

STATES OF JERSEY

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**DRAFT ADMINISTRATIVE DECISIONS (REVIEW)
(AMENDMENT NO. 2) (JERSEY) LAW 200
(P.195/2005): AMENDMENT**

Lodged au Greffe on 20th January 2006
by the Deputy of St. Martin

STATES GREFFE

DRAFT ADMINISTRATIVE DECISIONS (REVIEW) (AMENDMENT No. 2) (JERSEY) LAW 200
(P.195/2005): AMENDMENT

(1) PAGE 14, ARTICLE 3 –

In Article 3 of the principal Law, as substituted by this Article, insert the following paragraphs after paragraph (5) –

- “(5A) An applicant may, within one month of receiving notice of a decision described in paragraph (5), apply to the Greffier to have the decision reviewed.
- (5B) The Greffier shall inform the Chairman and Deputy Chairmen of an application under paragraph (5A) and –
 - (a) where the decision to be reviewed was taken by the Chairman, the review of it shall be undertaken by both Deputy Chairmen;
 - (b) where the decision to be reviewed was taken by a Deputy Chairman, the review of it shall be undertaken by the other Deputy Chairman and the Chairman.
- (5C) If the persons undertaking a review of a decision described in paragraph (5) do not uphold that decision, paragraphs (3) and (4) shall apply, with the necessary modifications, as if they had decided that the matter justified a review .”

(2) PAGE 15, ARTICLE 5 –

For paragraph (b) substitute the following paragraph –

- “(b) after paragraph (2) add the following paragraphs –
 - ‘(3) The Panel shall issue rules of practice and procedure which shall apply in matters arising under this Law.
 - (4) The Greffier shall ensure that all parties to a complaint are made aware of the rules issued under paragraph (3).’ ”

(3) PAGE 15, NEW ARTICLE –

After Article 6 insert the following Article and renumber the remaining Articles accordingly–

“7 Article 6A inserted

After Article 6 of the principal Law there shall be inserted the following Article–

‘6A

- (1) Notwithstanding Articles 3, 4 and 6, a person shall not decide whether a review of a matter is justified, review such a decision or select persons to comprise a Board to review a matter or, as a member of a Board, undertake such a review, if he or she is the complainant in respect of the matter or is otherwise connected with, or was involved in, the matter.
- (2) Where, by virtue of paragraph (1), the Chairman cannot do any thing under this Law that he or she could otherwise do and neither of the Deputy Chairmen can act in his or her place, the Greffier shall appoint a member of the panel to so act.
- (3) Where, by virtue of paragraph (1), a Deputy Chairman cannot do any thing under this Law that he or she could otherwise do and neither the Chairman nor the other Deputy Chairman can act in his or her place, the Greffier shall appoint a member of the panel to so act.’ ”

(4) PAGE 15, ARTICLE 8 –

For paragraph (b) substitute the following paragraph –

“(b) for paragraph (4) there shall be substituted the following paragraphs–

“(4) The Board shall provide the Privileges and Procedures Committee and the complainant with a copy of the information given under paragraph (3).

(5) The complainant may, within one month of the information being provided, request the Board to consider reconvening.

(6) The Board may reconvene, of its own motion or following a request under paragraph (5) if, in its opinion, the information provided under paragraph (3) and where a request has been made, any representations made with it, justify further consideration.

(7) On reconvening, the Board may exercise the powers in Article 8.

(8) In any case where a Board requested reconsideration of any matter, the Board may, if it considers that its findings have been insufficiently considered or implemented, present a report to that effect to the Privileges and Procedures Committee.

(9) The Privileges and Procedures Committee shall present to the States a copy of any information or report that it receives under this Article.”.

DEPUTY OF ST. MARTIN

REPORT

The Administrative Decisions (Review) (Jersey) Law 1982 has been operating with a degree of success; however there have been a few occasions when inadequacies in the law have been of concern to Complainants, the Defendants and to Boards of Administrative Appeal. I believe the amendments, which I have discussed and agreed with the Chairman of the Panel and the Privileges and Procedures Committee [PPC], will be of benefit to all parties.

Amendment 1

At present if the Chairman decides that the circumstances do not justify review by a Board the Law does not allow for the complainant to appeal against the decision. My amendment allows for the complainant to request the Deputy Chairmen to review the Chairman's decision. Should they consider the decision to be unreasonable, the matter would be referred to a Board.

Amendment 2

At present there is no requirement for the Administrative Appeals Panel to issue procedural rules on the manner and timescale in which the parties should submit documentation to the Board and the manner in which hearings will be conducted.

The amendment not only provides for that requirement but also places an onus on the Greffier to ensure that all parties to the complaint are made aware of the rules.

Amendment 3

This is a new Article and provides for another person to act when the Chairman or a Deputy Chairman has a personal interest in a matter. If the conflict is such that the actions that the Chairman or Deputy Chairmen are required by the Law to do cannot be undertaken the Greffier is able to appoint a member of the Panel to act on behalf of the Chairman or Deputy Chairmen.

Amendment 4

Appeal Bodies including Boards of Administrative Appeals should be able to direct their own affairs with sufficient flexibility to ensure that neither the complainant nor the defendant is denied natural justice. I believe that due to a defect in Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, justice is being denied.

The present procedure is as follows –

The Board holds a hearing and makes a finding. If the Board finds in favour of the complainant it will ask the Minister/Department concerned to reconsider its decision and report back within a certain period (3 months is the usual timescale). Once the Minister has informed the Board of the outcome of its reconsideration the Board reconvenes to review the Minister's response. If it is of the opinion that the Minister has insufficiently considered the Board's findings it can present a report to the PPC which, in turn, must present the report to the States.

What the Board cannot do at present is to hear new evidence or "re-open" the case at this stage of the proceedings. The Board could not for example, reconvene to request the Minister to substantiate, elaborate or clarify any of its response. The complainant is also denied this opportunity. There may also be occasions when new evidence or information comes to light after the Board has released its findings. The Law does not provide for the Board to reconvene to consider the evidence or information.

It is illogical for the Board to only reconvene to review the Minister's response, but it and the complainant are denied the opportunity of challenging it. I believe the Law should be amended to allow for the Board to reconvene and address the issues described above. The complainant would have one month to request a reconvening.

There is a risk that following the reconvening, the second or revised findings that the matter could go on and on, particularly if the complainant continues to be unhappy with the Minister's response. However, as my amendment will give the Board more authority to direct its own affairs, it will be best placed to decide whether the matter should run on and on or to bring the matter to a conclusion.

There should be no additional financial or manpower implications for the States arising from this amendment.