

DRAFT PLANNING AND BUILDING (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 23rd April 2002
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

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European Convention on Human Rights

The President of the Planning and Environment Committee has made the following statement -

In the view of the Planning and Environment Committee the provisions of the Draft Planning and Building (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator N.L. Querée**

REPORT

Members will recall that, at the conclusion of the debate on the new Law in June 2001, the President of the Planning and Environment Committee and H.M. Attorney General, indicated that it would be necessary to review the integrity of the draft Law following the significant amendments that had been made during the debate.

The review has resulted in this amendment which deals primarily with the way in which the Planning and Building Appeals Commission is constituted.

The addition of third party appeals will significantly increase the number of appeals that the Commission will be required to hear (estimated at an additional 200 per year). The increase in the number of interested parties to an Appeal, and their right to a hearing by the Commission conferred by Article 6 of the Human Rights Law, will lengthen the proceedings in each Appeal where this right is exercised.

As a result, the Committee believes that the Commission will need a nucleus of full-time, salaried commissioners, but also the ability to appoint part-time commissioners to hear cases as the need arises. The Committee cannot predict accurately the number of appeals that will be made in any year, and Article 4 enables the Commission to respond flexibly to fluctuations in work and, perhaps more important, to cope if the total number of appeals has been incorrectly estimated. The amendment proposes, at Article 4, that the Chief Commissioner be empowered to appoint temporary commissioners to determine particular appeals.

Article 4 also provides that the remuneration of commissioners should **not** be the responsibility of the Committee, but rather the States, to protect their independence as a tribunal to comply with the Human Rights Law. In due course it is anticipated that the responsibility for appointment and remuneration of the Commission should rest with an Appointments Commission for the same reason.

Other articles in the amendment provide greater clarity in Part 7 (Appeals) by re-arranging certain provisions by making it clear that an application fee may be payable for appeals.

Manpower implications for the States/Resources

Members are asked to refer to the Committee's recently published report (R.C.13/2002) for full details of the resources required to meet expected service levels for planning and building services in Jersey.

The resource issues arising from this amendment concern the costs and manpower implications of the proposed new appeals system, with and without third party appeals. There are implications for both the Commission and the Committee.

Deputy Scott-Warren's amendments had two major effects: first, to make all parties to an application "interested parties" to an appeal; and secondly to grant a statutory right of appeal to any of those persons. The first increases the administrative processes for the Commission's secretariat while the second increases the number of appeals.

Financial implications for the States/Third Party Appeals

	No third party appeals	With third party appeals
Manpower		
Commissioners	3	5
Temporary Commissioners	2.5	5
Registrar/administration	3	5
Overall costs	£565,000	£880,000

Planning and Environment Committee

	No third party appeals	With third party appeals
Manpower		
Planners (Appeals Section)	2	5
Clerks/secretaries	1	3

Overall costs	£140,000	£364,000
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European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 17th April 2002 the Planning and Environment Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Planning and Environment Committee the provisions of the Draft Planning and Building (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law will amend the Planning and Building (Jersey) Law 200- to provide for the better administration of appeals made against the grant of planning permission.

Article 1 defines “the principal Law” for the purposes of the amending Law.

Article 2 provides for the omission of Article 22(1)(b) of the principal Law, the provisions of which are inserted, in an expanded form, more appropriately in Article 114 of the principal Law by Article 5(a) of this amending Law.

Article 3 amends Article 108 of the principal Law to require a notice of appeal to be accompanied by any prescribed application fee.

Article 4 repeals and replaces Article 107 of the principal Law, which establishes the Planning and Building Appeals Commission.

The main change from the present Article is that the new Article will allow the Chief Commissioner to appoint temporary Commissioners to determine particular appeals whenever the Chief Commissioner considers it necessary to do so.

The other change is that the States, rather than the Committee, will determine the allowances and expenses Commissioners should receive. This is to overcome the impression that the Committee could thwart the appointment of Commissioners by not agreeing reasonable allowances and expenses - either in respect of all proposed Commissioners or in respect of any particular one.

Article 5 makes two amendments to Article 114 of the principal Law, which gives certain persons the right to appeal against the grant of planning permission.

Firstly it expands the amount of information each such person is to receive.

Secondly it makes it clear that when such a person does appeal the person who would otherwise have had the benefit of the planning permission at that time is “a person interested in the appeal” for the purposes of the Part of the principal Law that provides for appeals.

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

**PLANNING AND BUILDING (AMENDMENT)
(JERSEY) LAW 200-**

A LAW to amend the Planning and Building (Jersey) Law 200-; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

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

ARTICLE 1

In this Law “the principal Law” means the Planning and Building (Jersey) Law 2002.^[1]

ARTICLE 2

Article 22(1) of the principal Law¹ shall be amended by omitting sub-paragraph (b).

ARTICLE 3

Article 107 of the principal Law¹ shall be repealed and the following Article substituted -

“ARTICLE 107

Planning and Building Appeals Commission

- (1) There is established a Planning and Building Appeals Commission.
- (2) The Commission shall consist of -
 - (a) at least 5 but not more than 8 permanent Commissioners appointed by the States by Act; and
 - (b) any temporary Commissioners for the time being appointed by the Chief Commissioner in accordance with paragraph (5).
- (3) The States shall appoint one permanent Commissioner to be the Chief Commissioner.
- (4) Whenever there is a vacancy in the number of permanent Commissioners the Committee shall recommend to the States a person to be a permanent Commissioner.
- (5) Whenever the Chief Commissioner considers it necessary to do so the Chief Commissioner may appoint a person to be a temporary Commissioner to determine a particular appeal on behalf of the Commission.
- (6) The States or, as the case may be, the Chief Commissioner shall not appoint a person to be a Commissioner unless satisfied that the person has the experience and professional qualifications necessary to enable the person to carry out the duties of a Commissioner in a professional and impartial manner.
- (7) A Commissioner may resign from office by written notice given to the Greffier of the States.

(8) If, in the opinion of the Committee, a Commissioner is guilty of any malpractice or is incapable of the proper performance of his or her functions as a Commissioner or is otherwise unsuitable to continue in office, the Committee shall report the facts to the States and the States, after deliberating on the matter in camera, may remove the Commissioner from office.

(9) A permanent Commissioner ceases to hold office on attaining the age of 70 years.

(10) A temporary Commissioner ceases to hold office in respect of the appeal the Commissioner was appointed to determine when the Commissioner gives notice of his or her determination of the appeal to the Registrar in accordance with Article 112(1).

(11) The Committee shall appoint a Registrar of the Commission.

(12) Commissioners shall receive allowances and expenses determined by Act of the States.

(13) Commissioners need not receive the same allowances and expenses.

(14) A vacancy in the minimum number of permanent Commissioners does not affect a determination made on behalf of the Commission.”.

ARTICLE 4

Article 108 of the of the principal Law^[2] shall be amended by adding after paragraph (3) the following paragraph -

“(4) The notice shall be accompanied by any prescribed application fee.”.

ARTICLE 5

Article 114 of the principal Law^[3] shall be amended -

(a) by omitting paragraph (7)(b) and substituting the following sub-paragraph -

“(b) be accompanied by a notice that informs the person of the Committee’s reasons for making the decision and that the person may appeal against that decision or any part of it (including any condition of the planning permission) within 14 days of the service of the notice,”; and

(b) by adding the following paragraph after paragraph (9) -

“(10) If a person appeals to the Commission in accordance with this Article the expression“persons interested in the appeal” shall be taken for the purposes of this Part to include the person who would, but for paragraph (3), have the benefit of the planning permission for the time being”.

ARTICLE 6

Citation and commencement

(1) This Law may be cited as Planning and Building (Amendment) (Jersey) Law 200-

(2) This Law shall come into force on such day or days as the States by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

^[1] This Law is currently awaiting Privy Council sanction.

^[2] This Law is currently awaiting Privy Council sanction.

^[3] This Law is currently awaiting Privy Council sanction.