

# STATES OF JERSEY



## DRAFT PLANNING AND BUILDING (AMENDMENT No. 7) (JERSEY) LAW 201-

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Lodged au Greffe on 17th November 2015  
by the Minister for Planning and Environment

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STATES GREFFE





Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 7) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, 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. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy S.G. Luce of St. Martin**

*Minister for Planning and Environment*

Dated: 13th November 2015

## REPORT

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### Summary

There are some minor changes that would be useful to introduce for the proper functioning of the Planning and Building (Jersey) Law 2002 in relation to regulating the planning and building processes. In particular, the proposed amendments include the renaming of the Planning Applications Committee as the Planning Committee to avoid conflict of the acronym with the Public Accounts Committee. The change also reflects the fact that the Committee has a broader remit than just considering applications for planning permission.

### Background

The Planning and Building (Jersey) Law 2002 establishes the statutory framework for land use planning and control of building operations. As well as setting the process for the formulation of the Island Plan, the control of development and the regulation of building works, the Law also provides for the safeguarding of built heritage, archaeological sites, important ecological and geological sites and trees that contribute to amenity.

### Amendments to the Law – Planning and Building (Amendment No. 7) (Jersey) Law 201-

The following changes to the Law are proposed –

- (a) Specifically allow for the introduction of areas of archaeological potential (Articles 6 and 8).
- (b) Change the name of the Planning Applications Committee to the Planning Committee (Article 9A and at other relevant Articles in the Law).
- (c) Clarify the role of the Minister in determining applications for planning permission which are the subject of a public inquiry (Article 12).
- (d) Introduce the ability to charge for applications for the variation or removal of conditions attached to planning permissions (Article 21).
- (e) Require reasons to be provided when building permissions are granted that are not in accordance with building bye-laws (Article 35).
- (f) Allow for the prosecution of an individual who, in acting as a certifier of design, makes a false or misleading declaration (Article 38A – new Article).
- (g) Clarification of the types of sites of special interest (Articles 51 and 55).

### Article by Article changes

#### (a) Allow for the introduction of areas of archaeological potential

Areas of archaeological potential can indicate where there may be evidence or indications that features of archaeological interest may be present. Identifying such areas would allow for potential archaeological interest to be a material consideration in determining any application for planning permission, and can also allow restrictions to permitted development to be imposed so as to take archaeology into account.

#### (b) Change the name of the Planning Applications Committee to the Planning Committee (Article 9A and at other relevant Articles in the Law)

The Planning Applications Committee is constituted under Standing Orders by the States Assembly. Article 9A of the Law empowers the Committee to make decisions in connection with applications for planning permission and related issues such as the

review of decisions made by the Chief Officer, the service of notices and the variation or revocation of an existing planning permission.

The acronym of the Committee conflicts with that of the Public Accounts Committee. So as to remove any potential confusion and to reflect the fact that the Committee's remit goes beyond considering applications for planning permission, the Committee is proposed to be renamed as the Planning Committee.

**(c) Clarify the role of the Minister in applications for planning permission that are the subject of a public inquiry (Article 12)**

Amendments make it clear that applications for planning permission that are the subject of a public inquiry will be determined by the Minister for Planning and Environment.

**(d) Introduce the ability to charge for applications for the variation of conditions attached to planning permissions (Article 21)**

This amendment has been introduced to reflect the fact that the processing of an application to vary or remove a condition previously attached to a planning permission requires resources just like other applications. The Article as currently drafted does not allow a fee to be levied to contribute to these resources. The level of fee that might be introduced, and the circumstances under which it might be payable, will be set out in any subsequent amendment to the Planning and Environment (2015 Fees) (Jersey) Order 2014.

Since January 2013 some 178 applications to vary or remove conditions have been determined. Of these, some 79 were applications to vary the condition setting the time limit within which a planning permission must be commenced, effectively a renewal of a planning permission for a further significant period. Such renewal applications involve a re-assessment of a proposal to consider any changes of circumstance, including considering any changes in policy or physical changes nearby that may have an impact on the consideration of a proposal. However, as there is previous knowledge of the proposal, the fee to renew the permission will be 50% of the fee in a fresh application for the same development.

Applications to vary or remove any other type of condition attached to a planning permission will attract a fee of £150.00, which is based on the estimated time and resources it takes to consider and process an application.

The variation or removal of any condition attached to a permission granted by Development Order will not attract a fee.

**(e) Require reasons to be provided when building permissions are granted that are not in accordance with building bye-laws (Article 35)**

Building permissions can be granted that do not accord with the relevant building bye-laws, subject to a robust and reasonable argument being advanced to justify the grant. This amendment places a statutory requirement on the decision-maker to explain why a grant has been made that does not accord with the building bye-laws. This requirement ensures transparency in the operation of building permissions and brings them in parallel with requirements for the determination of applications for planning permission.

**(f) Allow for prosecution of an individual who, in acting as a certifier of design, makes a false or misleading declaration (Article 38A – new Article)**

A person is an approved Certifier of Design if his or her name appears on a list published by the Minister, of persons who are considered in accordance with a scheme approved by the Minister, to be persons who have the experience and qualifications required to be competent to issue design certificates. Design certificates confirm the

appropriateness of the structural design of a building by the Certifier of Design in relation to the requirements of Part 1 of Schedule 2 of the building bye-laws.

This amendment will act as a deterrent to abuse of the Design Certificate process, and allows anyone who does abuse it to be called to account.

Making a false or misleading statement in connection with a Design Certificate is considered to be of such gravity as to warrant being an offence under the Law.

**(g) Control of certain activities in areas that have been afforded special protection (Article 55)**

Amendments clarify the types of controls which can apply to different types of Sites of Special Interest (SSIs).

**Financial and manpower implications**

The proposed amendments to Article 21 will generate fee income which will contribute to the resources required for the processing of any applications to vary or remove conditions attached to planning permissions. However, requiring a fee may well reduce the number of such applications.

There are no resource implications associated with the other proposed amendments, as these will reflect tasks currently undertaken in administering the Planning and Building Law.

**Human Rights**

No human rights notes are annexed because the Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

## Explanatory Note

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This draft Law would complete the suite of recent amendments to the planning appeals system in the Planning and Building (Jersey) Law 2002 (the “2002 Law”), begun by the Planning and Building (Amendment No. 6) (Jersey) Law 2014. Most of the amendments it makes would replace references in the 2002 Law to the “Planning Applications Committee” with references to the “Planning Committee” (*Articles 2, 5, 6, 8, 9, 10(b), 11, 12, 13, 14, 17, 18, and 22*, amending respectively Articles 1, 9, 9A, 19, 20, 21, 22, 22A, 26, 27, 40, 45 and 106 of the 2002 Law. *Article 23* would similarly amend Article 48 of the States of Jersey Law 2005).

The remainder of the amendments in this draft Law are miscellaneous changes which would update the 2002 Law to reflect certain aspects of current planning policy. *Articles 3 and 4* would amend Articles 6 and 8 of the 2002 Law to enable the designation of areas of archaeological potential. *Article 7* would make additional changes to Article 12 of the 2002 Law, to clarify the Minister’s role in determining applications following public inquiries, and to permit the making of rules of court in relation to appeals against the Minister’s determinations. *Article 10(a)* would amend Article 21 of the 2002 Law to permit fees to be charged for applications to remove or vary conditions of planning permission. *Article 15* would amend Article 35(3) of the 2002 Law to provide that in granting permission for building work which is inconsistent with Building Bye-laws, the Chief Officer must indicate which provisions of those Bye-laws are disapplied.

*Article 16* would introduce, as Article 38A of the 2002 Law, a new offence of uttering a false design certificate for building work, which would be punishable by up to 2 years’ imprisonment and/or an unlimited fine.

*Articles 19 and 20* would make minor adjustments to the descriptions of types of site of special interest, in Articles 51 and 55 of the 2002 Law.

*Article 24* would provide for the citation of this Law and for its commencement 7 days after being registered.





Jersey

## DRAFT PLANNING AND BUILDING (AMENDMENT No. 7) (JERSEY) LAW 201-

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Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 7) (JERSEY) LAW 201-**

**A LAW** to amend further the Planning and Building (Jersey) Law 2002 and the States of Jersey Law 2005

*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, a reference to an Article by number and without more is to an Article of that number in the Planning and Building (Jersey) Law 2002<sup>1</sup>.

### **2 Article 1 amended**

In Article 1(1) for the words “ ‘Planning Applications Committee’ ” there shall be substituted the words “ ‘Planning Committee’ ”.

### **3 Article 6 amended**

At the end of Article 6 there shall be added the following paragraph –

“(4) In publishing guidelines and policies under paragraph (1)(c), the Minister –

- (a) may designate a particular area or type of area as an area of archaeological potential; and
- (b) may impose restrictions on development within such an area (whether by reference to a particular area or to a type of development, or otherwise).”.

**4 Article 8 amended**

In Article 8(7) at the end the full stop shall be deleted and there shall be added the following words –

“(including different areas, or parts of areas, of land of the same description).”.

**5 Article 9 amended**

In Article 9(5)(b) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**6 Article 9A amended**

In Article 9A and the heading to that Article, for the words “Planning Applications Committee” in each place in which they occur there shall be substituted the words “Planning Committee”.

**7 Article 12 amended**

In Article 12 –

(a) for paragraph (2) there shall be substituted the following paragraph –

“(2) Where this Article applies –

- (a) the Minister, and only the Minister, shall determine the application; and
- (b) the Minister shall not do so unless and until a public inquiry has been held concerning the application.”; and

(b) at the end there shall be added the following paragraph –

“(10) The power to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948<sup>2</sup> shall include the power to make rules regulating practice and procedure in relation to appeals under paragraph (6).”.

**8 Article 19 amended**

In Article 19(3) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**9 Article 20 amended**

In Article 20(2A)(b) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**10 Article 21 amended**

In Article 21 –

- (a) in paragraph (2), for the word “manner,” there shall be substituted the words “together with such fee as may be prescribed;” and
- (b) in paragraph (3)(b) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**11 Article 22 amended**

In Article 22(3) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**12 Article 22A amended**

In Article 22A(2) to (5) for the words “Planning Applications Committee”, in each place in which they occur, there shall be substituted the words “Planning Committee”.

**13 Article 26 amended**

In Article 26(2) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**14 Article 27 amended**

In Article 27(3) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**15 Article 35 amended**

In Article 35(3) for the words “if the Chief Officer is satisfied that there is sufficient justification for doing so.” there shall be substituted the following words –

“if the Chief Officer –

- (a) is satisfied that there is sufficient reason for doing so; and
- (b) specifies, in the grant of permission, which provisions of the Building Bye-laws are disapplied.”.

**16 Article 38A inserted**

After Article 38 there shall be inserted the following Article –

**“38A Offence of uttering false design certificate**

- (1) A person who is an approved Certifier of Design commits an offence if the person knowingly or recklessly signs or issues a design certificate containing –
  - (a) a material omission; or

(b) a statement or representation which is false in a material particular.

(2) In paragraph (1) –

‘approved Certifier of Design’ means a person whose name appears on a list published by the Minister of persons who are considered, in accordance with a scheme approved by the Minister, to have the experience and qualifications required to be competent to issue design certificates; and

‘design certificate’ means a certificate which –

(a) certifies that if the specified building work to which it relates is carried out in accordance with the plans and certificates accompanying the certificate, that work will comply with relevant requirements of Building Bye-Laws, and

(b) is signed by an approved Certifier of Design.

(3) A person who is guilty of an offence under this Article shall be liable to imprisonment for 2 years and to a fine.”.

#### 17 Article 40 amended

In Article 40(1) and (2) for the words “Planning Applications Committee” in each place in which they occur there shall be substituted the words “Planning Committee”.

#### 18 Article 45 amended

In Article 45(1) and (2) for the words “Planning Applications Committee” in each place in which they occur there shall be substituted the words “Planning Committee”.

#### 19 Article 51 amended

In Article 51(2) –

(a) in sub-paragraph (a) for the words “zoological, ecological, botanical or geological” there shall be substituted the words “botanical, ecological, geological, scientific or zoological”; and

(b) in sub-paragraph (b) for the words “historical, scientific or traditional” there shall be substituted the words “cultural or historical”.

#### 20 Article 55 amended

For paragraph (1) of Article 55 there shall be substituted the following paragraph –

“(1) This Article applies to the carrying on, at or on a site of special interest, of any of the following –

(a) the use or operation of a device designed or adapted to detect or locate metal or minerals in the ground;

- 
- (b) an activity which might injure or deface the site or a part of the site;
  - (c) where the special interest of the site is an archaeological interest, an activity specified in sub-paragraph (c), (d), (e) or (f) of paragraph (2);
  - (d) where the special interest of the site is a botanical, ecological, geological, scientific or zoological interest, any activity specified in paragraph (2).”.

**21 Article 57 amended**

In Article 57 after the word “Chapter” there shall be inserted the words “and in Part 7”.

**22 Article 106 amended**

In Article 106(4) for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**23 States of Jersey Law 2005 amended**

In Article 48(3A)(a) of the States of Jersey Law 2005<sup>3</sup> for the words “Planning Applications Committee” there shall be substituted the words “Planning Committee”.

**24 Citation and commencement**

This Law may be cited as the Planning and Building (Amendment No. 7) (Jersey) Law 201- and shall come into force 7 days after it is registered.

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- <sup>1</sup> *chapter 22.550*
  - <sup>2</sup> *chapter 07.770*
  - <sup>3</sup> *chapter 16.800*