

STATES OF JERSEY

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DRAFT PLANNING AND BUILDING (AMENDMENT No. 4) (JERSEY) LAW 200

**Lodged au Greffe on 21st November 2006
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 4) (JERSEY) LAW 200

European Convention on Human Rights

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. 4) (Jersey) Law 200 are compatible with the Convention Rights.

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

REPORT

This draft amendment will, if approved, amend the principal Law as follows:

Certification that applications made with land-owner's knowledge

Earlier this year I made it clear that I was unhappy that it was possible to make an application for land without the owner's knowledge. The reason for this was that there was no legal requirement to do so, either in the (now defunct) Island Planning (Jersey) Law 1964, or in the new Planning and Building (Jersey) Law 2002. I gave an assurance that I would ensure that this become a legal requirement.

The proposed amendment requires the applicant, where he is not the owner of the land to which the application relates, to submit with the application a certificate that the landowner has been informed of the application.

Composition of the Planning Applications Panel

It was a recommendation of the review of the planning and building functions by Chris Shepley Planning in 2005, that there should be an increase in the number of Members comprising the Panel.

There were 2 reasons for this –

- (a) The difficulty of a Panel of only 3 adequately representing the full range of Island interests.
- (b) The unreasonable exposure of those 3 Members, particularly since the Panel's affairs became public, to the risk of jeopardising their chances of re-election because of their unremitting duty to give objective attention to controversial applications.

Put simply – there is strength in numbers.

I concur with Shepley's recommendation and propose that the Panel comprise up to 9 members, with the minimum number of 3 at any meeting of the Panel.

Changes in the way that some Building Bye-law matters are discharged

This allows specified certification functions under the Building Bye-laws to be undertaken by authorised professionals who are not States employees, particularly where the States may not have the capacity or skills to undertake those functions.

This will enable developers to use the services of suitably qualified professionals outside the States to certify compliance with the Building Bye-laws.

Protection of purchasers of land

This provision will, in effect, provide an amnesty from enforcement procedures for the owners of property, against any breaches of development controls committed more than 8 years previously. It will not absolve the perpetrator of the breach from possible prosecution, but it will reduce the burden on prospective purchasers of property, their lawyers and the Planning Department for conducting property searches beyond the previous 8 years.

Conclusion

All of the above changes will, in my view, improve the operation of planning and building functions for users of the system and for the Department.

There are no cost or manpower implications in the proposed amendments

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 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 20th November 2006 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. 4) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

This Law amends the Planning and Building Law 2002 in four separate ways.

Article 1 defines the Law to be amended.

Article 2 introduces two separate amendments, namely –

- (a) to require an applicant for planning permission, who does not own the land to be developed, to certify that the owner of the land has been informed of the application; and
- (b) to allow more flexibility in the composition of any panel of States members to which the Minister delegates planning functions.

Article 3 will allow certain functions that are required to be carried out by virtue of the Bye-laws to be carried out by persons appointed by or in accordance with the Bye-laws. In other words, it will allow developers to use the services of certain relevantly qualified professionals outside the States to certify the adequacy of their proposals - a function the States may not have the capacity to undertake.

Article 4 introduces a protection for purchasers of land.

It does this by providing that where there has been a breach of development controls the Minister can only serve an enforcement notice requiring the breach to be made good if the breach occurred in the previous 8 years. A purchaser will, therefore, only have to check that there has not been any unapproved development during the past 8 years.

However, the person who committed the breach, whether or not still the owner of the land, can be prosecuted at any time for developing the land without planning permission and, if found guilty, fined accordingly. The fine can take into account any profit he or she has made or is likely to make by ignoring the Law.

Article 5 provides for the citation of the Law and for its commencement.



Jersey

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Arrangement

Article

- 1 Interpretation
- 2 Article 9 to 9H substituted
- 3 Article 30 amended
- 4 Article 40 amended
- 5 Citation and commencement



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 4) (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 “the principal Law” means the Planning and Building (Jersey) Law 2002^[1].

2 Article 9 to 9H substituted

For Articles 9 to 9H (inclusive) of the principal Law there shall be substituted the following Articles –

“9 Applications for planning permission not granted by a Development Order

- (1) A person who requires planning permission not granted by a Development Order must apply to the Minister for it.
- (2) The application must –
 - (a) be in the form required by the Minister; and
 - (b) contain or be accompanied by particulars the Minister reasonably requires to determine the application.
- (3) The application must be accompanied by –
 - (a) the prescribed fee; and
 - (b) if the applicant is not the owner of the land to be developed, a certificate that the applicant has informed the owner of the land of the application.
- (4) The Minister may require the applicant to provide the Minister with further particulars before making a decision in respect of the application.
- (5) If the applicant fails to provide those particulars within a reasonable time the Minister may refuse the application.
- (6) If the Minister does so, the Minister is under no obligation to refund the prescribed fee.

9A Minister's power to delegate

- (1) This Article applies to the functions conferred upon or vested in the Minister under –
 - (a) Part 3;
 - (b) Articles 40, 42 and 45; and
 - (c) Orders made under Articles 76 and 81.
- (2) The power conferred upon the Minister by Article 28(1) of the States of Jersey Law 2005 to delegate, wholly or partly, the function to which this Article applies shall include the power to delegate, wholly or partly, those functions to a panel of at least 3 elected members of the States chosen by the Minister from a group of not more than 9 such members approved by the States on the nomination of the Minister.
- (3) A panel appointed under paragraph (2) to determine the grant of planning permission under Article 19 must permit members of the public to attend its meetings.
- (4) The panel must give at least 3 days notice in the Jersey Gazette of a meeting–
 - (a) that specifies the date, time and place of the meeting and the application for planning permissions that it is to consider; and
 - (b) that invites members of the public to attend.
- (5) At such a meeting the presiding member may request a person to leave the meeting if the member is satisfied that the person's behaviour is prejudicing the conduct of the meeting.
- (6) A person who fails to comply with such a request shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.
- (7) Except to the extent that the Minister directs otherwise, a panel mentioned in paragraph (2) may determine its own procedures.”.

3 Article 30 amended

Article 30 of the principal Law is amended by adding after paragraph (3) the following paragraphs–

- “(4) Building Bye-laws may –
 - (a) provide that functions that are required to be carried out by virtue of the Bye-laws may be carried out by persons appointed by or in accordance with the Bye-laws;
 - (b) provide for the qualification required by those persons and for the verification of those qualifications.
- (5) Building Bye-laws may create an offence punishable by a fine.”.

4 Article 40 amended

For Article 40(1) of the principal Law there shall be substituted the following paragraph–

- “(1) This Article applies where it appears to the Minister –
 - (a) that there has been a breach of development controls during the previous 8 years; and
 - (b) that it is expedient that action should be taken to remedy the breach.”.

5 Citation and commencement

- (1) This Law may be cited as the Planning and Building (Amendment No. 4) (Jersey) Law 200.

(2) It shall come into force 7 days after it is registered.

[1]

L.36/2002