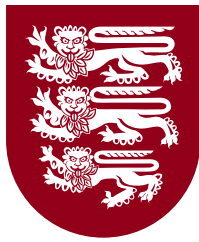


# STATES OF JERSEY



Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 8) (REPEAL) (JERSEY) LAW 202-**

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**Lodged au Greffe on 31st October 2023  
by Deputy P.M. Bailhache of St. Clement  
Earliest date for debate: 12th December 2023**

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**STATES GREFFE**

## REPORT

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1. The purpose of this draft Law is very simple. It would repeal the one part of the [Planning and Building \(Amendment No. 8\) \(Jersey\) Law 2022](#) (“the Amendment No. 8 Law”) not yet in force and sweep away all the complexities which would follow from expanding the definition of “develop” to be brought about by that amendment. It would delete the expanded definition so that “develop” did **not** include carrying out any “operation to or involving a tree”.
2. The Minister for the Environment has proposed ([P.71/2023](#)) bringing into force the new definition of “develop”. Under this proposal, no tree or branch of a tree could be cut down or lopped without permission unless the Minister had made an Order exempting the work in question from the prohibition. No one likes to see a mature tree unnecessarily cut down, but that is no reason to bring every sapling, hedge, and branch in the Island within the ambit of statutory control, as the Amendment No. 8 Law does. It would be an extraordinary intrusion into the liberty of property owners to manage their land as they thought fit. It is submitted that the Minister’s proposal is a disproportionate response to the nature of the problem.
3. The Minister seeks to justify his proposition by stating that he will make Orders exempting “certain categories of work” on trees which are less than 25 cm in diameter so that they are not classed as “development”. 25 cm is less than 10 inches. There must be tens of thousands of trees in Jersey (maybe more than 100,000) with a diameter exceeding 25 cm. A mature rhododendron or camellia would fall within the definition. None of those trees or shrubs would be exempt from control. To lop off a branch from such a tree would in principle require an application to the Planning Department for permission. This is to extend our bureaucracy in a way that is not sensible. The Minister says that “routine management as specified” would be exempted, but routine management seems not easy to define. It would be described, he says, in separate guidance to be published alongside the Orders following “best practice for tree management in the UK”. Examples given are crown thinning that removes up to (but not more than) 30% of a tree’s crown; crown lifting, provided that the remaining crown makes up at least two thirds of the height of the tree; re-pollarding of trees; and trimming hedgerows. It follows that thinning 35% of a tree’s crown would not be exempt; if crown lifting resulted in the remaining crown being only one half of the tree’s height, the work would not be exempt.
4. Work on trees that are damaging buildings would be exempted but how is that to be established? Will a report from a structural engineer be required? Work on trees that pose a danger to the public would be exempted – but how is that danger to be proved? Will a surveyor’s report be required? And if the danger is to the family but not the public, would it still be exempt from control? Dead branches can be removed, but if the branch or tree is only half dead, will an application for permission then be required?
5. The complexities and uncertainties of the proposed controls on owners of property are legion. Every uncertainty will mean that an official must be consulted. The Order will, it is said, specify the fees and charges to carry out work on trees. Are the fees to relate to each tree, or to all the trees in an individual application? What will the fee be? Why can the draft Order not be put in the public domain so that members, and the public, can assess the implication of the proposed controls?
6. The Minister states that he has developed an online notification system so that people can notify the Planning Department of intended works; a “deemed consent” can then be issued or the person will be told to submit a full application. How long will it take to issue the “deemed consent”? And if a full application is required, how much longer will it take to

obtain approval? In the meantime, the tree surgeon must wait. Planning the work of such a business will become extremely difficult.

7. The Minister asserts that “there are no new financial and/or staffing implications for the States arising from the adoption of this Act” but that seems highly optimistic. Perhaps the key word is “new” because common sense tells us that there are substantial staffing and financial implications from the introduction of a system of control over work on all trees with a diameter of more than 25 cm. It is regrettable that the States could not have been informed of the true position.
8. It is my belief that most civilised people care for and appreciate trees and do not want to see them unnecessarily cut down or damaged. There are a small number of unscrupulous or careless individuals who would put commercial profit or convenience ahead of the preservation of a fine specimen, but such destructive activity is rare. Most property owners nurture their trees. The question is whether the occasional damage to a fine tree justifies the introduction of a clumsily bureaucratic system involving officials in micro-managing the work of tree surgeons and individuals with gardens or woodland to maintain.
9. We probably have more trees in the Island today than for a very long time. The natural environment has been greatly enhanced by the thousands of trees planted by the National Trust for Jersey, Trees for Life, and other organisations. Sometimes, however, individuals plant trees in the wrong place. A forest tree can be planted in an urban garden in a place where, if left to grow to maturity, it would undermine the house and cause damage. It is not appropriate to require such an owner to have to get permission to remove the tree when he realises his mistake. Even those with larger gardens sometimes mistakenly plant a tree where it will eventually cause inconvenience by blocking out sunlight and creating too much shade. It is not appropriate to require such an owner to have to justify a decision to remove it by making an application to the Planning Department. Such decisions are a matter for an individual owner.
10. The Minister takes the view, however, that the individual’s rights are not important. He says that trees are not just a matter for the owner because the effect on the wider community can be significant. And it is true that some mature trees are a joy to behold and give pleasure to the public at large. The Minister has power under the [Planning and Building \(Jersey\) Law 2002](#) (“the 2002 Law”) to protect such trees. He can place them on the List of Protected Trees. It is a power that has been exercised, even if not extensively. It seems that between 150 and 200 trees have been protected since the 2002 Law came into force. If there is a true public interest in preserving a tree or group of trees, and it or they appear to be at risk, the Minister has powers to protect them.
11. The provisions of the 2002 Law which permit a tree protection order to be made are a proportionate and reasonable response to the problem of mature trees being unnecessarily felled. It must be accepted that occasionally an irresponsible developer, contrary to planning guidance, may pre-empt the system by felling a tree before putting in an application for planning permission. Such developers can be “punished” by appropriate conditions, including re-planting, being imposed to remove any improper benefits of the felling. Such an administrative response would discourage developers from behaving in that way. To make tens of thousands of trees owned by private individuals subject to bureaucratic controls, with all the financial implications of such bureaucracy, both for owners and for the States, is a wholly disproportionate response to the scale of the problem.
12. Most of such owners have no intention of doing anything but caring appropriately for their trees which, after all, give them pleasure and enhance the value of their properties. Their freedom to look after their trees as they see fit without interference from officialdom should not be removed. Personal freedom is precious. We are fortunate to live in a country where we are protected by the rule of law. In an Island where much activity is already tightly regulated, personal freedoms should be jealously guarded and only conceded where it is

absolutely necessary in the interests of the community. There is no pressing need to prevent owners from looking after their own trees as they see fit. This draft Law would preserve that freedom.

**Financial and staff implications**

There are no financial and staff implications arising from the adoption of this draft Law.

## EXPLANATORY NOTE

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This Law, if passed, would repeal the Planning and Building (Amendment No. 8) (Jersey) Law 2022 (*Article 1*). This repeal will operate only on the one provision of that Law that has not yet commenced, namely the amendment to Article 5(2) of the Planning and Building (Jersey) Law 2002 (“the 2002 Law”), which is in Article 4(2) of the Law to be repealed. Article 5(2)(c) of the Legislation (Jersey) Law 2021 provides that unless provision is made to the contrary, the repeal of any Jersey legislation does not affect any amendment of legislation made by the repealed legislation. This ensures that the amendments already made to the 2002 Law are unaffected by the repeal.

The only effect of the repeal is therefore that the definition of “develop” in respect of land in Article 5(2) of the 2002 Law would not be expanded to include removing a tree or carrying out on the land an operation to or involving a tree (except as the Minister may specify by Order).

The Law would come into force 7 days after it is registered in the Royal Court (*Article 2*).



Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 8) (REPEAL) (JERSEY) LAW 202-**

A **LAW** to repeal the [Planning and Building \(Amendment No. 8\) \(Jersey\) Law 2022](#).

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

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### **1 Planning and Building (Amendment No. 8) (Jersey) Law 2022 repealed**

The [Planning and Building \(Amendment No. 8\) \(Jersey\) Law 2022](#) is repealed.

### **2 Citation and commencement**

This Law may be cited as the Planning and Building (Amendment No. 8) (Repeal) (Jersey) Law 202- and comes into force 7 days after it is registered.