

STATES OF JERSEY

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DRAFT ISLAND PLANNING (AMENDMENT No. 9) (JERSEY) LAW 200

Lodged au Greffe on 22nd June 2005
by the Environment and Public Services Committee

STATES GREFFE



Jersey

DRAFT ISLAND PLANNING (AMENDMENT No. 9) (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 Island Planning (Amendment No. 9) (Jersey) Law 200 are compatible with the Convention Rights.

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

REPORT

The Clothier report into changes in the system of government in Jersey, and the Policy and Resources Committee's proposition (P.70/2003) which described how changes would be implemented, both recognised that it would be necessary to have special and different arrangements to deal with planning applications.

While, on the face of it, the proposal to set up a Planning Applications Panel is the antithesis of the philosophy of ministerial government, there are compelling reasons why it should be supported –

- The Planning and Building Law 2002 requires planning application decisions to be made in public, in the interests of transparency. These are more appropriately made by a Panel of Members.
- Planning decisions should not be political, in the sense that they are made by the executive arm of government – rather, they need to be made objectively in the public interest, taking into account all relevant considerations.
- A Panel of Members will act as a moderator of extreme or personal views on an application.
- It would separate the policy-making process of government from the “operational” decision-making process.

Discussions took place between the Policy and Resources Committee and the Environment and Public Services Committee at the end of 2003 and early in 2004 to discuss how application decisions would be made. It was agreed that there needed to be a Panel of three members, not drawn exclusively from the executive.

It had been intended that the provisions for establishing a Planning Applications Panel would have been included in the Draft States of Jersey (Amendments and Construction Provisions No. 3) (Jersey) Regulations 200, but H.M. Attorney General has advised that it is necessary to amend the primary legislation for Planning.

As drafted, the proposed amendments to the Island Planning (Jersey) Law 1964 and the Planning and Building (Jersey) Law 2002 (which will replace it) will enable the Minister to nominate a Panel whose membership is drawn from across the States, rather than wholly from within the executive.

The Explanatory Notes for each Law explain fully how the provisions will operate in practice.

There are no financial or manpower implications for 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 21st June 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 Island Planning (Amendment No. 9) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

This Law arises out of the change to ministerial government brought about by the States of Jersey Law 2005.

This Law amends the Island Planning (Jersey) Law 1964 to provide a discretionary power for the Minister to delegate specified functions of the Minister to a Planning Applications Panel and it also provides for the establishment of that Panel. Several new Articles would be inserted into the 1964 Law to achieve this objective.

Background

There is currently in existence a delegation of the powers under these Articles of the 1964 Law. The functions delegated to the Planning Sub-Committee include the functions under Article 6 for certain types of planning applications and under Articles 9 and 22. Functions relating to Articles 13 and 23 of the 1964 Law are also delegated to the Planning Sub-Committee.

The current delegation is made under Article 36A(1) of the States of Jersey Law 1966. This Article allows the Committee to delegate, wholly or partly, any of its functions under any enactment to (a) its President; (b) a Sub-Committee of its members; or (c) an officer. Article 36A of the 1966 Law limits the powers that can be delegated and does not prevent the Committee exercising the functions it has delegated under Article 36A.

As the States of Jersey Law 1966 is to be repealed and replaced by the States of Jersey Law 2005, any future delegation of functions by a Minister will be made under that Law. Under Article 27(1) of the States of Jersey Law 2005 a Minister may delegate, wholly or partly, his or her functions to an Assistant Minister or to an officer. The delegation prohibits certain powers from being delegated and, as with the earlier Law, the Minister can exercise the functions he or she has delegated.

This Law provides for a Planning Applications Panel to which the Minister may delegate specified functions under the 1964 Law.

This Law

Article 1 inserts several new Articles into the 1964 Law. The new Articles allow the delegation of the functions listed in Article 6A(1) to the Planning Applications Panel. The Minister with responsibility for the 1964 Law is given a discretionary power to delegate his or her powers under three Articles in the 1964 Law (Articles 6, 9 and 22) to the Panel and also his or her powers under any order made under two Articles of the 1964 Law (Articles 13 and 23).

The functions under the 1964 Law that may be delegated by the Minister under this new Article 6A are the functions to grant planning permission under Article 6 of that Law, to enforce planning control under Article 9 of that Law and to exercise the functions that restrict the importation of caravans under Article 22 of that Law. The functions in the Orders that may be delegated by the Minister are the functions under an Order made under Article 13 (Control of Advertisements) and Article 23 (Movable Structures).

Under Article 6A(2) the Minister must notify the States of a delegation of functions made under Article 6A as well as the functions that are delegated.

Article 6A(3) provides that the power to delegate under this Article is in addition to the power to delegate a function under Article 27 of the States of Jersey Law 2005.

Article 6A(4) provides that the delegation of functions under this Law by the Minister does not prevent the Minister from exercising those functions himself or herself.

Article 6A(5) allows the Minister to amend a delegation made under this Law (which includes the power to vary or revoke it).

The functions are delegated to the Planning Applications Panel which is established under Article 6B(1) and which, under Article 6B(2), is comprised of 3 members: an Assistant Minister and 2 elected States members who shall be permanent members of the Panel. The Panel can regulate its own procedures by standing orders or otherwise. Article 6B(3) provides that the quorum shall be 3. Article 6C(4) provides that any civil proceeding that challenges a decision of the Panel shall be taken against the Minister and not the Panel.

Article 6C(1)(a) provides that the Minister can appoint the Assistant Minister to the Panel with the Chief Minister's agreement and Article 6C(1)(b) provides that the Minister can appoint the 2 elected States members to the Panel if their nomination is approved by the States. An elected member is defined in the States of Jersey Law

2005 as a Senator, Connétable or Deputy.

Under Article 6C(2) the Minister must nominate to the States for its approval each elected States member whom the Minister proposes to appoint to the Panel. The States may either approve or reject a nomination. If the nomination is rejected the Minister shall make another nomination for appointment to the Panel.

Article 6C(3) provides that the period of membership of the Panel is 3 years. Article 6C(4) gives the Minister power to revoke the appointment of a Panel member to the Panel. Article 6C(5) deals with resignation of a Panel member. Article 6C(6) provides for the filling of a vacancy in the Panel: if it is an Assistant Minister, he or she is appointed in accordance with Article 6C(1)(a); and if it is a States member, the appointment and nomination procedure under Articles 6C(1)(b) and (2) shall apply to the appointment. If it is a single vacancy for a States member then those Articles shall be interpreted as applying to a single appointment and nomination (Article 6C(6)(b)). These vacancies arise out of the death, resignation or revocation of appointment of the Panel member or if he or she ceases to be an elected member of the States.

Under Article 6C(7) there are to be 2 reserve members of the Panel. The reserve members are also elected members of the States appointed by the Minister subject to the approval by the States of their nominations.

Article 6C(8) describes the circumstances in which a reserve member may sit on the Panel. A reserve member will sit on the Panel if a Panel member is unable to attend a meeting or during the period that occurs between the death, resignation or revocation of an appointment of a Panel member or if the Panel member ceases to be an elected member of the States and a new replacement appointment.

Article 6C(9) provides that a reserve member is appointed for 3 years and may resign. A replacement appointment can be made if a reserve member dies, resigns or has his or her appointment revoked or ceases to be an elected member of the States. Article 6C(10) provides that an appointment as a Panel member or a reserve member shall expire if the member ceases to be an elected member of the States. Article 6C(11) provides that a Panel member and a reserve member are eligible for reappointment.

Article 6C(12) provides for interpretation provisions.

Article 6D provides for an immunity from legal proceedings for Panel members and reserve members and Article 6E provides for an immunity from criminal proceedings for any person who acts in accordance with a permission or authorization granted by the Panel if it is subsequently discovered that the function had not been delegated or a requirement attached to a function had not been complied with.

Article 6F provides for the Minutes of the Panel to be received in evidence.

Article 6G provides protection for publishing an account or summary of a document published under the authority of the Panel or its proceedings if civil proceedings have been instituted in respect of the publication. A court will enter judgement for the defendant if it is satisfied that the publication was *bona fide* and without malice.

Article 2 provides for the name of this Law and that it will come into force on the same day as Article 42(3) of the States of Jersey Law 2005 (which provides for the Committees of the States to be abolished).



Jersey

DRAFT ISLAND PLANNING (AMENDMENT No. 9) (JERSEY) LAW 200

A LAW to amend further the Island Planning (Jersey) Law 1964 to provide for the Minister with responsibility for that Law to delegate certain functions under that Law to the Planning Applications Panel, to provide for the establishment of that Panel and its functions and to provide for related matters.

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 Articles 6A to 6G inserted

After Article 6 of the Island Planning (Jersey) Law 1964^[1] there shall be inserted the following Articles –

“6A Delegation of certain functions to Planning Applications Panel

- (1) The Minister may delegate, either wholly or partly, the functions conferred upon or vested in the Minister under –
 - (a) Articles 6, 9 and 22;
 - (b) an Order made under Article 13; and
 - (c) an Order made under Article 23,to the Panel established under Article 6B and may attach any condition, exception or qualification to the delegation that he or she considers appropriate.
- (2) Where the Minister delegates a function in accordance with this Article, he or she shall notify the States accordingly and specify the functions so delegated.
- (3) The power of the Minister under paragraph (1) to delegate a function is in addition, and without prejudice, to the power of the Minister under Article 27 of the States of Jersey Law 2005.^[2]
- (4) The delegation of any functions under this Article shall not prevent the Minister from exercising those functions personally.
- (5) A delegation of any functions under this Article (or any condition, exception or qualification attached to a delegation) may be amended at any time.

6B Planning Applications Panel

- (1) There is established a Planning Applications Panel (the “Panel”) which shall carry out the functions delegated to it in accordance with Article 6A.
- (2) The Panel shall, subject to Article 6C(8), consist of the following members (‘Panel members’) –
 - (a) an Assistant Minister appointed under Article 6C(1)(a); and
 - (b) 2 persons who are elected members and appointed under Article 6C(1)(b), and shall, subject to this Law, regulate its own procedures by standing orders or otherwise.
- (3) The quorum for the Panel shall be 3.
- (4) Civil proceedings in respect of a decision of the Panel that is made in exercise of a function of the Minister delegated to the Panel under Article 6A shall be instituted against the Minister.

6C Appointment to, and terms of membership of, Panel

- (1) The Minister shall –
 - (a) subject to the agreement of the Chief Minister, appoint an Assistant Minister to the Panel; and
 - (b) subject to the approval by the States of the nominations made under paragraph (2), appoint 2 elected members to the Panel.
- (2) The Minister shall nominate to the States 2 elected members for appointment to the Panel and the States shall either approve or reject each such nomination and –
 - (a) if the States approves a nomination, the Minister shall appoint the elected member concerned to the Panel under paragraph (1); or
 - (b) if the States rejects a nomination, the Minister shall make a new nomination for the vacancy.
- (3) The period of membership of the Panel for a Panel member shall be 3 years.
- (4) The Minister may revoke the appointment of a Panel member –
 - (a) subject to the agreement of the Chief Minister, in the case of an appointment under paragraph (1)(a); and
 - (b) subject to the approval of the States, in the case of an appointment under paragraph (1)(b).
- (5) A Panel member may resign from the Panel.
- (6) Where a vacancy occurs that is caused by the resignation, death, revocation of appointment or expiry of the period of appointment of a Panel member or the Panel member ceasing to be an elected member –
 - (a) paragraph (1) shall apply to the appointment to fill that vacancy; and
 - (b) if that vacancy is a single vacancy to which Article 6B(2)(b) applies, paragraphs (1) and (2) shall be construed accordingly.
- (7) There shall be 2 reserve members of the Panel (‘reserve members’) who shall be appointed by the Minister and the Minister shall, for that purpose, nominate to the States 2 elected members for appointment as reserve members and the States shall either approve or reject each such nomination and –

- (a) if the States approves a nomination, the Minister shall appoint the elected member concerned as a reserve member; or
 - (b) if the States rejects a nomination, the Minister shall make a new nomination for the vacancy.
- (8) A reserve member shall, in accordance with the procedures of the Panel, sit on the Panel as a Panel member in either of the following circumstances –
 - (a) if a Panel member is unable to attend a meeting of the Panel;
 - (b) if a vacancy specified in paragraph (6) occurs, during the period between the vacancy occurring and the appointment to fill that vacancy.
- (9) The period of appointment as a reserve member shall be 3 years and–
 - (a) the Minister may revoke an appointment and paragraph (4) shall apply to the revocation and be construed accordingly;
 - (b) a reserve member may resign; and
 - (c) where a reserve member resigns, dies, has his or her appointment revoked or his or her period of appointment expires or he or she ceases to be an elected member, paragraph (7) shall apply to the appointment to fill that vacancy and shall be construed accordingly.
- (10) An appointment as a Panel member or a reserve member shall expire if the member ceases to be an elected member.
- (11) A Panel member and a reserve member shall be eligible for re-appointment.
- (12) In this Article –
 - ‘Assistant Minister’ has the meaning assigned to it by the 2005 Law;
 - ‘elected member’ has the meaning assigned to it by the 2005 Law;
 - ‘2005 Law’ means the States of Jersey Law 2005.

6D Immunity from legal proceedings for Panel members

No civil or criminal proceedings may be instituted against a Panel member (including a reserve member) –

- (a) for any words, arising out of the exercise of a function delegated to the Panel, spoken or written by a Panel member (including a reserve member); or
- (b) by reason of any other matter or thing brought by the Panel member (including a reserve member) to the Panel.

6E Immunity from criminal proceedings for certain persons

Where any permission or authorization is granted in purported exercise of a function delegated under Article 6A, no criminal proceedings shall lie against any person for any act done or omitted to be done, in good faith and in accordance with the terms of the permission or authorization by reason that the functions had not be delegated, or that any requirement attached to a delegation of the functions had not been complied with.

6F Minutes of Panel to be evidence

A copy of any minutes of the Panel signed in accordance with the procedures of the Panel shall be received in evidence without further proof.

6G Protection in civil proceedings for publication without malice

- (1) This Article applies to civil proceedings instituted for publishing any account or summary of or any extract from or abstract of any document published under the authority of the Panel or any of its proceedings.
- (2) The court shall enter judgement for the defendant if satisfied that such account, summary, extract or abstract was published *bona fide* and without malice.”.

2 Citation and commencement

This Law may be cited as the Island Planning (Amendment No. 9) (Jersey) Law 200 and shall come into force on the same date as Article 42(3) of the States of Jersey Law 2005.

[1] Chapter 22.225.

[2] *Recueil des Lois, Volume 2005, page 345.*