

THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) (AMENDMENT) LAW, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Law amends the procedure and scope of the Administrative Review Board ("ARB") process by:

- introducing an independent Complaints Panel to enquire into complaints and, where appropriate, to refer them to the ARB (in place of the Chief Executive of the States of Guernsey);
- allowing a complaint to be considered where the complainant has already had knowledge of the decision, act or omission for 12 months if there are exceptional reasons to do so or it would be in the interest of justice to do so;
- prohibiting the referral of a complaint to the ARB where a Committee's internal complaints procedures have not been exhausted, or where a finding of medical negligence or malpractice would be required in order to form an opinion for the purposes of the Law;
- introducing an independent member (who is not a People's Deputy or a Dean of a Douzaine) to the ARB considering a complaint; and
- requiring the States of Deliberation to elect a Chairman at the beginning of a States' term for the duration of that term, rather than on an annual basis.

PROJET DE LOI

ENTITLED

The Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018

THE STATES, in pursuance of their Resolution of the 2nd day of March, 2016^a, 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.

Amendments to the 1986 Law.

1. The Administrative Decisions (Review) (Guernsey) Law, 1986, is amended as follows -

(a) in the arrangement of sections -

(i) immediately after the entry "1. Application by complainant for review of administrative decisions.", insert entry "1A. The Complaints Panel.", and

^a Article XIII of Billet d'État No. VI of 2016.

- (ii) in entry 2, for the words "Chief Executive or Her Majesty's Greffier", substitute "the Complaints Panel",
- (b) in section 1 -
 - (i) for "he may apply to the Chief Executive of the States of Guernsey", substitute "that person may apply to the Complaints Panel", and
 - (ii) delete from ":" to the end of the section,
- (c) immediately after section 1, inserting the following section -

"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.",

(d) in section 2 -

(i) in the title, for the words "Chief Executive or Her Majesty's Greffier", substitute "the Complaints Panel",

(ii) for the words "the Chief Executive of the States of Guernsey or Her Majesty's Greffier, as the

case may be," substitute "the Complaints Panel",

(iii) for the words "his" and "he", substitute "its" and "it",

(iv) in paragraph (i) of the proviso, for the words "him would in the opinion of the Chief Executive of the States of Guernsey or Her Majesty's Greffier, as the case may be," substitute "the Chairman would in the opinion of the Complaints Panel", and

(v) in paragraph (ii) of the proviso -

(A) for the words "the Chief Executive of the States of Guernsey or Her Majesty's Greffier, as the case may be," substitute "the Complaints Panel", and

(B) for "President", substitute "Presiding Officer",

(e) in section 3 -

(i) renumber the text of section 3 as subsection (1),

(ii) in subsection (1) as renumbered -

(A) for the words "The Chief Executive of the States of Guernsey or Her Majesty's Greffier, as the case may be," substitute "The Complaints Panel",

(B) for "his", substitute "its",

(C) in paragraph (b), immediately before the words "the matter complained of", insert "unless subsection (2) applies",

(D) in paragraph (d), immediately after "vexatious", insert ", unreasonable",

(E) immediately after paragraph (e), insert the following paragraph -

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

(F) in paragraph (f) -

(aa) for the words "the Chief Executive of the States of Guernsey or Her Majesty's Greffier, as the case may be,"

substitute "the Complaints Panel", and

(ab) for ".", substitute ", or", and

(G) immediately after paragraph (f), insert the following paragraph -

"(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.", and

(iii) immediately after subsection (1), insert the following subsection -

"(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. ",

(f) in section 4 -

(i) in subsection (1)(a), delete "and",

(ii) in subsection (1)(b), for ".", substitute ", and",

(iii) immediately after subsection (1)(b), insert the following paragraph -

"(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**").",

(iv) in subsection (2), for the words "every year",
substitute "within 6 weeks of a General
Election",

(v) for subsection (3), substitute the following
subsection -

"(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.",

- (vi) for subsection (4), substitute the following subsection -

"(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.", and

- (vii) immediately after subsection (4), insert the following subsections -

"(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.",

(g) in section 5(1) -

(i) for the word "three", substitute "four", and

(ii) in paragraph (c), for "President", substitute "Presiding Officer",

- (h) in section 6 -
 - (i) for the words ", the Chief Executive of the States of Guernsey and Her Majesty's Greffier, as the case may be," substitute "and the Complaints Panel", and
 - (ii) in paragraph (b) -
 - (A) for the words ", the Chief Executive of the States of Guernsey or Her Majesty's Greffier", substitute "or the Complaints Panel", and
 - (B) for the words immediately after the words "as if" until the end of the paragraph, substitute "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^b",
- (i) in section 10(1) -
 - (i) immediately after the entry **""complainant""**, insert the following entry -

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

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

- (ii) immediately after the entry **"enactment"**, insert the following entries -

"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,"

- (iii) delete the entry **"Her Majesty's Greffier"**,

- (iv) immediately after the entry **"the Members"**, insert the following entries -

"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.", and

- (v) delete the entry ""**Chief Executive of the States of Guernsey**"".

Interpretation.

2. In this Law, unless the context requires otherwise -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

and references in this Law to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

Citation.

3. This Law may be cited as the Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2018.