

# STATES OF JERSEY



Jersey

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

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**Lodged au Greffe on 2nd August 2021  
by the Minister for the Environment  
Earliest date for debate: 14th September 2021**

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**STATES GREFFE**





Jersey

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

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

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for the Environment has made the following statement –

In the view of the Minister for the Environment, the provisions of the Draft Planning and Building (Amendment No. 8) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy J.H. Young of St. Brelade**  
*Minister for the Environment*

Dated: 30th July 2021



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## REPORT

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### Background

The [Planning and Building \(Jersey\) Law 2002](#) (the “Law”) regulates change in the built and natural environment. The Law provides the legislative means to protect, enhance, conserve and to use wisely the natural resources and biodiversity of Jersey and to preserve and improve Jersey’s general amenities.

The Minister for the Environment has instructed amendments to the Law to ensure the Law appropriately reflects current practice, and in light of the Climate Emergency, decided to urgently pursue an additional control to further protect the existing tree stock of the Island.

Although the draft follows the usual pattern of provisions in sequence, this report outlines the amendments in groups for the purposes of explanation. Overall, there were 20 changes requested.

### Detail

Three of the 20 amendments are new changes that will have a greater impact on individuals. These changes include introducing powers for the designation of Conservation Areas, the determination of public inquiries by a determining body of the Minister, Assistant Minister(s) and Planning Committee Chair, and the introduction of control over any felling, lopping, pruning and any alteration of any tree.

Regarding the introduction of powers to designate Conservation Areas, this has been raised previously in multiple Island Plans and support have been demonstrated by during debates. This change to the law has been long standing and supported externally in the past.

The changes to the determining body for public inquiries provides more robust decision making by introducing a panel of members to determine the most significant applications, rather than the Minister alone. This provides better governance with limited impact to individuals.

The introduction for control over any alteration to trees has the most impact on individuals, however, the Law defines works to trees to be defined by Order, which has yet to be drafted, and an Appointed Day Act will ensure that this power will not come into effect until the subordinate legislation is in force. The preparation of the Order for tree alterations will be subject to wide stakeholder engagement as part of the preparation of an Island Tree Strategy under the Climate Emergency Fund (known as the Species and Habitat Protection project).

Seven of the 20 amendments are minor changes that have arisen from case law, appeals, significant applications or other evidenced learning examples. These changes include to enable bye-laws to be made for in-building infrastructure such as high speed communication networks and electric car charging points, the control of Caravans by Order rather than requiring an application in every instance, defining appeal inspectors as contractors, clarifying appeal rights for Parishes and Government departments, allowing a written request to the Judicial Greffier for an extension of time on appeals, allowing a right of appeal to the Royal Court against a judicial decision of the Judicial Greffier, and to allow inspectors to hear any appeal by way of written representation with the consent of the appeal parties. All these minor changes have been discussed with the key internal and external stakeholders or have been the subject of the inspectors’ recommendations or the Courts.

Ten of the 20 amendments change the Law to reflect current practice. The drafting of the 2002 Law as currently stands is either silent or ambiguous on certain matters and these 10 changes are intended to explicitly clarify how the Chief Officer, Judicial Greffier and/or the department will carry out actions under the Law in practice. Other changes are to ensure that the Law is aligned with current interpretation or practice of the Chief Officer, Judicial Greffier and/or department.

**Financial and manpower implications**

There are no new financial or manpower implications for the States arising from the adoption of this draft Law.

**APPENDIX TO REPORT****Human Rights Notes on the Draft Planning and Building (Amendment. No. 8)  
(Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Planning and Building (Amendment. No. 8) (Jersey) Law 202-, (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law if passed would make a number of amendments to the Planning and Building (Jersey) Law 2002 (the “**2002 Law**”). The provisions of the ECHR principally engaged by the amendments made by the draft Law are the protection of property (Article 1 of Protocol No. 1 ECHR) and the right to a fair trial (Article 6 ECHR).

**Article 1 of Protocol No. 1, ECHR – Right to the peaceful enjoyment of possessions**

Article 1 of Protocol No. 1 ECHR (“A1P1”) states –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

A1P1 guarantees the right of property and protects individuals from arbitrary interference by the State with their existing possessions. A1P1 recognises the right of the State to “control the use” of the property of individuals when deemed necessary in the public or general interest. Land and property are ‘possessions’ within the ambit of A1P1 and, as such, the guarantees provided for by A1P1 are relevant in the context of planning legislation. Planning policies are spheres in which the State intervenes in respect of the possessions of private persons, particularly through measures taken in order to control property in the general or public interest. In such cases, the community’s general interest is widely thought to be pre-eminent, and in these areas the European Court of Human Rights (“ECtHR”) takes the view that the State’s margin of appreciation is wider than when exclusively civil rights are at stake. Under A1P1 it is permissible for the State to impose and maintain building restrictions, so long as the interference in question is in accordance with the law (and therefore not arbitrary), for the general interest and proportionate to the aim pursued.

The majority of the substantive provisions in the draft Law would vary existing provisions, or are supplementary additional provisions to be incorporated, within the general scheme of the 2002 Law. The effect of the 2002 Law is to establish a scheme for the regulation of land use. Relevant provisions in the draft Law in this regard are: the inclusion of tree into the meaning of development (Article 4(2)); the protection, and enhancement, of biodiversity as a condition of planning permission (Article 8); an

amendment to the Schedule of the 2002 Law specifying the content of building bye-laws, enabling those bye-laws to make requirements for the installation of equipment relating to high speed data communication networks and/or electric vehicle charging points (Article 9(2)); the establishment of conservation areas and associated powers for the Minister to regulate the use of land in those areas (Article 13); and additional powers to control the use of caravans (Article 17).

From an A1P1 perspective, these provisions, and others in the draft Law which would engage possessions for the purposes of A1P1, are to be considered “in accordance with the law”. Regulating the use of land is within the public interest and, that being the case, and considering the wide margin of appreciation afforded to States in these cases, the provisions of the draft Law are in principle proportionate to the public interest identified, which includes protecting the environment (both natural and human) and ensuring that properties are equipped with relevant infrastructure. On this analysis, the provisions in the draft Law, taken in the scheme of the 2002 Law, are compatible with A1P1.

### **Article 6 ECHR – Right to a fair trial**

Article 6 ECHR provides that “[in] the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing...by an independent and impartial tribunal established by law...”.

Part 7 of the 2002 Law governs the appeal of various specified decisions, notices, conditions and actions which may be taken in the course of a planning case. Appeals are submitted to the Judicial Greffier, who then appoints a planning inspector to conduct the appeal in accordance with Articles 114 and 115 of the 2002 Law. The Minister for the Environment then determines the appeal, having considered the inspector’s report, and is required to implement the inspector’s recommendation unless the Minister is satisfied there are reasons not to do so (Article 116 of the 2002 Law). An appellant may appeal the Minister’s determination to the Royal Court on a point of law, but no other appeal lies from a decision of the Minister (Article 116(5) of the 2002 Law).

The principal amendments to the appeal provisions in the 2002 Law which would be made by the draft Law are: Article 19(3) makes an amendment to Article 108(4) of the 2002 Law to enable Parishes, and government departments, to be joined as an ‘aggrieved person’ in certain appeals; Article 19(1) enables an appeal to be brought, under new provision inserted into Article 108(2) of the 2002 Law, against the grant or refusal of permission in relation to reserved matters; Article 20 amends Article 112 of the 2002 Law to confer a discretion on the Judicial Greffier to grant an extension of time for giving notice of appeal; and Article 22 amends Article 114 of the 2002 Law to extend the ability of inspectors to hear appeals on the basis of written representations only, where the parties agree.

In civil matters, such as planning, the application of Article 6(1) ECHR depends on the existence of a genuine and serious dispute which relates to a right recognised under domestic law, and the result of the proceedings in question must be directly decisive for the “civil” right in question. Proceedings under the 2002 Law, which materially impact on the exercise of property rights of individuals recognised in Jersey law, and determinations of those rights on appeal, do therefore engage Article 6(1) ECHR. As such, determinations of the civil rights in question must be made by an independent and impartial tribunal established by law. Any amendments to the scheme of the 2002 Law made by the draft Law that engage substantive aspects of this process are then potentially relevant from an Article 6 ECHR perspective.

In general terms, the amendments made to the 2002 Law by the draft Law will amend or supplement existing features of the planning appeal process, that process being one



based around the essential characteristics of an initial determination by the Minister (not regarded as an “independent tribunal” for the purposes of Article 6 ECHR), with an appeal on a point of law to the Royal Court (which is an independent court for the purposes of Article 6 ECHR). The amendments made by the draft Law are of a nature that do not materially affect the overall compatibility of the planning appeal process with Article 6 ECHR and, on this analysis, the provisions in the draft Law do not of themselves raise compatibility issues with the requirements of Article 6(1) ECHR.

For the purposes of these human rights notes, it may however be considered beneficial to provide some further analysis of Article 6 ECHR compatibility of the planning appeal process in the 2002 Law.

Determinations of civil rights must be by an independent tribunal. For the purposes of Article 6 ECHR, only an institution that has full jurisdiction merits the designation “tribunal”. In general terms, Article 6(1) ECHR requires the tribunal to carry out an effective judicial review, meaning it must have “jurisdiction to examine all questions of fact and law relevant to the dispute before it”. The body in question must exercise “sufficient jurisdiction” or provide “sufficient review” in the proceedings before it. Where an administrative body determining disputes over “civil rights and obligations” does not satisfy all the requirements of Article 6(1) ECHR, no violation of the ECHR can be found if the proceedings before that body are “subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6(1) ECHR, that is, if any structural or procedural shortcomings identified in the proceedings before the administrative authority are remedied in the course of the subsequent review by a judicial body with full jurisdiction. In the context of the 2002 Law, the initial “tribunal” is constituted by the Minister’s determination of the appeal, and the subsequent control is provided by the Royal Court.

Article 6(1) ECHR in principle requires that a court or tribunal should have jurisdiction to examine all questions of fact and law that are relevant to the dispute before it. The principle of full jurisdiction has been qualified in a number of cases by the ECtHR’s case-law, which has often interpreted it in a flexible manner, particularly in administrative-law cases where the jurisdiction of the appellate court had been restricted on account of the technical nature of the dispute’s subject matter, as is the case in the scheme of the appeal process in the 2002 Law (i.e. the Royal Court hears an appeal on a point of law because the nuanced aspects of the matter are considered in detail by specialist parties at an administrative level). This is common in the legal systems of the various member European States, where legal regulatory regimes in the sphere of town and country planning are considered to be a specialised area of the law where courts consequently have limited jurisdiction as to the facts of the dispute.

Notably, in specialist areas of law, when a thorough inquiry into the facts has already been conducted at the administrative level, Article 6(1) ECHR does not require that the review by the domestic courts should necessarily encompass a full reopening of the case with the rehearing of the parties and evidence. Moreover, in relation to areas of countryside planning and town planning and environmental protection, Article 6 ECHR does not require access to a level of jurisdiction that can substitute its own opinion for that of the administrative authority, as is the position of the Royal Court under the 2002 Law (see *Article 116(5B) of the 2002 Law*).

To illustrate the principles further the case of *Bryan v United Kingdom* can be considered. In that case, the ECtHR considered whether determination of an individual’s appeal, following the issue of an enforcement notice for breach of a planning control, first by an inspector and subsequently by the High Court, constituted a “fair hearing” by an “independent and impartial tribunal” with sufficient “jurisdiction” so as to be compliant with Article 6 ECHR. The ECtHR concluded that an appeal to an inspector

did constitute a fair hearing but did not satisfy the requirements of independence. The independence requirement was fulfilled by the right of subsequent appeal to the High Court.

With regard to the question of jurisdiction, the ECtHR in Bryan concluded that even though the High court could not substitute its own findings of fact for those of the inspector, it would have had the power to satisfy itself that the inspector's findings of fact or the inferences based on them were neither perverse nor irrational. The ECtHR found that such an approach by an appeal tribunal on questions of fact can reasonably be expected in specialised areas of the law such as the one at issue, particularly where the facts have already been established in the course of a quasi-judicial procedure governed by many of the safeguards required by Article 6(1) ECHR.

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## EXPLANATORY NOTE

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This draft Law would make numerous and varied further amendments to the Planning and Building (Jersey) Law 2002 (the “principal Law”). Although the draft follows the usual pattern of amending the provisions of the principal Law in sequence, it will perhaps be helpful to readers to indicate that this Note describes related amendments in groups, for the purposes of explanation.

The usual provisions as to interpretation, and citation and commencement, can be found at *Article 1* and *Article 24* respectively.

Some of the most significant changes to the principal Law take up relatively small portions of the draft. One such is the inclusion of trees in the definition of development, which will also entail changes to relevant secondary legislation in due course. This amendment is made by *Article 2(b)*, inserting a new definition “tree” into Article 1(1) of the principal Law, and by *Article 4(2)(a) and (b)* which add operations to or involving trees to the meaning of development given by Article 5 of the principal Law. *Article 14* makes a small consequential amendment to Article 57(1).

Another change to what may be permitted by way of development is made by *Article 8(1)*, which inserts new provision at Article 23(2) of the principal Law to enable the inclusion of conditions, where permission is given, as to the protection and improvement of biodiversity in Jersey.

Some changes are largely self-contained, such as the change made by *Article 9* which amends Article 31 of, and the Schedule to, the principal Law (dealing with the contents of building bye-laws) to permit regulation of infrastructure for high speed data communication networks and electric vehicle charging points. *Article 3* makes a corresponding amendment to the purposes of the principal Law.

A stand-alone change may nevertheless have wider ramifications, such as the provision in *Article 17* which amends Chapter 7 of Part 6 of the principal Law to create new Order-making powers to deal with control of the importation, stationing and use of caravans, bringing greater consistency to the treatment in this Part of additional controls on development.

Similarly, a new scheme of secondary legislation is provided for by *Article 13*, introducing a new Article 56A into the principal Law, to confer power on the Chief Officer to designate relatively broad geographical areas as conservation areas. The new Article creates related enabling powers so that the States may make Regulations as to the management of such areas, including power to create criminal offences enforceable against those who carry out prohibited activities in such areas or who otherwise contravene restrictions specified in Orders as to such areas which may be made by the Minister. Orders may also specify activities which may be undertaken in conservation areas without permission.

By contrast, a significant change running throughout the principal Law may necessitate amendment of several of its provisions in largely the same terms. This is the case with new provision to place on a statutory basis a time limit of 3 years for carrying out development or operations for which permission has been granted, which is to be found in *Article 8(2)* amending Article 23(3), *Article 10(2)* inserting new Article 54(6)(a), *Article 11(3)* inserting new Article 55(6)(a), *Article 15* inserting new Article 76(2)(e) and *Article 16* inserting new Article 81(2)(c).

A related provision in *Article 4(3)* adds new paragraphs (6) and (7) to Article 5 of the principal Law to clarify the point at which development is said to begin. This is

modified, however, following determination of an appeal, when the period for development begins afresh, under the new provision in Article 116(8) of the principal Law as inserted by *Article 23*.

Other groups of amendments to different provisions in the principal Law are related by subject matter. One such group makes changes to the principal Law to update some aspects of the process of consideration and determination of planning applications. *Article 5* adds a new paragraph (3A) to Article 11 of the principal Law to provide that an application may be rejected without determination if no evidence of site display is provided; a further new paragraph 11(4) prevents any determination from being made until after the period for publicising or notifying an application has expired. The opportunity is taken in *Article 2(a)* to amend the definition 'site notice' which is relevant to these provisions. Lastly in this group, *Article 6* amends Article 12 of the principal Law to enable the Minister to choose to determine significant public enquiries (other than appeals) by way of a panel consisting of the Minister, Assistant Minister and the Chair of the Planning Committee.

Another group of amendments relates to sites of special interest. New provisions in *Article 11(1), (2) and (3)(b)* make minor clarifications to Article 55 in respect of activities which are restricted on sites of special interest. *Article 12* creates a new offence of giving false information in relation to an application under either Article 54 or 55 (in similar terms to the offence in Article 10 of the principal Law relating to applications under Part 3).

Finally, the remaining amendments in the group in *Articles 18 to 23* make various changes to Part 7 of the principal Law dealing with appeals and appeal procedures. Notably, *Article 19(3)* makes an amendment to Article 108(4) of the principal Law to enable Parishes, and government departments, to be joined as an 'aggrieved person' in certain appeals. *Article 19(1)* enables an appeal to be brought, under new provision inserted into Article 108(2), against the grant or refusal of permission in relation to reserved matters. *Article 20* amends Article 112 of the principal Law to confer a discretion on the Judicial Greffier to grant an extension of time for giving notice of appeal (*Article 7* makes an amendment to Article 19 of the principal Law which is consequential on this change). *Article 22* amends Article 114 of the principal Law to extend the ability of inspectors to hear appeals on the basis of written representations only, where the parties agree. Other amendments made by Articles in this group are consequential or minor and technical in nature.



Jersey

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

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Jersey

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

A LAW to amend further the [Planning and Building \(Jersey\) Law 2002](#).

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her 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 Her Most Excellent Majesty in Council, have adopted the following Law –

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### 1 Interpretation

In this Law, a reference to an Article by number and without more is a reference to the Article of the same number in the [Planning and Building \(Jersey\) Law 2002](#).

### 2 Article 1 (interpretation) amended

In Article 1(1) –

- (a) for the definition “site notice” there is substituted –  
“ “site notice” means a notice or copy of a notice which is displayed, or is to be displayed, under any requirement of this Law, on the land affected by such development, listing, enforcement or other operation as is specified in the notice;”;
- (b) for the definition “tree” there is substituted –  
“ “tree” means a tall perennial plant having a permanent woody or fibrous trunk, a root system and a crown of foliage, or such plant of a similar nature as the Minister may by Order prescribe, and includes –
  - (a) a single tree of any age, genus, species, cultivar or variety;
  - (b) a group of trees;
  - (c) a hedgerow.”.

### 3 Article 2 (purposes of Law) amended

In Article 2(4) for “health, safety and welfare” there is substituted “health, safety, welfare and convenience”.

### 4 Article 5 (meaning of “develop”) amended

(1) For the heading to Article 5, there is substituted –

#### “Meaning of “develop”, commencement of development, etc.”.

(2) In Article 5(2) –

- (a) in sub-paragraph (d) for “a hedgerow or banque” there is substituted “a tree or banque”;
- (b) after sub-paragraph (j) there is inserted –  
“(k) to carry out on the land an operation to or involving a tree, such as the Minister may specify by Order.”.

(3) After Article 5(5) there is inserted –

“(6) In this Law, a reference to development being begun is a reference –

- (a) if the development consists of the carrying out of an operation, to the time when any material operation comprised in the development begins to be carried out;
- (b) if the development consists of a material change of use, to the time when the new use is instituted;
- (c) if the development consists both of the carrying out of operations and of a change of use, to the earlier of the times mentioned in sub-paragraphs (a) and (b).

(7) For the purposes of paragraph (6)(a), in relation to a building operation, “material operation” includes –

- (a) any work of construction in the course of the erection of a building;
- (b) any work of demolition of a building;
- (c) the digging of a trench which is to contain the foundations or part of the foundations of a building;
- (d) the laying of an underground main or pipe to the foundations, or part of the foundations, of a building or to a trench such as mentioned in sub-paragraph (c); or
- (e) any change in the use of land which constitutes material development, and for this purpose “material development” means any development other than –
  - (i) development for which planning permission is granted by a development order and which is carried out so as to comply with any condition or limitation subject to which the permission is granted, or
  - (ii) development of a class prescribed by the Minister by Order for the purposes of this provision.”.



**5 Article 11 (manner in which application is to be publicised) amended**

- (1) For Article 11(1)(b) there is substituted –
  - “(b) representations in relation to the application may be provided.”.
- (2) For Article 11(3) there is substituted –
  - “(3) An Order under this Article may further prescribe –
    - (a) the manner, including any limit of time, in which an application must be publicized or notified; and
    - (b) the manner, including any limit of time, in which evidence of publication or notification of the application must be provided by an applicant.
  - (3A) Where there is a failure to provide evidence of publication or notification in the prescribed manner, the Minister or the Chief Officer may reject the application without determining it.
  - (3B) No determination is to be made until after the expiry of the prescribed period for publication or notification of an application.”.
- (3) In Article 11(4) there is deleted “by members of the public”.

**6 Article 12 (public inquiries) amended**

- (1) For Article 12(2) there is substituted –
  - “(2) Where this Article applies –
    - (a) a public inquiry must be held before the application is determined; and
    - (b) following the public inquiry the Minister alone may determine the application or, where the Minister considers that the nature of the application or the decision is of such significance for the public of Jersey that it is expedient to do so, the Minister may refer the matter to a panel (the “determining panel”) for determination.
  - (2A) The determining panel must consist of the Minister, any Assistant Minister having responsibility for the environment, and the Chair of the Planning Committee.”.
- (2) In Article 12(3), (6) and (8)(c) after “Minister” in each place there is inserted “or the determining panel”.
- (3) In Article 12(8), in each of sub-paragraphs (a) and (b) “of the Minister” is deleted.
- (4) In Article 12(9), in each of sub-paragraphs (a) and (b) for “the Minister determines” there is substituted “it is determined”.

**7 Article 19 (grant of planning permission) amended**

In Article 19(8) after “28 days” there is inserted “, or such extension of that period as may be granted under Article 112(5),”.

## **8 Article 23 (conditions attached to the grant of planning permission) amended**

- (1) In Article 23(2) after sub-paragraph (i) there is inserted –
  - “(j) the protection and improvement of biodiversity on the land.”.
- (2) In Article 23(3)(b) after “begun” there is inserted “, being no longer than the period ending 3 years after the date of the grant of planning permission”.

## **9 Article 31 (purposes of Building Bye-Laws) and Schedule (contents of Building Bye-Laws) amended**

- (1) In Article 31(2)(a) and (3)(a) for “health, safety and welfare” in each place there is substituted “health, safety, welfare and convenience”.
- (2) In the Schedule –
  - (a) after paragraph (2)(p) there is inserted –
    - “(q) installations in buildings of, and standards for, infrastructure and equipment relating to high speed data communication networks;
    - (r) installations in buildings of, and standards for, electric vehicle charging points.”;
  - (b) in paragraph (12) after the definition “sanitary equipment in buildings” there is inserted –
    - “services, fittings, appliances, equipment and accessories in or in connection with buildings” includes –
      - (a) infrastructure relating to high speed data communication networks; and
      - (b) electric vehicle charging points;”.

## **10 Articles 53 (provisional listing) and 54 (control of operations on sites of special interest) amended**

- (1) In each of Articles 53(1) and 54(1), “adversely” is deleted.
- (2) In Article 54(6) for “shall fairly and reasonably relate to protection of the special interest of the site” there is substituted –
  - “ –
    - (a) may relate to the period within which the operation or change of use must be begun, being no longer than the period ending 3 years after the date of the grant of permission; and
    - (b) must fairly and reasonably relate to protection of the special interest of the site.”.

## **11 Article 55 (certain activities restricted on sites of special interest) amended**

- (1) In Article 55(2)(c) after “probe” there is inserted “or similar implement”.

- (2) In Article 55(4) for “without the permission referred to in” there is substituted “, except as permitted by”.
- (3) In Article 55(6) for “shall fairly and reasonably relate to protection of the special interest of the site” there is substituted –
  - “–
  - (a) may relate to the period within which the activity must be begun, being no longer than the period ending 3 years after the date of the grant of permission; and
  - (b) must fairly and reasonably relate to protection of the special interest of the site.”.

## 12 New Article 55A (offence of false information) inserted

After Article 55 there is inserted –

### **“55A False information [in relation to application for permission]**

- (1) A person who, in making an application for permission under Article 54 or 55, knowingly or recklessly –
  - (a) makes a false or misleading statement or representation;
  - (b) makes a statement or representation with a material omission,is guilty of an offence and liable to imprisonment for a term of 2 years and a fine.
- (2) Paragraphs (2) to (10) of Article 10 apply in respect of a statement or representation to which this Article applies, as if a reference in those paragraphs –
  - (a) to development, refers to an operation or change of use under Article 54, or to use or operation of a device, or to an activity, under Article 55, as the case may be; and
  - (b) to planning permission, refers to permission under either of those Articles.”.

## 13 New Article 56A (conservation areas) inserted

After Article 56 (Minister may make funds available, etc.) there is inserted –

### *“Chapter 1A – Conservation Areas*

#### **56A Conservation areas**

- (1) The Chief Officer may designate, as a conservation area, any area of Jersey to which there attaches a special architectural or historical interest, for the purpose of protecting and improving the character or appearance of that area.
- (2) The States may by Regulations make such further provision as appears to them to be necessary or expedient in relation to the

management of conservation areas in general, and such Regulations may, in particular –

- (a) make provision as to the allocation of funds for the purpose mentioned in paragraph (1);
- (b) create sanctions and offences, including offences of breach of a provision of an Order under paragraph (3); and
- (c) impose penalties, but such provision may not include a penalty of imprisonment or of a fine exceeding level 2 on the standard scale.

(3) The Minister may by Order make all such further provision as is necessary for the purposes of this Article, whether in relation to a particular conservation area or to all such areas, including provision –

- (a) specifying any activity which may be undertaken within a conservation area without the Chief Officer’s permission;
- (b) specifying –
  - (i) any activity which, if carried out within a conservation area, may amount to commission of an offence, or
  - (ii) any prohibitions on or restrictions to activities carried out within a conservation area, breach of which may amount to commission of an offence,under Regulations made under paragraph (2);
- (c) as to the manner in which notice of prohibitions or restrictions is to be given or published, and to whom;
- (d) as to the manner in which applications for permission must be made, and in which permission may be granted, including the imposition of conditions; and
- (e) as to the creation and maintenance of a list or register.”.

#### **14 Article 57 (interpretation – protected trees) amended**

In Article 57 the definition “tree” is deleted.

#### **15 Article 76 (Orders to control advertisements) amended**

In Article 76(2) at the end there is inserted –

- “(e) make provision as to the period within which advertisements may be displayed, being no longer than the period ending 3 years after the date of the grant of permission.”.

#### **16 Article 81 (Orders in respect of moveable structures) amended**

In Article 81(2) at the end there is inserted –

- “(c) make provision as to the period during which any permission is to subsist, being no longer than the period ending 3 years after the date of the grant of permission.”.

**17 Chapter 7 (controls on caravans) of Part 6 (additional controls) amended**

- (1) At the end of Article 98 (definitions in respect of caravans) there is added –
  - “; and
  - “Order” means an Order under this Chapter.”.
- (2) In Article 99 (controls on caravans) –
  - (a) before paragraph (1) there is inserted –
    - “(A1) The Minister may by Order regulate or restrict –
      - (a) the importation of caravans into Jersey; and
      - (b) the stationing and use of caravans in Jersey.
    - (A2) An Order may further and in particular –
      - (a) require permission to be obtained for the importation, stationing or use of caravans; and
      - (b) include provision to prevent nuisances that may arise from caravans.
    - (A3) The Order may be made to apply to all caravans or to caravans or types of caravan specified in the Order.”;
  - (b) in paragraph (1) after “granted” there is inserted “by the Order or, where required under the Order,”;
  - (c) in paragraph (2) after “application” there is inserted “for permission”.

**18 Article 107 (appointment of inspectors) amended**

In Article 107(1) “as States employees” is deleted.

**19 Article 108 (right to appeal against certain decisions, etc.) amended**

- (1) In Article 108(2) after sub-paragraph (b) there is inserted –
  - “(ba) a decision under Article 19(6) to grant or to refuse permission in relation to matters reserved for further approval;”.
- (2) In Article 108(3) after sub-paragraph (a) there is inserted –
  - “(aa) for the purposes of an appeal against a decision to grant permission mentioned in paragraph (2)(ba), the applicant and any third party;”.
- (3) In Article 108(4) for “a person, other than an applicant,” there is substituted “a person, a Parish or a department of the government of Jersey, who is not the applicant and”.

**20 Article 112 (notice of appeal: proper form, etc.) amended**

After Article 112(4) there is inserted –

- “(5) Without prejudice to paragraph (3), the Greffier may grant an extension of the period in that paragraph, if –
  - (a) the Greffier considers it reasonable to do so; and

- (b) the request for an extension is received by the Greffier no later than the end of that period.
- (6) A person aggrieved by a decision of the Greffier under paragraph (5) may appeal against that decision to the Royal Court.
- (7) In paragraph (6) a “person aggrieved” means the person requesting the extension and, where that person is not the applicant for planning permission, the applicant.
- (8) An appeal under paragraph (6) must be made within 28 days beginning with the date of the refusal, and on hearing the appeal the Royal Court may –
  - (a) confirm or quash the decision of the Greffier; or
  - (b) remit the decision to the Greffier to be retaken.
- (9) The power to make rules of court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) includes power to make rules regulating practice and procedure in relation to appeals under paragraph (6).”.

## 21 Article 113 (registration of appeal, etc.) amended

- (1) In Article 113(1) –
  - (a) at the end of sub-paragraph (b), “and” is deleted; and
  - (b) after sub-paragraph (c) there is inserted –
    - “and
    - (d) nominate an inspector to conduct the appeal, from the list of persons appointed for that purpose under Article 107.”.
- (2) In Article 113(2), sub-paragraph (a) is deleted.

## 22 Article 114 (appeal procedures) amended

- (1) For Article 114(2) there is substituted –
  - “(2) An appeal of a kind mentioned in sub-paragraph (a) or (b) of paragraph (1) may be determined on the basis of written representations only in a case where either –
    - (a) no representations, except representations by statutory bodies in accordance with Articles 14 to 17, have been made in relation to the application which gave rise to the appeal; or
    - (b) the parties, and the inspector, have agreed to the determination of the appeal on that basis.”.
- (2) After Article 114(7) there is inserted –
  - “(8) For the purposes of this Article, “parties” means –
    - (a) the appellant;
    - (b) (where different) the applicant; and
    - (c) the decision-maker.”.

**23 Article 116 (Minister's decision on appeal, etc) amended**

After Article 116(7) there is inserted –

“(8) Following the Minister's determination of an appeal under this Article, a reference in this Law to a time period within which development or any operation must be begun is to be construed as though that time period commences –

- (a) where an appeal against the determination is made to the Royal Court under paragraph (5), on the date of the Royal Court's final decision on that appeal; or
- (b) in any other case, on the date of the Minister's determination of the appeal.”.

**24 Citation and commencement**

This Law may be cited as the Planning and Building (Amendment No. 8) (Jersey) Law 202- and comes into force on a day to be specified by the States by Act, but not earlier than 7 days after the day on which it is registered.