

# PROJET DE LOI

ENTITLED

## **The Administrative Decisions (Review) (Guernsey) Law, 1986 \***

[CONSOLIDATED TEXT]

### NOTE

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XXIX, p. 381; as amended by the Administrative Decisions (Review) (Amendment) (Guernsey) Law, 1992 (No. VIII of 1992); the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 1993 (No. II of 1993); the Reform (Election of Conseillers and Minor Amendments) (Guernsey) Law, 1993 (No. V of 1993); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

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### ARRANGEMENT OF SECTIONS

1. Application by complainant for review of administrative decisions.
2. Action by Chief Executive Supervisor or Her Majesty's Greffier.
3. Cases where complaints shall not be referred to the Chairman.
4. The Panel of Members.
5. Appointment of Board.
6. Calling of documents and hearing of evidence.
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## **The Administrative Decisions (Review) (Guernsey) Law, 1986**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> day of October, 1985, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### **Application by complainant for review of administrative decisions.**

1. Where any person (hereinafter referred to as "**the complainant**") is aggrieved by any decision made, or any act done or omitted, relating to any matter of administration by any Committee of the States or by any person acting on behalf of any such Committee, he may apply to [the Chief Executive of the States of Guernsey] to have the matter reviewed by a Review Board constituted in accordance with this Law (hereinafter referred to as a "**Board**");

Provided that –

- (a) where the matter complained of relates to any matter of administration by the States [Policy Council] or by any person acting on behalf of that [Council], or
- (b) the complainant is a member on the staff of that [Council],

the application under this section shall be made to Her Majesty's Greffier.

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## NOTES

*In section 1,*

*the words in the first pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance;*

*the words in the second, third and fourth pairs of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.*

*The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

*The following case has referred to this Law:*

*Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86.*

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### **Action by [Chief Executive] or Her Majesty's Greffier.**

2. On receipt of an application made under section 1 of this Law [the Chief Executive of the States of Guernsey] or Her Majesty's Greffier, as the case may be, shall enquire into the facts of the matter and, if satisfied as a result of his enquiries that the circumstances justify a review of the matter by a Board, he shall refer the matter to the Chairman of the Panel of Members who shall, as soon as may be, appoint a Board in accordance with this Law and thereafter forthwith refer the matter to the Board so constituted for the Board's action in accordance with this Law:

[Provided that –

- (i) if, due to the unavailability or indisposition of the Chairman, reference to him would in the opinion of [the Chief Executive of the States of Guernsey], or of Her Majesty's Greffier as the case may be, involve undue delay, the reference shall be made to the Deputy Chairman, who shall act in accordance with this section, and
- (ii) if, due to the unavailability or indisposition of both the Chairman and the Deputy Chairman reference to either of them would in the opinion of [the Chief Executive of the States of Guernsey], or of Her Majesty's Greffier as the case may be, involve undue delay, the reference shall be made to the senior available Acting President of the States, who shall act in accordance with this section.]

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#### NOTES

*In section 2,*

*the words in the marginal note thereto, and in the first pair of square brackets therein, were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance;*

*the proviso thereto was inserted by the Administrative Decisions*

*(Review) (Amendment) (Guernsey) Law, 1992, section 1(a), with effect from 18th January, 1993;*

*the words in the square brackets within the proviso thereto were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

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**Cases where complaints shall not be referred to the Chairman.**

3. [The Chief Executive of the States of Guernsey] or Her Majesty's Greffier, as the case may be, shall not refer any complaint under this Law to the Chairman if in his opinion –

- (a) the matter complained of is not within the jurisdiction of a Board,
- (b) the matter complained of relates to a decision, act or omission of which the complainant has had knowledge for more than twelve months,
- (c) the subject matter of the complaint is trivial,
- (d) the complaint is frivolous, vexatious or not made in good faith,
- (e) the complainant has not a sufficient personal interest in the subject matter of the complaint,
- (f) the complainant has in respect of the matter complained of a right of appeal, reference or review [...] or a remedy by way of proceedings in any court

of law unless, in any such case, [the Chief Executive of the States of Guernsey] or Her Majesty's Greffier, as the case may be, is satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort to or to have resorted to that right or remedy.

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#### NOTES

*In section 3,*

*the words in the first and third pairs of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance;*

*the words omitted in the second pair of square brackets were repealed by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 1993, section 1, with effect from 11th May, 1993.*

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#### **The Panel of Members.**

4. (1) Boards shall be constituted from a Panel of Members consisting of –

- (a) Members of the States of Deliberation for the time being who have held a seat in the States for a period of three years or more (hereinafter referred to as "**the Members**"), and
- (b) Deans for the time being of every Douzaine of the Parishes of the Island of Guernsey (hereinafter referred to as "**the Deans**").

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(2) The States shall every year elect one of the Members to be Chairman, and one of the Deans to be Deputy Chairman, of the Panel of Members:

Provided that a Dean who is a Member of the States of Deliberation shall not be appointed Deputy Chairman.

(3) The Chairman and Deputy Chairman shall each hold office for a period of one year computed from the first day of [June] in the year of his election.

(4) Where any Member of the Panel ceases to be qualified for membership of the Panel in accordance with the provisions of paragraph (a) or (b) of subsection (1) of this section he shall forthwith be deemed to have ceased to be a Member of the Panel; and, in that event, where such a person holds also the office of Chairman or Deputy Chairman he shall equally forthwith be deemed to have ceased to be Chairman or Deputy Chairman, as the case may be.

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**NOTE**

*In section 4, the word in square brackets in subsection (3) was substituted by the Reform (Election of Conseillers and Minor Amendments) (Guernsey) Law, 1993, section 11(6), with effect from 31st March, 1994.*

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**Appointment of Board.**

[5. (1) A Board shall be composed of three persons selected from the Panel of Members –

(a) by the Chairman, who shall first consult the Deputy Chairman unless the latter is unavailable or



indisposed, or

- (b) if the Chairman is unavailable, indisposed, or in any way concerned with the complaint, by the Deputy Chairman, or
- (c) if the Chairman and the Deputy Chairman are both unavailable, indisposed, or in any way concerned with the complaint, by the senior available Acting President of the States of Deliberation.

(2) In making that selection regard shall be had to the subject matter of the complaint so as to ensure that no member of the Board is a member of a Committee which is in any way concerned with the complaint.]

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**NOTE**

*Section 5 was substituted by the Administrative Decisions (Review) (Amendment) (Guernsey) Law, 1992, section 1(b), with effect from 18th January, 1993.*

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**Calling of documents and hearing of evidence.**

6. For the purposes of this Law a Board, [the Chief Executive of the States of Guernsey] and Her Majesty's Greffier, as the case may be, shall have power to call for documents from any Committee or officer or employee of any Committee and to hear any person in connection with any complaint:

Provided –

- (a) that the power conferred under this section regarding

the calling of documents and hearing of evidence shall not extend to the calling of any document containing, or the hearing of any evidence upon, any information the disclosure of which is prohibited under or by virtue of any provisions of any enactment or is confidential or privileged from disclosure under or by virtue of any enactment, custom or rule of law,

- (b) that a witness before a Board, [the Chief Executive of the States of Guernsey] or Her Majesty's Greffier for the purpose of enquiring into any complaint under this Law shall be entitled to the same immunities and privileges as if he were a witness before the Royal Court.

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**NOTE**

*In section 6, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

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**Action by Board.**

7. (1) A Board shall, with the least possible delay, enquire into any complaint referred to it under this Law and for this purpose shall regulate its own procedure:

Provided that every sitting of the Board to enquire into any complaint referred to it under this Law shall be held in public unless the public is excluded therefrom (whether during the whole or part of the proceedings) by decision of the Board whenever the Board is of the opinion that it would not be in the public interest

*Consolidated text*

expedient for such sitting to be held in public for reasons connected with the subject-matter of the complaint or the nature of the evidence to be given.

(2) After completing its enquiry, a Board shall report its findings in writing to the complainant and to the Committee, or person concerned.

(3) Where a Board after making enquiry as aforesaid is of opinion that the decision, act or omission which was the subject matter of the complaint –

- (a) was contrary to law, or
- (b) was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory, or
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) could not have been made by a reasonable body of persons after proper consideration of all the facts, or
- (e) was contrary to the generally accepted principles of natural justice,

the Board, in reporting its findings thereon to the Committee or person concerned, shall request that Committee or person to reconsider the matter.

(4) Where a Board requests reconsideration of any matter, it shall

also request the Committee or person concerned to inform it within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration.

(5) Where a Board, having requested reconsideration by the Committee, or person concerned, is of the opinion that the findings of the Board have been insufficiently considered or implemented, it shall refer the matter to the States.

#### **Annual Report to the States.**

8. The Chairman shall, every twelve months, report to the States on the complaints received, the findings of any Board in relation thereto and any steps taken on a reconsideration of any matter.

#### **Savings.**

9. The provisions of this Law shall be in addition to, and not in derogation of, any other remedy which may be available to a complainant.

#### **Interpretation.**

10. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"Board"** has the meaning assigned to it by section 1 of this Law,

**"Chairman"** means the Chairman of the Panel of Members,

**"Committee"** means any body set up by or at the instance of the States, whether it be styled a Committee, a Board or otherwise and includes any other body whatsoever administered by or on behalf of the States; and

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the expression "**any person acting on behalf of any such Committee**" shall be construed accordingly,

**"complainant"** has the meaning assigned to it by section 1 of this Law; and the expression "**complaint**" shall be construed accordingly,

**"the Deans"** has the meaning assigned to it by section 4 of this Law,

**"Deputy Chairman"** means the Deputy Chairman of the Panel of Members,

**"enactment"** includes any order, rule or regulation under any enactment,

**"Her Majesty's Greffier"** means Her Majesty's Greffier or such other person as the States may, from time to time, appoint to perform the functions of Her Majesty's Greffier under this Law,

**"the Members"** has the meaning assigned to it by section 4 of this Law,

**"[the Chief Executive of the States of Guernsey]"** means [the Chief Executive of the States of Guernsey] or such other person as the States may, from time to time, appoint to perform the functions of [the Chief Executive of the States of Guernsey] under this Law.

(2) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

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**NOTE**

*In section 10, the words in the square brackets in the definition of the expression "the Chief Executive of the States of Guernsey" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

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**Citation.**

11. This Law may be cited as the Administrative Decisions (Review) (Guernsey) Law, 1986.

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**NOTE**

*The Law received Royal Sanction on 16th December, 1986 and was registered on the Records of the Island of Guernsey on 17th February, 1987.*

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