



BILLET D'ÉTAT

WEDNESDAY, 2nd MARCH, 2016

VI
2016

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POLICY COUNCIL

REFORM OF THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986 (AS AMENDED)

1. **Executive Summary**

- 1.1 This Policy Letter sets out proposals for the preparation of new legislation to reform the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) (“the Law”). The consolidated form of the Law is attached at Appendix 1.
- 1.2 In its 30th year and after consideration of 177 cases, the Review Board process introduced by the Law has held the States, acting through its various Committees¹, to account for a range of administrative decisions and actions that it has taken over those decades; to highlight a few, these have ranged from challenges in respect of school catchment areas, access rights over land owned by the States and alleged communication failures with patients.
- 1.3 When the Law was enacted there was no judicial review² system in Guernsey, such as then existed in the UK. A tailored solution for Guernsey was clearly required. The aim of the Law was to establish a procedure to provide independent or impartial assistance in the resolution of disputes between members of the public and Committees.
- 1.4 With the introduction of judicial review in Guernsey in the 1990s and the establishment of various specialist tribunals, there had been an expectation that requests for administrative reviews would progressively decrease; however, there has been a recent resurgence in cases after a relatively quiet ten year period. In addition, complaints have become increasingly more complicated and procedurally challenging and resource-intensive to address.
- 1.5 These trends are likely to continue as the public’s expectations of the services that they receive rise and as the financing of public services becomes more stretched.

¹ “Committee” is used in this Policy Letter to include existing Departments and Parliamentary Committees and Committees of the States from May 2016.

² Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. The focus is often on the **way** in which a decision has been made, more than the substantive decision itself. The court will invariably not substitute what it thinks the ‘correct’ decision should have been.

- 1.6 The Policy Council is also mindful that societies worldwide are becoming increasingly litigious, and the public more willing to seek redress for alleged acts of maladministration.
- 1.7 Against this background, the Policy Council, supported by those post-holders with roles under the Law (including the States Chief Executive, H.M. Greffier, and the Chairman of the Review Board's Panel of Members), is of the view that the Island continues to require a system by which Islanders can seek to resolve their concerns involving public administration wherever practicable, expeditiously and without incurring the cost of litigation.
- 1.8 The Policy Council notes from the States Review Committee's recommendation in its Third Policy Letter³ last year that "*many of the appeals processes which have been set up over the years by the States and their Committees might usefully be brought together under a single committee or administered at arm's length.*" A review of the arrangements for appellate bodies operating at arm's length of government, coupled with the Policy Council's extant States' Resolution to set up a Tribunals Service⁴; and the likely investigation of an ombudsman-type service for the Island, strongly suggests that the Law will be repealed to make way for different arrangements in due course. However, it would be premature at this juncture to repeal it so, in the interim, the focus of this Policy Letter is to lay before the States proposals which aim to make the process:
- i) more independent: through transferring the roles currently undertaken under the Law by the Chief Executive and H.M. Greffier to a proposed new and independent Complaints Panel comprising a Chairman and between eight to ten members of the public (*Recommendation (a) and paragraphs 4.2 to 4.8.*
In addition, a fourth person who is not a States Member nor a Dean of the Douzaine should be appointed to a Review Board by the Chairman and Deputy Chairman of Panel of Members. (*Recommendation (b) and paragraphs 4.6 to 4.7;*
 - ii) fairer for all stakeholders: by firstly providing the proposed new and independent Complaints Panel with the discretion, either in exceptional circumstances or when it would be in the interest of justice to do so, to accept complaints which are lodged more than twelve months after the date on which the complainant had knowledge of the issue (*Recommendation (c) paragraphs 4.9 to 4.10.*
Secondly, all members of a Review Board (including the Dean of the Douzaine and the proposed new 4th member) also needs to be afforded the necessary protection from legal proceedings, a privilege enjoyed by the two States Members of each Review Board (*Recommendation (d) and paragraphs 4.11 and 4.12;*

³ Billet d'État XXI, 25th November 2015, paragraph 8.10.2 at page 3327.

⁴ Billet d'État XV, 10th July 2002.

- iii) more accountable and stable: by increasing the term of office of the Chairman and Deputy Chairman of the Panel of Members from one to four years to run concurrently with a States' political term (*Recommendation (e) and paragraphs 4.13 to 4.15*); and
- iv) more fit for purpose: by firstly focusing on the suitability of cases submitted for investigation so as to exclude the progression of a complaint in which a Complainant first has to establish medical negligence or malpractice in order to establish that an act of maladministration has taken place (*Recommendation (f) and paragraphs 4.17 to 4.18*). Secondly, the proposed Complaints Panel will also need to ensure that complainants have exhausted the internal complaints procedures applying to any committee against which they are complaining *prior* to requesting an administrative review (*Recommendation (g) and paragraph 4.19*).

1.9 The Chairman of the Review Board's Panel of Members supports these changes and approached the Policy Council with his recommendations for change to the Review Board System earlier this year, as seen in his letter to the Chief Minister (see Appendix 2).

2. Background

2.1 The Review Board process was introduced to the Island by a Requête (Billet d'État XXIV of 1985). The Law governing the process, which is based on a similar system in Jersey⁵, sets up procedures enabling persons aggrieved by decisions and acts made and done by Committees to apply to the Chief Executive of the States of Guernsey (or H.M. Greffier in respect of complaints against the Policy Council) for a review of that decision or action.

2.2 The Chief Executive has a duty, under the Law, to investigate the matter and "*if the facts of the matter ... justify a review by a Board, he shall refer the matter to the Chairman of the Panel of Members*", {who then} "*forthwith refers the matter to the Board so constituted in accordance with this Law.*"

2.3 The Chairman will then convene a Review Board to hear the complaint. Review Boards are constituted from a panel consisting of: (i) two States' Members of more than three years' standing; and (ii) one Dean of a Douzaine. A Review Board, in accordance with section 7(3) of the Law, considers if the act or decision:

- (a) *was contrary to law;*
- (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;*

⁵ Administrative Decisions (Review) (Jersey) Law 1982.

- (c) *was based wholly or partly on a mistake of law or fact;*
- (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.*

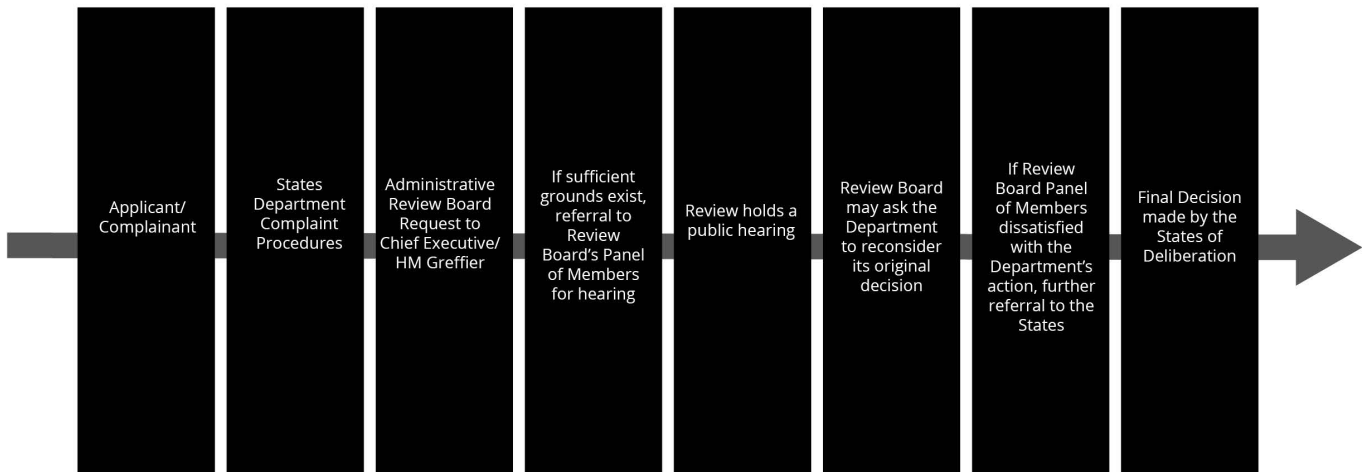
2.4 The complainant and the Committee(s) involved will have the opportunity to put forward their arguments and ask questions during a hearing. Following that hearing, the Review Board will issue a decision and may ask the Committee(s) to reconsider their original decision or action if it finds that these contravened any of the criteria set out in paragraph 2.3. In other words, a Review Board cannot itself overturn or alter the decision which is the subject-matter of the complaint. Furthermore, the Committee is not bound to follow the finding of the Review Board but, should the Review Board remain dissatisfied with the department's subsequent actions, it may refer the matter to the States. In practice, Committees have respected a Review Board's decision.

2.5 In summary, the purpose of a Review Board is to determine if something significant has “gone wrong” when the Committee reached its decision rather than a lower threshold of “this would be a better decision for the Committee to have reached”.

2.6 Section 3 of the Law also sets out six circumstances in which the Chief Executive is not obliged to refer a complaint to the Chairman, namely where:

- (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; or*
- (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.*

2.7 The following diagram shows all of the possible stages in the Review Board process:



3. Repeal or amend the Law?

- 3.1 A fundamental element of democracy is to ensure that the citizen is protected against abuses of power by the state. Judicial review before the courts is certainly a potent way by which the courts can safeguard the rights of citizens, as it ensures that public authorities act within the law and safeguard individual interests against illegal or unreasonable administrative action. However, most Western democracies provide their citizens with “free” alternatives through which to challenge government decisions without having sole recourse to court action, e.g. through ombudsmen-type services. In Guernsey, this is currently achieved through the Review Board process.
- 3.2 Following the introduction of judicial review and further specialist tribunals in Guernsey, it had been anticipated that Review Boards would be convened less frequently than had been the case in the past. However, 177 applications have been made since 1987. Although the number of cases had levelled out over a number of years, there has been an increase in the number of cases submitted to the Chief Executive since 2011 (see table below). Details of cases which have been brought to the attention of the Chief Executive or H.M. Greffier and referred to the Chairman of the Panel of Members for investigation can be seen in the Panel’s reports published annually in the Billets d’État.

Year	Number of Complaints Submitted	Number of Complaints Determined by a Review Board	Percentage of Complaints Determined by a Review Board
1987	14	7	50%
1988	13	3	23%
1989	19	4	21%
1990	9	2	22%
1991	14	1	7%
1992	15	5	33%
1993	11	2	18%
1994	7	2	29%
1995	11	3	27%
1996	4	2	50%
1997	6	1	17%
1998	7	3	43%
1999	1	0	--
2000	6	3	50%
2001	6	2	33%
2002	5	3	60%
2003 - 2005	4	1	25%
2006 - 2010	4	0	--
2011 - 2015	22	4	18%
Total	178	48	27%

- 3.3 The Chief Executive and H.M. Greffier have reported that, alongside the increasing numbers, cases involve more and more complex subject-matters, sometimes involving multiple Committees. The time required to investigate the requests thoroughly and gather evidence from the parties has also increased, putting pressure on the limited resources available to administer the system. In addition, the concept of an “administrative” decision or act is also becoming harder to differentiate from other decisions or acts, while members of the public are frequently less willing to accept the Chief Executive’s decision not to refer their complaint to a Review Board.
- 3.4 Against this background, the Policy Council, supported by those post holders with roles under the Law (including the States Chief Executive, H.M. Greffier, and the Chairman of the Review Board’s Panel of Members), is of the view that the Island continues to require a system by which Islanders can seek to resolve their concerns involving public administration wherever practicable, expeditiously and without incurring the cost of litigation.
- 3.5 Given the States Review Committee’s views of the need for the Policy and Resources Committee to investigate arm’s length appellate bodies during the next term and the Policy Council’s extant States Resolution as highlighted in paragraph 1.8, it seems likely that the Law will be repealed to make way for a centralised

Tribunal service which may also include an ombudsman-type service in due course. However, it would be premature at this juncture to repeal it.

3.6 Indeed, in the absence of an ombudsman-type service, there are real benefits to the States and Islanders in retaining the Law, which would be enhanced further should the proposals in this Policy Letter be accepted. To list some of these, the process:

- (a) *supports Islanders by listening to and acting upon their concerns and complaints against Committees' actions or decisions in an impartial manner;*
- (b) *provides an opportunity for further negotiations and resolution between the parties;*
- (c) *is accessible to all regardless of ability to afford legal or other professional representation;*
- (d) *acts as a "change agent" by assisting and positively influencing the organization to look at the root causes of the issues that caused the dispute and by providing a basis to avoid those disputes in the future, for the benefit of the public and the States' overall, currently all at no additional cost;*
- (e) *provides additional scrutiny of the decision and acts of the States and their Committees, in tandem with the roles performed by the Scrutiny Committees of the States;*
- (f) *in addition to the Courts, acts as a guardian of the principles of natural justice;*
- (g) *provides a further opportunity to disseminate or clarify information to the public through liaison with Committees about services available to them which may have been overlooked at departmental level;*
- (h) *promotes the principles of good governance generally but especially as it encourages/provides an opportunity for Committees to carefully re-visit their decisions, even if no referral is made to a Review Board;*
- (i) *is relatively inexpensive to operate;*
- (j) *is flexible as a wide range of administrative matters can be reviewed;*
- (k) *is responsive to need, as Review Boards can be arranged fairly quickly and although there has been an increase in cases, the number is still manageable; and*

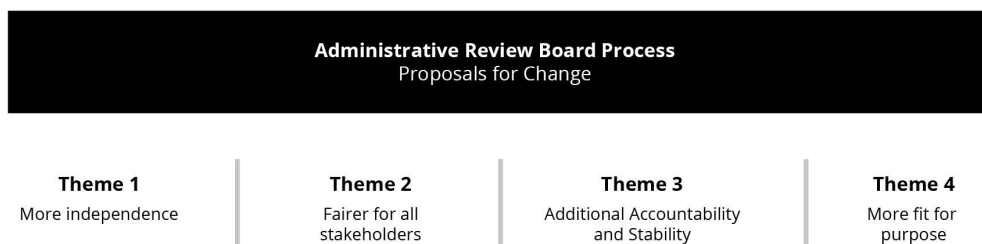
(l) is “*tried and tested*” and proportionate to the Island in the current times of financial restraint.

3.7 Subject to the States’ decision to support these recommendations, the Law can only be amended by a Projet de Loi and not by Ordinance, which will therefore take a longer period to accomplish. The Reform (Guernsey) Law, 1948 would also require amendment, as explained further in paragraph 4.11; this can however be amended by Ordinance in a shorter time-frame. When consulted, the Law Officers Chambers indicated that the legislative changes could be expedited, subject to the Policy Council’s agreement to support the prioritisation of both pieces of legislation. It is the Policy Council’s intention to prioritise the drafting of the legislation in order for Islanders to gain the benefits from these important changes at the earliest opportunity.

3.8 The Policy Council has consulted with the Chairman of the Review Board Panel (Deputy Matthew Fallaize), the Chief Executive and H.M. Greffier who are all supportive of these proposals for change.

4. The Proposals For Change: the Four Themes

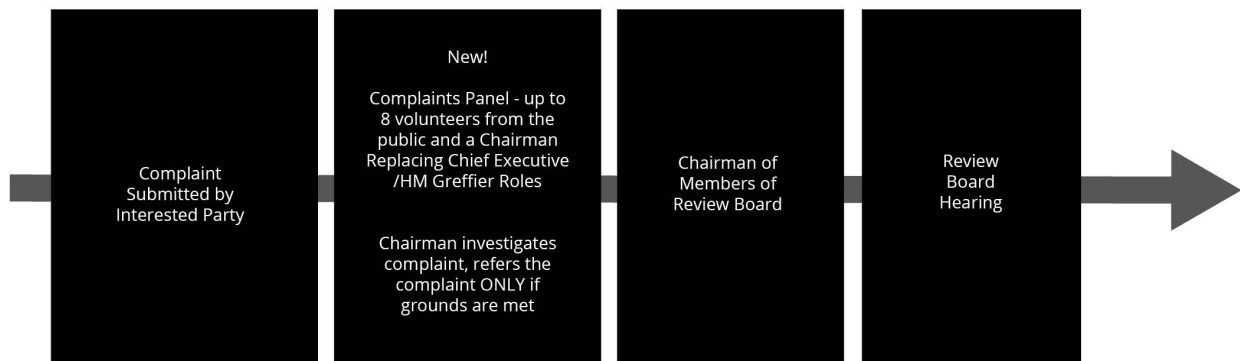
4.1 The proposals for change are summarised in the diagram below:



(a) Theme 1: Making the Process more independent of The States / Civil Service

4.2 Although the integrity and impartiality with which the Chief Executive and officers assisting him undertake their roles under the Law are not being called into question, the Chief Executive’s and H.M. Greffier’s involvement in the first stage of the process has the potential to impact on its perceived independence. There is an argument that, at the particular stage when the Chief Executive is investigating and assessing the merits of the complaint, the process may not be sufficiently independent of the government; alternatively, there could be a possible perception of bias, given that the Chief Officer of each department reports to the Chief Executive.

- 4.3 The Policy Council therefore recommends that the roles undertaken by the Chief Executive or H.M. Greffier under the Law be given to a new independent body of persons (“the Complaints Panel”), thereby removing any possible allegations of conflicts of interest, impartiality or perception of bias on behalf of the Chief Executive or H.M. Greffier.
- 4.4 Complainants would therefore apply for an administrative review to the Complaints Panel instead of the Chief Executive or H.M. Greffier; this would be a standing panel of up to 8-10 volunteers (or more should this be required), independent of the States, with a States-appointed and preferably legally-qualified Chairperson. It is the Policy Council’s view that the Chairperson would benefit from using the skills which a legally-qualified person would have when investigating and analysing each matter. The Chairperson would select three members most suited to sit on each Complaints Panel for each matter, having considered any personal interests that each person may have in the matter and other practical issues such as their availability. It is expected that the number of volunteers on the panel will better assist the public as requests for reviews may be determined concurrently and as a consequence, more quickly. The Complaints Panel would continue to receive support from the Civil Service and legal advice from the Law Officers Chambers, resulting in a cost neutral proposal.



- 4.5 The Policy Council therefore recommends the amendment of sections 1, 2, 3 and 6 of the Law to replace the roles of the Chief Executive and H.M. Greffier (where applicable) under the Law with that of a Complaints Panel.
- 4.6 With regard to the constitution of the Review Boards, there is a perception that two States Members on each Review Board makes the process more political than necessary. Given the view of the Policy Council and stakeholders that the present Review Board system should be retained, the proposal to include a fourth, lay

person on each Review Board would, to a certain extent, redress this perceived imbalance, with the Chairman having a casting vote in the event of deadlock.

- 4.7 The Policy Council therefore recommends the amendment of section 4 of the Law to enable a fourth person who is not a States Member nor a Dean of the Douzaine to be appointed to a Review Board by the Chairman and Deputy Chairman of Panel of Members.
- 4.8 These proposals should provide more independence and impartiality of scrutiny than currently exists in the system. These changes should therefore be considered to be a significant improvement in terms of compliance with human rights generally, given the size of our jurisdiction.

(b) Theme 2: Making the process fairer for all stakeholders

(i) Time Limit

- 4.9 Under Section 3(b) of the Law, a person aggrieved by a Committee's decision has 12 months from the date that person had knowledge of the matter to lodge a request for an administrative review to the Chief Executive. In certain circumstances, this time limit poses difficulties and may be unfair to some, especially when a complainant has not exhausted a Committee's complaints procedures prior to lodging the request. The Policy Council proposes to give a discretion to the proposed Complaints Panel to accept requests for an administrative review made more than 12 months after the date on which the complainant had knowledge of the issue where exceptional circumstances exist or it would otherwise be in the interest of justice to do so. It would be for the individual complainant to provide the justification for a late request to the Complaints Panel.
- 4.10 The Policy Council therefore recommends the amendment of Section 3(b) of the Law to give necessary discretion to the Complaints Panel as highlighted in paragraph 4.9 above.

(ii) Protection of Review Board Members

- 4.11 The Dean of the Douzaine is the only member of each Review Board who, currently, unlike the two States Members, does not currently benefit from absolute privilege from legal proceedings under section 20A of the Reform (Guernsey) Law, 1948 when performing his or her duties under the Law. The Policy Council recommends that this law should be amended to afford all members of a Review Board including the Dean and the proposed new fourth member, the same protection as other members of the Review Board. This can be achieved by Ordinance.

- 4.12 Consequently, the Policy Council therefore also recommends the amendment of Section 6 of the Law to provide for protection for all involved in the Review Board process.

(c) Theme 3 - Providing additional accountability for and stability to the process

- 4.13 To provide more accountability and stability to the process, the Policy Council also recommends extending the tenure of Chairman and Deputy Chairman of the Panel, who are appointed annually by the States of Deliberation. It proposes that the term of office for these posts become co-terminous with a States' political term (currently 4 years) in order for the process and the public to gain the maximum benefit of their experience.
- 4.14 Given that the proposed legislative changes, should they be accepted by the States, will take some time to achieve, the annual elections to be held in June for the posts of Chairman and Deputy Chairman of the Panel of Members are not expected to be affected until slightly later in the new political term. The Policy Council envisages that the States, during the first half of the 2016-2020 term will elect a new Chairman and Deputy Chairman to serve until the 30th of June 2020 to coincide with the new dates for general elections from 2020.
- 4.15 It is therefore recommended that section 4 (and any other relevant parts) of the Law be amended so that the term of office of the Chairmen and Deputy Chairman of the Panel of Members be increased to 4 years, in line with paragraph 4.13 above.

(d) Theme 4 - Making the process more fit for its purpose

i) Complex cases

- 4.16 The Policy Council does not wish to limit the investigations relating to purported acts of maladministration which the proposed Complaints Panel may wish to undertake. It is clear that Committees, such as Health and Social Services in its recent Secondary Health Care Review⁶, are making every effort to ensure that their internal Complaints Policies and Procedures are fit for purpose.
- 4.17 However, the Policy Council is mindful of certain limited and exceptional circumstances in which an application for administrative review is simply not suitable for determination within that process owing to its complexity or the expertise required to determine it. It is therefore proposed that the Law should be made clearer so as to exclude the progression of a complaint in which a complainant first has to establish medical negligence or malpractice, in order to establish that an act of maladministration has taken place. Wherever possible the

⁶ Resolution 1, X, 16th October 2015 - Health and Social Service "Arrangements for Secondary Healthcare from 1st January 2018".

Complaints Panel will consider the purported act of maladministration only; however the Policy Council is aware that certain cases may preclude this. Accordingly, it is the Policy Council's view that such complaints should only be dealt with in formal legal proceedings by persons competent to hear them.

- 4.18 It therefore proposes that Section 3 of the Law be amended to enable the proposed Complaints Panel investigating the request to reject applications in line with paragraph 4.17 above.

ii) Cases which have not exhausted a Committee's Complaints Policies and Procedures

- 4.19 In addition, some complainants currently refer their complaints to the Chief Executive without first lodging their complaint with the Committee in question. The Policy Council proposes that Section 3 of the Law makes specific reference to the need for the complainant to have exhausted *all* of the Committee's complaints procedures, prior to referring a request for an administrative review to the proposed Complaints Panel. It is important for Committees and the complainants to be given the opportunity to discuss the issue, negotiate and wherever possible resolve problems prior to a complainant seeking redress from the Review Board system. In this context, the system is the next tier of the complaints process available to the public which should only be called upon when they have not been able to resolve their complaint directly with the Committee in question using the Committee's official complaints procedure.

5. Consultation

- 5.1 The Policy Council has consulted the Law Officers Chambers both during the early stages of the formulation of these proposals and on the final Policy Letter.
- 5.2 The Policy Council has consulted with the Chairman of the Review Board Panel (Deputy Fallaize), the Chief Executive and H.M. Greffier, who are all supportive of these proposals for change.
- 5.3 The Policy Council has also consulted with the public regarding these proposals and reports that there is general support for the reform proposed in this Policy Letter.

6. Financial and Resource Management

- 6.1 These proposals will not adversely impact the budget of the Policy Council/Policy and Resources Committee. It is expected that the new Complaint Panel, including its Chairman, will be served by unpaid volunteers and supported administratively by an existing civil servant. Any small additional costs that may arise will be met from the existing budget for the administration of tribunals.

- 6.2 Should the proposed legislation have the unlikely effect of increasing revenue expenditure that cannot be accommodated within existing budgets, the Policy Council will return to the States as soon as practicable, identifying as clearly as possible the additional resources required, together with its proposals for funding such an increase.

7. **Conclusion**

- 7.1 The Policy Council believes that reforming the Review Board process as recommended in this Policy Letter is both measured and proportionate in the short-term. It is pleased to have received the full support of the Chairman of the Panel of Members for these changes, as well as public support.
- 7.2 However, as indicated above, the Law may be repealed at some point in the future. Supporting these recommendations will ensure that Committees' administrative decisions which aggrieve members of the public are subject to independent scrutiny, pending the States considering proposals to replace the current system in the near future.

8. **Recommendations**

- 8.1 The Policy Council recommends the States:
- a) To amend sections 1, 2, 3 and 6 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable the roles of the Chief Executive and H.M. Greffier to be given to a new independent body which will be known as "the Complaints Panel", led by a Chair to be appointed by the States, as detailed in paragraphs 4.4 and 4.5 of this Policy Letter;
 - b) To amend sections 4 and 5 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable a fourth person who is not a States Member or a Dean of the Douzaine to be appointed to sit on each Review Board by the Chairman and Deputy Chairman of Panel of Members, as detailed in paragraphs 4.6 and 4.7 of this Policy Letter;
 - c) To amend Section 3(b) of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to give discretion to the proposed Complaints Panel to accept requests for an administrative review made more than 12 months after the date on which the complainant had knowledge of the issue, where either exceptional circumstances exist and/or it would be in the interest of justice to do so, as detailed in paragraphs 4.9 to 4.10 of this Policy Letter.
 - d) To amend the Reform (Guernsey) Law, 1948 and the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) as appropriate to provide all members of a Review Board the necessary protection from legal proceedings in the course of their duties, as detailed in paragraphs 4.11 and 4.12 of this Policy Letter;

- e) To amend section 4 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) and any other relevant parts of the Law in order that the term of office of the Chairman and Deputy Chairman of the Panel of Members be co-terminous with the current States' term, i.e. for a 4 year period, as detailed in paragraphs 4.13 to 4.15 of this Policy Letter;
- f) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended), in line with paragraphs 4.16 to 4.18 of this Policy Letter, to enable the exclusion of the progression of a complaint in which a complainant first has to establish medical negligence or malpractice, in order to establish that an act of maladministration has taken place; and
- g) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to allow the rejection of applications which are made prior to the complainant exhausting all departmental complaints procedures, in line with paragraph 4.19 of this Policy Letter; and
- h) To direct the preparation of legislation to give effect to the above recommendations.

J P Le Tocq
Chief Minister

11th January 2016

A H Langlois
Deputy Chief Minister

Y Burford
P L Gillson
S J Ogier

R W Sillars
M G O'Hara
K A Stewart

P A Luxon
D B Jones
G A St Pier

Consolidated text

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).

Consolidated text

PROJET DE LOI

ENTITLED

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

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.
7. Action by Board.
8. Annual Report to the States.
9. Savings.
10. Interpretation.
11. Citation.

PROJET DE LOI

ENTITLED

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, 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],

Consolidated text

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

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.

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:

Consolidated text

[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.]

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

Consolidated text

(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.

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

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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.

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.

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.

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.

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

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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.]

NOTE

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

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

Consolidated text

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.

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.

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

Consolidated text

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

Consolidated text

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.

Consolidated text

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.

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 on 17th February, 1987.



APPENDIX 2

Review Board (constituted under The Administrative Decisions (Review) (Guernsey) Law, 1986)

The Chief Minister
Policy Council
Sir Charles Frossard House
St Peter Port

19th March, 2015

By Email

Dear Deputy Le Tocq,

POLICY COUNCIL			
DATE	19 MAR 2015		
REC'D			
ACTION	HGB		
CM	HPF		
DCM	ECON		
CE	SAPD		
DCE	SPO		
HIR	SPC		
PEAD	HA		
HHR	MA		

Review Board ("the Board") constituted under The Administrative Decisions (Review) (Guernsey) Law, 1986 ("the Law") – Proposed Changes to the Law and Process

Thank you for your kind invitation for me to attend the Policy Council meeting on Monday the 23rd of March to participate in discussions relating to proposed changes to the above Law. When presenting the Review Board's Annual Report during the June States' meeting last year, I highlighted changes to the Law which I intended to bring before the Policy Council and subsequently the States during my tenure as Chairman of the Panel of Members. Having had the opportunity of sitting as both a member of Review Boards and as Chairman, I am keen to address weaknesses in the Law and seek the Council's support in so doing.

I appreciate that some States' members may be of the view that the Law should be repealed in view of the opportunity which complainants have to seek leave to apply for judicial review in the Royal Court and I acknowledge that the Law may not endure for decades longer. However, repeal at this stage would be premature owing to the absence – other than judicial review, which of course can be expensive and extremely onerous – of any other independent or impartial means by which an aggrieved member of the public can challenge decisions of States' committees and their officers which it is contested were unreasonable, unfair etc. In Guernsey's system of government by the States through their committees, the Law as presently constructed (or at least as hopefully constructed after the reforms proposed in this letter) provides a reasonable avenue of complaint for aggrieved members of the public. The Law may also have the effect of making the decisions of committees and their officers less vulnerable to judicial review.

There is an extant States' Resolution dating from the 8th of March, 2012 viz. "*The Policy Council should redouble its efforts to present proposals for the establishment of appropriate processes for hearing complaints and appeals against States Departments and Committees, having set out the merits or otherwise of a Centralised Tribunal Service and an Ombudsman*". I understand the Council has thus far been unable to apply additional

resources to fulfilling this States' Resolution; and in the present fiscal climate I suppose it can be assumed that the scarce resources available may not be diverted from other work of a higher priority before the end of this States' term.

As you know, the States' Review Committee committed to considering appeals processes generally as part of its review of the organisation of States' affairs and its second policy letter – to be debated by the States on the 7th of July this year – should refer to the future governance of appeals processes and the Law, but in any event it is clear that no substantial change in appeals processes will be possible in this States' term or very probably early in the next States' term. As such, I respectfully request the Council to support the proposed changes I am outlining and to lay the necessary recommendations before the States as expeditiously as possible. In short, if the Law is to remain and complaints are still to be heard under it, the Law must be revised. If approved, the proposals I have in mind will significantly improve the existing framework for reviewing administrative decisions taken by, and in the name of, committees of the States – at no additional cost to the States.

The Chief Executive of the States of Guernsey and Her Majesty's Greffier have important roles in determining the status of Review Board applications. The principal officer to Review Boards, Mrs Ellis, advises me that they are fully supportive of these proposals.

In brief, the changes which I am asking the Council to support are:

1. To strengthen the process by introducing more independence.

Currently, a complainant applies for review of a decision to the Chief Executive or, in the event of perceived or actual conflict of interest, to Her Majesty's Greffier. It is for the Chief Executive (or Her Majesty's Greffier), to determine "*if the facts of the matter ... justify a review by a Board...*". If a review is considered to be justified, the matter is referred to the Chairman of the Panel of Members to convene a Review Board.

Although I have no doubt that the Chief Executive and his advisors deal with these matters with absolute integrity, setting up the head of the civil service as 'gatekeeper' under the Law may allow for perceptions of bias, not least because all chief officers report to the Chief Executive. I understand this view is shared by the Chief Executive and Her Majesty's Greffier: they are strongly in favour of change to put them beyond any possible perceptions of bias or conflict of interest.

I am asking the Council to support changes to the Law to provide for the establishment of a panel of persons independent of the States to consider all applications for review, i.e. to replace the role of the Chief Executive / Her Majesty's Greffier as 'gatekeeper' in the Law. There are various ways in which such a panel could be appointed. I suggest the best might be for the States to elect a person to chair the panel and to maintain a list of other members from whom a three-person panel could be convened to consider any application for review – along the lines of the system used when complaints of conduct are lodged against States' members.

- 2. To provide adequate protection for members of a Review Board against legal proceedings brought by any interested party who may claim to have been “defamed” during a hearing.**

Currently, whilst the two States’ members on a Review Board and any witnesses are arguably afforded protection from legal proceedings, such protection is not extended to the Dean of the Douzaine who sits on a Review Board. I am seeking the Council’s support for a change to the Law to put it beyond doubt that members of Review Boards are protected from legal proceedings.

A Review Board held in 2013 which I chaired brought this problem into sharp focus. Your colleague on the Council, Deputy Ogier, will remember it too: he was a member of the Board. I tried to ensure that no party was placed in a difficult position during that hearing by asking that names related to the case not be disclosed and on three separate occasions hearing evidence *in camera*. Please be assured that all reasonable steps will continue to be taken to protect Review Board members until the Law is (hopefully) amended as necessary, but this is of limited comfort to any Dean of the Douzaine who undertakes to sit on a Review Board and may well feel rather exposed, which I consider to be highly unsatisfactory.

- 3. Making the constitution of a Review Board more balanced and representative by increasing its size from three persons to four and making the fourth person a member of the public.**

Greater public confidence in the process could be achieved by the appointment to any Review Board of a fourth person independent of the States. This would help to make any Board more representative and redress the present imbalance whereby States’ members constitute two-thirds of any Board. I appreciate that the person chairing a Board would need to have a casting vote if it came to voting, although from my experience on Boards this is required infrequently and does not in my view tip the balance against the case for a fourth person on each Board. In any event, and in order to strengthen transparency, I suggest that in future Boards should advise not only of their decision but also of whether their decision is unanimous, by a majority or on the casting vote of the person in the chair – I intend to include this in guidance notes relating to the procedures of Review Boards because the Law provides for Boards to regulate their own procedures.

4. Time limits under the Law

At present, a matter cannot be referred to a Review Board “*of which the complainant has had knowledge of more than 12 months*”. I consider an absolute cut-off point of 12 months to be contrary to the principles of natural justice, most especially because complainants are required to exhaust internal complaints procedures of States’ committees before making application for a Review Board. Some of the cases which have, or which could, come before Review Boards are complex and merely exhausting internal complaints procedures of States’ committees could take considerable time and absorb many of the 12 months for which the clock is ticking under the Law. It seems to me that applications made more than 12 months after the making of the original decision might *ordinarily* be ruled out but that the person or people determining whether to refer the complaint to a Review Board should have the right to waive that provision in the event that the complainant is able to provide adequate

justification. I am advised that the Chief Executive and Her Majesty's Greffier support this proposal as well.

While that concludes the matters upon which I am expressly seeking the Council's support, there is one further matter which I feel obliged to raise with the Council.

The term of office of the Chairman and Deputy Chairman of the Panel of Members is only one year. This provides for little, if any, stability and may inhibit the gaining of a proper understanding of the process through experience. As Chairman it would be most improper for me to recommend to the Council that my term of office be extended – I draw this matter to your attention in order that the Council may take an informed and dispassionate view about whether the Law should be amended to provide for my successors to have longer terms of office, such as two years or the length of a States' term.

I hope the Council will feel able to support my proposals. In view of the need to make these changes as expeditiously as possible, I am also seeking the Council's support in prioritising the necessary amendments to legislation.

I look forward to the meeting on Monday when I will of course be happy to expand on these proposals, if necessary, and answer any questions from members of the Council.

Yours sincerely,

Matt Fallaize,
Chairman

(N.B. As there are no resource implications in this Policy Letter, the Treasury and Resources Department has no comments to make.)

The States are asked to decide:-

XIII.- Whether, after consideration of the Policy Letter dated 11th January, 2016, of the Policy Council, they are of the opinion:

- (a) To amend sections 1, 2, 3 and 6 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable the roles of the Chief Executive and H.M. Greffier to be given to a new independent body to be known as “the Complaints Panel”, led by a Chair to be appointed by the States, as detailed in paragraphs 4.4 and 4.5 of that Policy Letter;
- (b) To amend sections 4 and 5 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable a fourth person who is not a States Member or a Dean of the Douzaine to be appointed to sit on each Review Board by the Chairman and Deputy Chairman of Panel of Members, as detailed in paragraphs 4.6 and 4.7 of that Policy Letter;
- (c) To amend Section 3(b) of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to give discretion to the proposed Complaints Panel to accept requests for an administrative review made more than 12 months after the date on which the complainant had knowledge of the issue, where either exceptional circumstances exist and/or it would be in the interest of justice to do so, as detailed in paragraphs 4.9 to 4.10 of that Policy Letter.
- (d) To amend the Reform (Guernsey) Law, 1948 and the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) as appropriate to provide all members of a Review Board the necessary protection from legal proceedings in the course of their duties, as detailed in paragraphs 4.11 and 4.12 of that Policy Letter;
- (e) To amend section 4 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) and any other relevant parts of the Law in order that the term of office of the Chairman and Deputy Chairman of the Panel of Members be co-terminous with the current States’ term, i.e. for a 4 year period, as detailed in paragraphs 4.13 to 4.15 of that Policy Letter;
- (f) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended), in line with paragraphs 4.16 to 4.18 of that Policy Letter, to enable the exclusion of the progression of a complaint in which a complainant first has to establish medical negligence or malpractice, in order to establish that an act of maladministration has taken place; and
- (g) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to allow the rejection of applications which are made prior to

the complainant exhausting all departmental complaints procedures, in line with paragraph 4.19 of that Policy Letter; and

- (h) To direct the preparation of legislation to give effect to the above recommendations.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 2ND DAY OF MARCH, 2016

**The States resolved as follows concerning Billet d'État No VI
dated 22nd January 2016**

POLICY COUNCIL

REFORM OF THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986 (AS AMENDED)

XIII.- After consideration of the Policy Letter dated 11th January, 2016, of the Policy Council:

- (a) To amend sections 1, 2, 3 and 6 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable the roles of the Chief Executive and H.M. Greffier to be given to a new independent body to be known as “the Complaints Panel”, led by a Chair to be appointed by the States, as detailed in paragraphs 4.4 and 4.5 of that Policy Letter;
- (b) To amend sections 4 and 5 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to enable a fourth person who is not a States Member or a Dean of the Douzaine to be appointed to sit on each Review Board by the Chairman and Deputy Chairman of Panel of Members, as detailed in paragraphs 4.6 and 4.7 of that Policy Letter;
- (c) To amend Section 3(b) of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to give discretion to the proposed Complaints Panel to accept requests for an administrative review made more than 12 months after the date on which the complainant had knowledge of the issue, where either exceptional circumstances exist and/or it would be in the interest of justice to do so, as detailed in paragraphs 4.9 to 4.10 of that Policy Letter.
- (d) To amend the Reform (Guernsey) Law, 1948 and the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) as appropriate to provide all members of a Review Board the necessary protection from legal proceedings in the course of their duties, as detailed in paragraphs 4.11 and 4.12 of that Policy Letter;
- (e) To amend section 4 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) and any other relevant parts of the Law in order that the term of office of the Chairman and Deputy Chairman of the Panel of Members be co-terminous with the current States' term, i.e. for a 4 year period, as detailed in paragraphs 4.13 to 4.15 of that Policy Letter;

- (f) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended), in line with paragraphs 4.16 to 4.18 of that Policy Letter, to enable the exclusion of the progression of a complaint in which a complainant first has to establish medical negligence or malpractice, in order to establish that an act of maladministration has taken place; and
- (g) To amend section 3 of the Administrative Decisions (Review) (Guernsey) Law, 1986 (as amended) to allow the rejection of applications which are made prior to the complainant exhausting all departmental complaints procedures, in line with paragraph 4.19 of that Policy Letter; and
- (h) To direct the preparation of legislation to give effect to the above recommendations.