a) if the archaeological object was found on the foreshore or other land conveyed to the Public of the Island, the object must be returned to the Jersey Heritage Trust, which may keep or dispose of the object or return it to the person who reported finding it; or
 - (b) if the archaeological object was found on other land, the object must be returned to the person who reported finding it.
- (4) If an archaeological object must be returned to the person who reported finding it under paragraph (3)(b) and the person does not want the object, it must be returned to the Jersey Heritage Trust, which may keep or dispose of the object.

22 Planning and Building (Jersey) Law 2002 amended

In Article 55 of the Planning and Building (Jersey) Law 2002 –

- (a) in paragraph (1)(c), for “or (f)” there is substituted “, (f) or (g)”;
- (b) in paragraph (2) after sub-paragraph (f) there is inserted –
 - (g) to remove an archaeological object (within the meaning of the Heritage (Jersey) Law 202-).

23 Shipping (Jersey) Law 2002 amended

After Article 146 of the Shipping (Jersey) Law 2002 there is inserted –

146A Sale of wreck containing archaeological objects

- (1) Before the Receiver sells wreck under Article 145 or 146, the Receiver must determine whether the wreck may be, or may contain, an archaeological object within the meaning of the Heritage (Jersey) Law 202-.
- (2) If the Receiver determines that the wreck may be, or may contain, an archaeological object, the Receiver must inform the body designated under the Heritage (Jersey) Law 202- and comply with any instructions the body provides in relation to the storage and preservation of the object.

24 Consequential amendments

The States may, in consequence of any provision made by or under this Law, by Regulations make amendments to any enactment that appears to the States to be expedient.

25 Citation and commencement

This Law may be cited as the Heritage (Jersey) Law 202- and comes into force on a day to be specified by the Minister by Order.