

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. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. 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 Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018 (No. ** of 2019); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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The Administrative Decisions (Review) (Guernsey) Law, 1986

THE STATES, in pursuance of their Resolution of the 30th 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, [that person may apply to the Complaints Panel] to have the matter reviewed by a Review Board constituted in accordance with this Law (hereinafter referred to as a "**Board**") [...].

NOTES

In section 1, the words in the first pair of square brackets were substituted and those omitted in the second pair of square brackets were repealed by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(b)(i) and section 1(b)(ii), with effect from 3rd June, 2019.¹

The following case has referred to this Law:

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

[The Complaints Panel.]

1A. (1) The States shall, upon recommendation of the Policy & Resources Committee, appoint a panel to be called the Complaints Panel which shall consist of such number of persons as in the opinion of the States is necessary for the purpose of carrying out the functions of the Complaints Panel established under this Law.

(2) The members of the Complaints Panel shall be persons who, in the opinion of the States, have sufficient experience and knowledge to enable them to decide matters likely to fall for decision by the Complaints Panel.

(3) The States shall from time to time appoint a Panel Chair from amongst the members of the Complaints Panel.

(4) The Panel Chair may appoint a Deputy Panel Chair from amongst the members of the Complaints Panel who may perform the functions of the Panel Chair.

- (5) The following may not be members of the Complaints Panel –
- (a) a Member of the States of Deliberation,
 - (b) a member of a Committee who is not also a Member of the States of Deliberation,
 - (c) a Dean for the time being of a Douzaine of one of the Parishes of the Island of Guernsey,
 - (d) any person who holds appointment to any judicial office in the Bailiwick, or
 - (e) an employee of the States.

(6) The Panel Chair shall select 3 members of the Complaints Panel to exercise the functions of the Complaints Panel in relation to an application made under section 1 of this Law.

(7) A member of the Complaints Panel may resign as Panel Chair or a member by serving a notice in writing on the Policy & Resources Committee.

(8) Where, on the recommendation of the Policy & Resources Committee, the States resolves to dismiss a member of the Complaints Panel where that member is –

- (a) under a legal disability,
- (b) convicted of an indictable offence, or
- (c) otherwise unable or unfit to continue in office,

that member shall forthwith no longer be a member of the Complaints Panel.

(9) Any complaint or other document to be served on the Complaints Panel shall be served on the Panel Chair, care of the principal officer to the Panel.

(10) The Policy & Resources Committee shall –

- (a) appoint a principal officer to the Complaints Panel on such terms and conditions and with such functions, and
- (b) provide such other officers and facilities,

as it thinks fit.]

NOTE

Section 1A was inserted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, section 1(c), with effect from 3rd June, 2019.²

Action by [the Complaints Panel].

2. On receipt of an application made under section 1 of this Law [the Complaints Panel] shall enquire into the facts of the matter and, if satisfied as a result of [its] enquiries that the circumstances justify a review of the matter by a Board, [it] 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 [the Chairman would in the opinion of the Complaints Panel] 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 Complaints Panel] involve undue delay, the reference shall be made to the senior

available Acting [Presiding Officer] of the States, who shall act in accordance with this section.]

NOTES

In section 2,

the words in square brackets in, first, the marginal note thereto³ and, second, in the first and, third, in the second and third pairs of square brackets in subsection (1) were substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(d)(i), section 1(d)(ii) and section 1(d)(iii), with effect from 3rd June, 2019;⁴

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 first, second and third pairs of square brackets within the proviso thereto were substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(d)(iv), section 1(d)(v)(A) and section 1(d)(v)(B), with effect from 3rd June, 2019.⁵

Cases where complaints shall not be referred to the Chairman.

3. [(1)] [The Complaints Panel] shall not refer any complaint under this Law to the Chairman if in [its] opinion –

- (a) the matter complained of is not within the jurisdiction of a Board,
- (b) [unless subsection (2) applies] 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,

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(d) the complaint is frivolous, vexatious[, unreasonable] or not made in good faith,

(e) the complainant has not a sufficient personal interest in the subject matter of the complaint,

[(ea) the complainant has not exhausted the internal complaints procedures of the relevant Committee in respect of the matter complained of,]

(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 Complaints Panel] 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[, or]

[(g) the complaint would require the Board to make a finding of medical negligence or malpractice in order to form an opinion for the purposes of section 7.]

[(2) Where –

(a) the matter complained of relates to a decision, act or omission of which the complainant has had knowledge for more than twelve months, but

(b) the Complaints Panel is of the opinion that –

(i) there are exceptional circumstances which

justify the making of a complaint after twelve months have elapsed since the complaint had knowledge of the decision, act or omission, or

- (ii) it is otherwise in the interests of justice that the complaint should be referred to the Chairman,

the Complaints Panel may refer the complaint to the Chairman.]

NOTES

In section 3,

first, subsection (1) was renumbered, second, the words in the first and, third, the second pairs of square brackets therein were substituted, fourth, the words in the third and, fifth, the fourth pairs of square brackets therein were inserted and, sixth, paragraph (ea) thereof was inserted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(e)(i), section 1(e)(ii)(A), section 1(e)(ii)(B), section 1(e)(ii)(C), section 1(e)(ii)(D) and section 1(e)(ii)(E), with effect from 3rd June, 2019;⁶

the words omitted in the first pair of square brackets in paragraph (f) of subsection (1) were repealed by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 1993, section 1, with effect from 11th May, 1993;

the words in, first, the second and, second, the third pairs of square brackets in paragraph (f) of subsection (1) were substituted and, third, paragraph (g) thereof and, fourth, subsection (2) were inserted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(e)(ii)(F)(aa), section 1(e)(ii)(F)(ab), section 1(e)(ii)(G) and section 1(e)(iii), with effect from 3rd June, 2019.⁷

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**"), [...]

(b) Deans for the time being of every Douzaine of the Parishes of the Island of Guernsey (hereinafter referred to as "**the Deans**")[, and]

[(c) persons who are not –

(i) Members of the States of Deliberation, and

(ii) the Dean of the Douzaine of any Parish of the Island of Guernsey,

appointed by the Chairman (hereinafter referred to as "**the independent Members**").]

(2) The States shall [within 6 weeks of a General Election] 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) Subject to –

(a) subsection (4), the Chairman and Deputy Chairman, and

(b) subsection (5), the independent Members,

shall, unless that Member of the Panel resigns by serving a notice in writing on the Policy & Resources Committee, hold office until the date of the following General Election.]

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

[(5) Where the Chairman decides to dismiss one of the independent Members where that Member is –

- (a) under a legal disability,
- (b) convicted of an indictable offence, or
- (c) otherwise unable or unfit to continue,

that Member shall forthwith no longer be a member of the Panel.

(6) Where –

- (a) the Chairman or Deputy Chairman resigns or ceases to be a Member of the Panel, the States shall appoint a replacement Chairman or Deputy Chairman (as the case may be), and
- (b) an independent Member of the Panel resigns or is

dismissed, the Chairman may appoint a replacement Member.]

NOTES

In section 4,

first, the words in the first pair of square brackets in subsection (1) were repealed, second, the words in the second pair of square brackets therein were substituted, third, paragraph (1)(c) was inserted and, fourth, the words in square brackets in subsection (2) were substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(f)(i), section 1(f)(ii), section 1(f)(iii) and section 1(f)(iv), with effect from 3rd June, 2019;

first, subsection (3) and, second subsection (4) were substituted and, third, subsection (5) and subsection (6) were inserted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(f)(v), section 1(f)(vi) and section 1(f)(vii), with effect from 3rd June, 2019.⁸

Appointment of Board.

[5. (1) A Board shall be composed of [four] 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 [Presiding

Officer] 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.]

NOTES

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

In section 5, the words in the first and second pairs of square brackets were substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(g)(i) and section 1(g)(ii), with effect from 3rd June, 2019.

Calling of documents and hearing of evidence.

6. For the purposes of this Law a Board [and the Complaints Panel] 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 [or the Complaints Panel] for the purpose of enquiring into any complaint under this Law shall be entitled to the same immunities and privileges as if [that person was a witness before the Royal Court, in the same manner as set out in article 20E of the Reform (Guernsey) Law, 1948*].

NOTE

In section 6, the words in the first, second and third pairs of square brackets were substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, respectively section 1(h)(i), section 1(h)(ii)(A) and section 1(h)(ii)(B), with effect from 3rd June, 2019.⁹

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 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.

* Ordres en Conseil Vol. XIII, p. 288; there are amendments not relevant to this enactment.

(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 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 Complaints Panel"** has the meaning assigned to it in section 1A of this Law,]

"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,

[**"General Election"** means a General Election for the office of People's Deputy in accordance with the Reform (Guernsey) Law, 1948,]

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

[...]

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

[**"a Member of the States of Deliberation"** has the meaning set out in article 1(1) of the Reform (Guernsey) Law, 1948,]

[**"Panel Chair"** includes any person designated by the Panel Chair to carry out the functions of Panel Chair due to illness or unavailability, and]

[**"the Policy & Resources Committee"** means the States of Guernsey Policy & Resources Committee.]

[...]

(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.

NOTE

In section 10, the definitions of the expressions, first, "the Complaints Panel", second, "General Election" and "the independent Members" and, third, "a Member of the States of Deliberation", "Panel Chair" and "the Policy & Resources Committee" in subsection (1) were inserted and the words omitted in, fourth, the square brackets immediately preceding the definition of the expression "the Members" and, fifth, in square brackets immediately after the definition of the expression "the Policy & Resources Committee" (as inserted) in that subsection were, respectively, inserted, inserted, inserted, repealed and repealed by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, section 1(i)(i), section 1(i)(ii), section 1(i)(iv), section 1(i)(iii) and section 1(i)(v), with effect from 3rd June, 2019.¹⁰

Citation.

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

NOTE

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

¹ Section 1 was previously amended 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 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 Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016. The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance; and the functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President 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.

² The corresponding entry in the Arrangement of Sections was inserted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, section 1(a)(i), with effect from 3rd June, 2019.

³ The corresponding entry in the Arrangement of Sections was substituted by the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018, section 1(a)(ii), with effect from 3rd June, 2019.

⁴ The marginal note and subsection (1) were previously amended 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.

⁵ The words in the first and second pairs of square brackets were previously 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.

⁶ The words in the second pair of square brackets were previously amended, in part, 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.

⁷ The words in the second pair of square brackets were previously amended, in part, 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.

⁸ Subsection (3) was previously amended by the Reform (Election of Conseillers and Minor Amendments) (Guernsey) Law, 1993, section 11(6), with effect from 31st March, 1994.

⁹ The words in the first and second pairs of square brackets were previously amended, in part, 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.

10 Subsection (1) was previously amended 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.