

STATES OF JERSEY

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DRAFT HOUSING (AMENDMENT No. 11) (JERSEY) LAW 200

**Lodged au Greffe on 24th February 2004
by the Housing Committee**

STATES GREFFE



Jersey

DRAFT HOUSING (AMENDMENT No. 11)(JERSEY) LAW 200

European Convention on Human Rights

The President of the Housing Committee has made the following statement –

In the view of the Housing Committee the provisions of the Draft Housing (Amendment No. 11) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy T.J. Le Main of St. Helier**

REPORT

1. As part of the Housing Committee's submissions for savings in respect of the Fundamental Spending Review for 2004, it included under the "user pays" principle, a proposal for charging for the issue of consents required under the terms of the Housing Law and Regulations. In order to be able to propose Regulations to the States in this regard it has been necessary to bring these amendments to the Housing (Jersey) Law 1949, as amended.
2. The Housing Law sets out transactions to which the Law itself applies, requiring consent to be sought by transacting parties and enabling the Committee to either grant or refuse consent and, where consent is granted, to impose conditions on the consent as to the classes of persons entitled to occupy the land in question, together with the use of the land.
3. Currently, having issued consent to a transaction, the Committee, where a party or parties to a transaction wish to change the terms of the transaction, or add new parties, carries out processes to ensure that any additions or deletions requested still meet with the requirements of both the Law and the Regulations, and then issues a revised consent reflecting changes to the transaction. All such revisions are to the benefit of the parties transacting, but to date the Law itself makes no formal provision for the issue of a revised consent. The alternative to the revision arrangement would be, on every occasion where the terms or parties to a transaction alter, for a completely new application form to be submitted to the Committee. Historically the Committee has viewed that process to be too bureaucratic, hence the current revised consent procedure.
4. As part of the Committee's proposed charging structure it is intended to include in the Regulations the provision for charging for certain revised consents. In order for this process to be formalised it has been necessary to introduce the provision of revised consents into the 1949 Law, hence that part of this particular amendment.
5. This Draft Law has no implications for the manpower resources of the States.

European Convention on Human Rights

6. 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 20th February 2004 the Housing Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Housing Committee the provisions of the Draft Housing (Amendment No. 11) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Background

The consent of the Committee is required in several circumstances under Part 3 of the Housing (Jersey) Law 1949. The consent of the Committee is required –

- (a) under Article 10(1) to a sale, transfer, or registered lease, in relation to residential property; and
- (b) under Article 10(2), as a condition of a previous consent granted under Part 3 to a sale, transfer or lease of residential property to a body corporation, to the occupation of the property by certain persons.

Also, if the Committee has received an application for consent under Article 10(1) in relation to premises and receives a request to consent to those premises becoming tourist premises, Article 10A requires the Committee to grant consent to the premises becoming tourist premises, if certain conditions are satisfied.

Notes on proposed Law

This proposed Law amends the current Law to allow a person to apply under proposed Article 10B for a variation of a consent granted under Part 3 of the Law and to allow fees to be charged for any application under that Part. The proposed Law will also allow the Committee, if it has the consent of a permit holder, to vary the consent of its own motion. It will do this when the variation is required to correct an error of form (e.g. a typographical error) or where it is otherwise unfair to require a permit holder to apply for the variation. Some other changes to provisions of the existing Law are required to make the new proposals consistent with the existing provisions of the Law.

Article 1 specifies the Law that is to be amended.

Article 2 inserts a proposed Article 9 into the current Law, replacing the existing Article 9.

Proposed Article 9(1) allows the Committee to require an applicant to provide particulars, information and documents specified by the Committee, together with any application under Part 3.

Proposed Article 9(2) allows fees to be charged for applications under Part 3.

Proposed Article 9(3) broadens the scope of the Article that it replaces by allowing the Committee to require any kind of evidence (not just affidavits, as the Article it replaces requires) to be provided after the initial application is made.

Article 3 inserts a proposed Article 10B, which will allow for variations of consents granted under Part 3.

Proposed Article 10B(1) allows a person to apply for a variation of a consent.

Proposed Article 10B(2) allows the Committee to vary a consent at the request of a person to whom the consent was granted (for example, when the person realises they have given incorrect information to the Committee).

Proposed Article 10B(3) allows a consent to be varied at the instigation of the Committee (for example, when it is necessary to amend a formal error or when the Committee thinks it is otherwise fair to revoke a condition without requiring the holder of the consent to apply for the condition to be revoked).

Proposed Article 10B(4) expressly states that changes to the names of the parties, the land, the price, the duration of the short-term lease or occupation, or a condition, as specified in the consent, are permitted to be made, but that variations are not limited to these matters.

Proposed Article 10B(5) has the effect that a variation cannot be sought or made if to do so would circumvent the existing restrictions of the Law.

Proposed Article 10B(5)(a) states that the power to vary a condition that is imposed by Article 10(2) of the Law cannot be used to remove that condition.

Proposed Article 10B(5)(b) states that a variation of a consent cannot be sought or made so as to allow a transaction to be entered into by a person if it is not permitted to be entered into by the person under Article 10.

Article 4 amends the existing Article 12, to allow for appeals to be made against decisions made under the proposed Article 10B to vary a consent granted under Part 3. An appeal will therefore be allowed against any decision made by the Committee under Part 3.

The proposed Law would come into effect 7 days after it is registered in the Royal Court.



Jersey

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Arrangement

Article

- 1 Interpretation
- 2 Article 9 substituted
- 3 Article 10B inserted
- 4 Article 12 amended
- 5 Citation and commencement



Jersey

DRAFT HOUSING (AMENDMENT No. 11)(JERSEY) LAW 200

A LAW to amend further the Housing (Jersey) Law 1949^[1]

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 Housing (Jersey) Law 1949^[2]

2 Article 9 substituted

For Article 9 of the principal Law^[3] there shall be substituted the following Article –

“9 Applications for consents and variations of consents

- (1) Every application for –
 - (a) the consent of the Committee under this Part; or
 - (b) a variation under Article 10B of a consent granted by the Committee under this Part,shall contain or be accompanied by the particulars, information and documents that the Committee requires.
- (2) An application shall be accompanied by the fee, if any, specified in an Order made by the Committee.
- (3) The Committee may require that a person who has made an application to the Committee provide to the Committee evidence, of a kind specified by the Committee, that purports to verify the application.”

3 Article 10B inserted

After Article 10A of the principal Law^[4] there shall be inserted the following Article –

“10B Variation of consents

- (1) A person who is a party to a transaction to which a consent granted by the Committee under this Part relates may apply to the Committee for a variation of the consent.
- (2) The Committee shall, on receipt of an application, vary, or refuse to vary, the consent to which the application relates.
- (3) The Committee may, of its own motion, with the agreement of a person who is a party to a transaction to which a consent granted by the Committee under this Part relates, vary the consent.
- (4) The variation of a consent under this Article may include, but is not limited to including, a variation of the following –
 - (a) the names of persons specified in the consent;
 - (b) a reference to land specified in the consent;
 - (c) a monetary value specified in the consent;
 - (d) the period specified in the consent as either the duration of the lease (not being a registered contract of lease), or the occupation, to which the consent relates;
 - (e) a condition attached to the consent.
- (5) Nothing in this Article permits the Committee –
 - (a) to vary a condition attached under Article 10(2) to a consent; or
 - (b) to vary a consent so as to have the effect of granting consent to enter into a transaction to which consent shall, in accordance with Article 10, be refused.
- (6) The Committee shall give notice of a decision under this Article in relation to a consent to the person who applied under paragraph (1) for, or who agreed under paragraph (1) to, the variation of the consent.”.

4 Article 12 amended

For Article 12(1) of the principal Law^[5] there shall be substituted the following paragraphs –

- “(1) Any person aggrieved by a decision of the Committee under this Part to –
- (a) refuse to grant a consent;
 - (b) attach a condition to a consent;
 - (c) vary or refuse to vary a consent; or
 - (d) revoke a consent,
- may appeal to the Court against the decision.
- (1A) An appeal shall be lodged by a person with the Court not later than one month after the date on which notice of the decision to which the appeal relates was given to the person by the Committee.
- (1B) The Court may, on the application of a person, extend the period in which an appeal may be lodged by the person.”.

5 Citation and commencement

This Law may be cited as the Housing (Amendment No. 11) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

[1] *Tome VII, page 535, Volume 1988-1989, page 295, Volume 1990-1991, pages 545 and 1113, Volume 1992-1993, page 115, Volume 1996-1997, pages 1 and 337, Volume 1999, pages 418 and 533 and Volume 2002, page 1215.*

[2] *Tome VII, page 535, Volume 1988-1989, page 295, Volume 1990-1991, pages 545 and 1113, Volume 1992-1993, page 115, Volume 1996-1997, pages 1 and 337, Volume 1999, pages 418 and 533 and Volume 2002, page 1215.*

[3] *Tome VII, page 539.*

[4] *Tome VII, page 540 and Volume 1999, page 533.*

[5] *Tome VII, page 541.*