

# **STATES OF JERSEY**

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## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 2)(JERSEY) LAW 200**

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**Lodged au Greffe on 15th March 2005  
by the Environment and Public Services Committee**

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**STATES GREFFE**





Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200**

### **European Convention on Human Rights**

The President of the Environment and Public Services Committee has made the following statement –  
In the view of the Environment and Public Services Committee the provisions of the Draft Planning and Building (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

## REPORT

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This further Amendment to the Law is submitted as a consequence of the States agreeing, in December 2004, the Committee's Amendment to substitute the Royal Court for the Planning and Building Appeals Commission as the appellate body in the Planning and Building (Jersey) Law 2002.

It was intended that the Planning and Building Appeals Commission would have been staffed by persons with specialist planning skills, and accordingly it had been considered that the Commission should have full jurisdiction to review cases *de novo* and substitute its own decision for the Committee's taking into account its view of the merits of the application. Such an appeals jurisdiction is not the same as currently applies in relation to Article 21 of the Island Planning (Jersey) Law 1964, where the appeal to the Royal Court may be brought on the grounds that the decision of the Committee was unreasonable having regard to all the circumstances of the case. There is considerable authority in the Royal Court and the Court of Appeal as to the approach which the Royal Court ought to take to an appeal right of this nature, and the Committee considers that now the decision has been taken to dispense with the Planning and Building Appeals Commission, it would be appropriate to reinstate, in the right of appeal contained in Article 113(2) of the 2002 Law, the same provisions as appear in Article 21 of the 1964 Law. If adopted by the States, the test will be whether the Committee's decision was unreasonable having regard to all the circumstances of the case. The Committee has consulted with the Bailiff on this amendment, which has his support.

The second Amendment is consequential on the substitution, by the Royal Court, of the Planning and Building Appeals Commission, agreed by the States in December 2004.

There are no financial or manpower implications from the States arising from this Draft Law.

### **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 3rd March 2005 the Environment and Public Services Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Environment and Public Services Committee the provisions of the Draft Planning and Building (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

## **Explanatory Note**

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The purpose of this Law is to amend the Planning and Building (Jersey) Law 2002 to continue the same ground for an appeal to the Royal Court against an action taken by the Committee as presently exists under the Island Planning (Jersey) Law 1964 – namely a right to appeal to the Royal Court against an action taken by the Committee on the ground that the action taken was unreasonable having regard to all the circumstances of the case.

Other consequential amendments to the Law are also made.





Jersey

# **DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200**

## **Arrangement**

### **Article**

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- 1      Interpretation
- 2      New Article 109
- 3      Article 114 amended
- 4      Article 117 amended
- 5      Citation and commencement







Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200**

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

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*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 –

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### **1 Interpretation**

In this Law “the principal Law” means the Planning and Building (Jersey) Law 2002<sup>[1]</sup>

### **2 New Article 109**

After Article 108 of the principal Law<sup>[2]</sup> there shall be inserted the following Article –

#### **109 Grounds of appeal**

- (1) An appeal under Chapter 2 may only be made to the Royal Court on the ground that the action taken by or on behalf of the Committee was unreasonable having regard to all the circumstances of the case.
- (2) Paragraph (1) applies to –
  - (a) a refusal by the Committee to which Article 113(1) applies;
  - (b) the grant by the Committee of planning permission to which Article 114 applies or of a part of any such permission;
  - (c) the imposition by the Committee of a condition mentioned in Article 115(1);
  - (d) a decision by the Committee to which Article 116 applies;
  - (e) the service by the Committee of a notice to which Article 117 applies;
  - (f) the imposition by the Committee of a requirement or a time limit in a notice to which Article 117 applies;
  - (g) an entry on to land by the Committee and the undertaking by the Committee of work as mentioned in Article 117(2);
  - (h) the extent and nature of any work undertaken by or on behalf of the Committee as a result of an entry made under Article 117(2); or

- (i) the inclusion by the Committee of a building or a tree on a List mentioned in Article 118.”.

### 3 Article 114 amended

Article 114 of the principal Law<sup>[3]</sup> shall be amended by omitting the word “Commission” (thrice appearing) and substituting the words “Royal Court”.

### 4 Article 117 amended

- (1) For Article 117(3) of the principal Law<sup>[4]</sup> there shall be substituted the following paragraph –

“(3) This Article also applies to a person aggrieved by –

- (a) in the case of the service on the person of a notice mentioned in paragraph (1), a requirement of the notice or a time limit imposed by the notice, or both; or
- (b) in the case of an entry to a building to which paragraph (2) applies, the extent or nature of any work undertaken by the Committee as a result of that entry, or both.”.

- (2) For Article 117(7) of the principal Law<sup>[5]</sup> there shall be substituted the following paragraph –

“(7) If the Royal Court determines, in the case of an entry to a building and the undertaking of work to which paragraph (2) applies, that all or any of the actions taken by the Committee were unreasonable having regard to all the circumstances of the case, the Committee shall not be entitled to recover its costs in accordance with Article 71(4) and Article 72 shall not apply in this case.”.

### 5 Citation and commencement

- (1) This Law may be cited as the Planning and Building (Amendment No. 2) (Jersey) Law 200-.
- (2) It shall come into force on the same day or days as the principal Law.

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[1] *Volume 2002, page 511.*

[2] *Volume 2002, page 609.*

[3] *Volume 2002, page 613.*

[4] *Volume 2002, page 617.*

[5] *Volume 2002, page 618.*