

STATES OF JERSEY



DRAFT PLANNING AND BUILDING (AMENDMENT No. 5) (JERSEY) LAW 200-

**Lodged au Greffe on 3rd November 2009
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 5) (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Planning and Environment has made the following statement –

In the view of the Minister for Planning and Environment the provisions of the Draft Planning and Building (Amendment No. 5) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.E. Cohen**

REPORT

Introduction

The Island Plan is an important document: it sets out the future planning policy framework for development in the Island. It is an important material consideration to which the Minister for Planning and Environment is obliged to pay the closest attention in determining applications for planning permission. The Minister is not legally bound to determine an application in accordance with the provisions of the Plan, but there is a strong presumption that he or she will do so.

Owing to the public significance and primacy of the Island Plan, it is important that there is an exacting process for the publication, consultation and decision-making when it comes to revisions and or reviews of the Island Plan: this is required by the primary Law and the Minister is legally bound to ensure that a rigorous and transparent process of consultation and scrutiny is undertaken.

The current Law makes it clear that it is the duty of the Minister to prepare and to present to the States any review or revisions of the Island Plan. The Law presently makes no provision for anyone else to prepare revisions to the Plan and a ruling of the former Bailiff made it clear that it would undermine the planning process if the Minister's plan, or any revision to it, could be subject to amendment by other members without undergoing similar procedures for publication, consultation and transparency that are imposed upon the Minister. This means that, unusually, the Minister for Planning and Environment's proposition to revise or review the Island Plan is not presently legally capable of amendment.

The Minister for Planning and Environment and others believe that it is, however, important that all States members have an opportunity to seek to amend the Minister's proposition for a new Island Plan or a revision to it. To ensure, however, that the planning process is not undermined, it is important that this is enabled in an open and transparent manner which provides for appropriate publication, consultation and transparency of any such amendments, as appropriate. For this reason, the Minister for Planning and Environment is proposing to amend the Planning and Building (Jersey) Law 2002.

Proposed amendments

Definition of the Island Plan

It is proposed to change the definition of the Island Plan in the Law to make it clear that that which the Minister for Planning and Environment brings to the States is a draft Island Plan. This applies to both a complete review of the existing Plan and a review of part of it. This has the effect of making clear that the Minister's draft Plan is capable of amendment by others and that the plan only becomes the new or amended Island Plan when it is approved by the States.

Dealing with amendments

It is proposed to insert a new provision in to the principal Law to enable and set out the process by which amendments to a draft Island Plan, lodged by the Minister, will be considered. This includes the following:

- that a draft Island Plan must be lodged for 12 weeks before it can be debated;
- four weeks are provided for any amendments to the draft Plan to be made;
- a further two weeks is permitted for any amendments to amendments to be submitted.

The purpose of requiring amendments to be lodged for a longer period of time than would apply under Standing Orders is to allow sufficient time for the Minister to consult upon the amendment. This specifically addresses the point in the former Bailiff's ruling that any proposals for a new or amended plan ought to be published and consulted upon, prior to adoption, as required for those proposals to review or amend the Island Plan as brought by the Minister. Accordingly, a period of six weeks is provided for any such consultation to take place once amendments have been submitted and prior to a States debate.

The requirement for consultation and the form of it is proposed, however, to be flexible and discretionary on the part of the Minister. The reason for this is to enable the Minister to undertake some form of further consultation on amendments only where an amendment raises matters which are new and of substance and which have not been the subject of earlier consultation and scrutiny. It is relevant to note that, under the current legal framework, any draft Island Plan or revision of an Island Plan is required to go through extensive and exacting procedures for consultation and scrutiny, where there is considerable opportunity for issues to be raised, considered and debated, as well as being considered independently through a public inquiry. Some of these issues may remain unresolved and will become the subject of amendments that will need to be determined by the States: where they have already been the subject of consultation and independent scrutiny it is considered that there is little value or purpose in repeating the exercise. It is not considered desirable or necessary for matters previously consulted upon in the draft Plan or considered in an Examination in Public, to be reviewed again through a further process of consultation. It is only considered necessary for this provision to be required, recognising the requirement for an open and transparent process for a new or amended Island Plan, where matters raised by amendments are substantive and new, where they have not been previously considered in the plan-making process.

The form and nature of any such consultation is proposed to remain at the discretion of the Minister. Where necessary, the Minister may seek the agreement of the States to defer the date of debate beyond that set for six weeks from the date of the last amendment if he or she feels that this is insufficient time to properly deal with the matter at hand. The proposed amendment to the Law also seeks to enable a further amendment to be brought by the Minister within the last six weeks prior to debate, without the requirement for further consultation and delay to the debate, if the States is agreeable to this to enable the practical and timely business of government, where there is agreement to do so.

Consultation

There has been no formal process of consultation on this proposed amendment on the basis that it is designed to deal with a procedural issue of direct relevance to States members in the plan-making process whilst seeking to ensure that due process and rigour, as already required by the Law, is integrated into the proposed amendments.

Subject to the necessary approvals, it is envisaged that the amended Law would come into effect prior to the States' consideration of the draft Island Plan presently the subject of review, which is due to be presented to the States in mid-2010.

Resources

There will be resource implications of this proposed amendment related to the potential requirement for further rounds of consultation in respect of new and substantive amendments to the draft Island Plan once lodged *au Greffe* by the Minister. The extent and nature of this cannot be foreseen and the requirement will need to be managed within the resources available to the Minister for Planning and Environment to meet his statutory plan-making responsibilities. It is, however, possible that the extensive consultation procedures built into the current plan-making process may serve to reduce or limit the number and substance of amendments in response to the Minister's lodged Draft Plan.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). On 2nd November 2009 the Minister for Planning and Environment made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Minister for Planning and Environment the provisions of the Draft Planning and Building (Amendment No. 5) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 defines the Planning and Building (Jersey) Law 2002 as the “principal Law”.

Article 2 amends the definition “Island Plan” consequentially upon Article 3.

Article 3 amends Article 3 of the principal Law so as to make it clear that what the Minister for Planning and Environment (the “Minister”) prepares, for approval by the States, is a draft Island Plan. The Plan only becomes the Island Plan at the point when it is so approved.

Article 4 amends Article 4 of the principal Law, again, to make it clear that the requirements in it as to form and content of the Island Plan are imposed upon the Minister when he or she is preparing a draft Island Plan for the States to approve.

Article 5 inserts Article 4A in the principal Law. A draft Island Plan must be lodged for at least 12 weeks before it is debated. An amendment to it must be lodged for at least 8 weeks before it is debated. An amendment to an amendment must be lodged for at least 6 weeks before it is debated. The purpose of requiring amendments to be lodged for a longer period of time than would apply under Standing Orders is to allow sufficient time for the Minister to consult upon the amendment if he or she so wishes. Consultation may take any form, including the publication of, and the seeking of representations from the public on, the amendment.

The Minister may wish to lodge his or her own amendment, or amendment to an amendment, following consultation upon amendments lodged by other States members. Accordingly, the States are given a discretion to reduce or waive the extended lodging periods in the case of an amendment lodged by the Minister.

Article 6 provides for the citation and commencement of this Law.



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 5) (JERSEY) LAW 200-

Arrangement

Article

1	Interpretation	11
2	Article 1 amended	11
3	Article 3 amended	11
4	Article 4 amended	12
5	Article 4A inserted	12
6	Citation and commencement	13



Jersey

PLANNING AND BUILDING (AMENDMENT No. 5) (JERSEY) LAW 200-

A LAW to amend further the Planning and Building (Jersey) Law 2002.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “principal Law” means the Planning and Building (Jersey) Law 2002¹.

2 Article 1 amended

In Article 1(1) of the principal Law in the definition “Island Plan” the words “in accordance with Article 3” shall be deleted.

3 Article 3 amended

- (1) In the heading to Article 3 of the principal Law for the words “an Island Plan” there shall be substituted the words “a draft Island Plan”.
- (2) In Article 3 of the principal Law –
 - (a) in paragraph (1) for the words “an Island Plan” there shall be substituted the words “a draft Island Plan”;
 - (b) in paragraph (2) for the words “a revision of that Plan”, in each place that they appear, there shall be substituted the words “a draft revision of the Island Plan”;

- (c) in paragraph (3) for the words “the Island Plan or a revision of it” there shall be substituted the words “a draft Island Plan or a revision of the Island Plan”;
- (d) in paragraph (4)(a) for the words “the Island Plan” there shall be substituted the words “a draft Island Plan or a draft revision of the Island Plan”;
- (e) in paragraph (6) for the words “the Island Plan or any revision of it” there shall be substituted the words “a draft Island Plan or a draft revision of the Island Plan”.

4 Article 4 amended

- (1) For the heading to Article 4 of the principal Law there shall be substituted the heading “Form of draft Island Plan”.
- (2) In Article 4 of the principal Law, in paragraphs (1) and (5), for the words “the Island Plan” there shall be substituted the words “a draft Island Plan”.

5 Article 4A inserted

After Article 4 of the principal Law there shall be inserted the following Article –

“4A Procedure for and following lodging of draft Island Plan

- (1) A draft Island Plan cannot be debated by the States unless it has been lodged for a minimum period of 12 weeks.
- (2) An amendment to a draft Island Plan cannot be debated by the States unless it has been lodged for a minimum period of 8 weeks.
- (3) An amendment to an amendment to a draft Island Plan cannot be debated by the States unless it has been lodged for a minimum period of 6 weeks.
- (4) Paragraph (2) or (3) does not apply to an amendment lodged by the Minister if the States agree that the amendment may be debated forthwith or on a day or at a time approved by the States.
- (5) The Minister may publicize a lodged amendment to a draft Island Plan and seek representations from the public on it.
- (6) This Article applies to a draft revision of an Island Plan as it applies to a draft Island Plan, and references in it to a draft Island Plan shall be construed accordingly.
- (7) In this Article –
 - ‘amendment’ includes (except in paragraphs (2) and (3)) an amendment to an amendment;
 - ‘draft Island Plan’ means a Plan prepared by the Minister in accordance with Article 3 and lodged by the Minister;
 - ‘lodged’ means lodged au Greffe.”.

6 Citation and commencement

This Law may be cited as the Planning and Building (Amendment No. 5) (Jersey) Law 200- and shall come into force on the day following the day it is registered.

¹ *chapter 22.550*