

STATES OF JERSEY

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DRAFT PLANNING AND BUILDING (AMENDMENT No. 3) (JERSEY) LAW 200

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

STATES GREFFE



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 3) (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. 3) (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 Planning and Building (Amendment No. 3) (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 Planning and Building (Jersey) Law 2002 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 2002 Law to achieve this objective.

Background

Article 36A(1) of the States of Jersey Law 1966 allows a 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 Planning and Building (Jersey) Law 2002.

This Law

Article 1 provides for an interpretation of the Planning and Building (Jersey) Law 2002.

Article 2 inserts several new Articles into the Planning and Building (Jersey) Law 2002. The new Articles allow the delegation of the functions listed in Article 9A(1) to the Planning Applications Panel. The Minister with responsibility for the 2002 Law is given a discretionary power to delegate his or her powers under several Articles in the 2002 Law to the Panel and also his or her powers under any order made under two Articles of the 2002 Law.

The functions under the 2002 Law that may be delegated by the Minister under this new Article 9A are the functions under the following Articles of the 2002 Law: Article 9 (Applications for planning permission not granted by a Development Order); Articles 11(3) to (6) (Committee decisions on planning permission applications not to be made until Committee satisfied the application complies with an Order on the publication, notification and public representation); Articles 13(1) to (3) (Environmental impact of proposed development); Articles 13(1) to (3) (Environmental Impact of proposed development) Articles 14 to 17 (Development of concern to highway authority; Harbours and Airport Committee; Public Services Committee; other Committees); Articles 19 to 24 (Grant of planning permission; application for planning permission for development already undertaken; variation of conditions for grant of planning permission; Committee to give reasons for certain decisions; conditions attached to the grant of planning permission; planning permission attaches to land); Article 26 (Committee may terminate planning permission by reference to time limit); Article 28 (Committee may provide certificate of completion); Article 40 (Committee may serve an enforcement notice for breach of development controls); Article 42 (Committee may vary or withdraw an enforcement notice) and Article 45 (Stop notices). Functions of the Minister in an Order made under Article 76 (Orders to control advertisements) and Article 81 (Orders for moveable structures) can also be delegated to the Panel.

Under Article 9A(2) the Minister must notify the States of a delegation of functions made under Article 9A as well as the functions that are delegated.

Article 9A(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 9A(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 9A(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 9B(1) and

which, under Article 9B(2), is comprised of 3 members: an Assistant Minister and 2 elected States members who shall be permanent members on the Panel. Under Article 9B(2), the Panel can regulate its own procedures by standing orders or otherwise. Article 9B(3) provides that the quorum shall be 3. Article 9C(4) provides that any civil proceedings that challenge a decision of the Panel shall be taken against the Minister and not the Panel.

Article 9C(1)(a) provides that the Minister can appoint the Assistant Minister to the Panel with the Chief Minister's agreement and Article 9C(1)(b) provides that the Minister can appoint 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 9C(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 9C(3) provides that the period of membership of the Panel is 3 years. Article 9C(4) gives the Minister power to revoke the appointment of a Panel member to the Panel. Article 9C(5) deals with resignation of a Panel member. Article 9C(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 9C(1)(a); and if it is a States member, the appointment and nomination procedure under Articles 9C(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 9C(6)(b)). These vacancies arise out of the death, resignation or revocation of appointment of the Panel member or if the Panel member ceases to be an elected member of the States.

Under Article 9C(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 for appointment.

Article 9C(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 9C(9) provides that a reserve member is appointed for 3 years and may resign. A replacement appointment to 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 9C(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 9C(11) provides that a Panel member and a reserve member are eligible for reappointment.

Article 9C(12) provides for interpretation provisions.

Article 9D provides for an immunity from legal proceedings for Panel members and reserve members and Article 9E 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 9F allows members of the public to attend a meeting of the Planning Applications Panel. This entitlement is similar to Article 18 of the 2002 Law which provides that members of the public may attend meetings of the Environment and Public Services Committee when it is considering planning permission. This entitlement applies, by Article 9F, to the meetings of the Panel when it is considering the same matter. Article 9F replicates most of the provisions of Article 18 of the 2002 Law which is to be repealed.

Under Article 9F members of the public are entitled to attend Panel meetings if it is considering an application for planning permission. Article 18 also permits the presiding member of the Committee to request a member of the public to leave if the presiding member is satisfied that the member of the public is behaving in a manner that is interfering with the Committee's deliberations. This has also been included in Article 9F and will apply to Panel meetings.

Under Article 18 of the 2002 Law a person who fails to comply with the presiding members request is guilty of an offence and liable to a fine of level 2. This has also been included in Article 9F and applied to Panel meetings.

The Panel must give, under Article 9F(c) at least 3 days' notice in the Jersey Gazette of the meeting that will be open to the public and shall specify in the notice the date, time and place of the meetings and the applications for planning permission it intends to consider at the meeting. It repeats the provisions of Article 18(4) and (5) of the 2002 Law.

Article 9G provides for the minutes of the Panel to be received in evidence.

Article 9H 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 3 provides for the repeal of Article 18 of the Planning and Building (Jersey) Law 2002 as it has been, for the most part, replicated and applied to the Panel in Article 9F.

Article 4 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).

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1994, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

Article 16A of the Interpretation (Jersey) Law 1954 has the effect that –

- (a) where the penalty for an offence is expressed as a specified term of imprisonment or specified fine, a penalty not exceeding the specified term or amount may be imposed for the offence;
- (b) where no amount or level on the standard scale is specified for a fine, the fine is to be construed as a fine of an unlimited amount;
- (b) where the penalty for an offence is expressed as a term of imprisonment and a fine, either or both of the term of imprisonment and the fine may be imposed for the offence.



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 3) (JERSEY) LAW 200

Arrangement

Article

- 1 Interpretation
- 2 Articles 9A to 9H inserted
- 3 Article 18 repealed
- 4 Citation and commencement



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT No. 3) (JERSEY) LAW 200

A LAW to amend further the Planning and Building (Jersey) Law 2002 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, to repeal Article 18 of the 2002 Law 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 Interpretation

In this Law, “Law” means the Planning and Building (Jersey) Law 2002.^[1]

2 Articles 9A to 9H inserted

After Article 9 of the Law there shall be inserted the following Articles –

“9A 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 9, 11(3) to (6), 13(1) to (3), 14 to 17, 19 to 24, 26 and 28;
 - (b) Article 40, 42 and 45;
 - (c) an Order made under Article 76; and
 - (d) an Order made under Article 81,to the Panel established under Article 9B and may attach any condition, exception or qualification to the delegation as 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.

- (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.

9B 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 9A.
- (2) The Panel shall, subject to Article 9C(8), consist of the following members (‘Panel members’) –
 - (a) an Assistant Minister appointed under Article 9C(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 9A shall be instituted against the Minister.

9C Appointment to and terms of membership of Panel

- (1) The Minister shall –
 - (a) subject to the agreement of the Chief Minister, appoint the 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 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 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 the vacancy concerned; and
 - (b) if that vacancy is a single vacancy to which Article 9B(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.^[2]

9D 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.

9E Immunity from criminal proceedings for certain persons

Where any permission or authorization is granted in purported exercise of a function delegated under Article 9A, 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.

9F Public may attend certain Panel meetings

Where the Minister makes a delegation under Article 9A of the function relating to the granting of planning permission under Article 19, it shall be a condition of the delegation that the Panel shall permit members of the public to attend a meeting of the Panel when it is considering an application for planning permission and for that purpose –

- (a) if at any meeting that is open to the public the presiding member of the Panel is satisfied that a member of the public is behaving in a manner that is interfering with the Panel’s deliberations, the presiding member may request the member of the public concerned to leave the meeting;
- (b) a person who fails to comply with a request made in accordance with sub-paragraph (a) shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale;
- (c) the Panel shall give at least 3 days notice in the Jersey Gazette of the meetings that will be open to the public and specify in the notice the date, time and place of the meeting and the applications for planning permissions that the Panel intends to consider at the meeting.

9G 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.

9H 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 judgment for the defendant if satisfied that such account, summary, extract or abstract was published *bona fide* and without malice.”.

3 Article 18 repealed

Article 18 of the Law shall be repealed.

4 Citation and commencement

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

[1] *Volume 2002, page 511.*

[2] *Volume 2005, page 345.*