

STATES OF JERSEY

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DRAFT ADMINISTRATIVE DECISIONS (REVIEW) (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 13th September 2005
by the Privileges and Procedures Committee**

STATES GREFFE



Jersey

DRAFT ADMINISTRATIVE DECISIONS (REVIEW) (AMENDMENT No. 2) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Privileges and Procedures Committee has made the following statement –

In the view of the Privileges and Procedures Committee the provisions of the Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Deputy R.G. Le Hérisssier**

REPORT

After taking over responsibility for the administrative appeals system in late 2002 from the former Special Committee to Consider the Relationship Between Committees and the States, the Privileges and Procedures Committee undertook a full review of the operation of the administrative appeals system. The Committee's findings were published in a consultation report published on 4th May 2004 as R.C. 20/2004. The report assessed the strengths and weaknesses of the system and made a number of recommendations for improvement in sections 50 to 57.

After a period of consultation, when the Committee received no adverse comments, the necessary law drafting brief was prepared and the PPC is now pleased to present this amending law to the States to implement the recommendations for change that require legislative changes.

The name of the system (Article 2 and Article 6)

The PPC considers that the present name of the Panel, namely the 'Administrative Appeals Panel' can be misleading for members of the public. In addition, the name used for the board of 3 people established from the Panel to hear each individual complaint, namely a 'Board of Administrative Appeal' is equally confusing which is probably why boards are often simply referred to as 'review boards'. It is possible to confuse the present names with a judicial process of appeal to the Court in relation to a matter of administration and the Committee suggested in its consultation report that the names should be changed. The new names chosen, the 'States of Jersey Complaints Panel' and a 'States of Jersey Complaints Board' are intended to be easily understood and to refer precisely to what the system is all about, namely the opportunity for a person who has a 'complaint' in relation to a matter of public administration to seek a review of the complaint.

The rôle of the Greffier of the States (Article 3 and Article 4)

In 1996 amendments to the present system were introduced to replace the previous system of review by a Board comprised of States members with the present system of review by persons who are independent of the States. It is not clear why the rôle of the Greffier of the States was not also changed at that time. Although the Greffier must seek the views of the independent Chairman of the Panel in every case, the law as presently worded gives him the final say on whether or not a case should be referred to a Board. The Committee considers that this is a difficult and unusual responsibility to give to an official and the present Greffier of the States has made it clear that it is a rôle he feels uncomfortable with. In practice the Greffier already relies almost entirely on the views of the Chairman in taking his decisions and in recent years he has not had cause to overrule her recommendation. The amendment to the law being proposed takes away the responsibility for taking the decision from the Greffier and gives it entirely to the Chairman although the administrative rôle of the Greffier in undertaking the initial investigation and collation of evidence for the Chairman is unchanged.

Another important change is found in new Article 3(5) where it is made clear that the Chairman must ensure that a complainant is informed of the reasons when it is decided that a review is not justified. At present there is no such requirement and, although the majority of cases are referred for a review, the Committee considers that complainants are entitled to understand the precise reasons when a decision is taken that a case is not suitable for review.

Informal resolution of a complaint (Article 3)

One of the principal criticisms of the present system identified in R.C. 20/2004 was that the system involves a relatively complex and time-consuming process to review a complaint. A Board of 3 people must be established and a hearing arranged. Because of the need to ensure the availability of all the parties this process can take some time and it is possible that some complainants are deterred from using the system because of this complexity.

Although the Committee does not support the replacement of the present system with an ombudsman for the reasons set out in detail in its consultation report, there is no doubt that one of the advantages of an ombudsman over the present system is the ability of an ombudsman to write a letter or simply make a telephone call in an attempt to resolve what might be a relatively minor complaint. In many instances the case might be resolved in this way without the need to initiate a more complicated or lengthy process. The purpose of the amendment is to allow the Chairman of the Complaints Panel to attempt an informal resolution of the matter if he or she considers that this might achieve a resolution of the complaint. The Committee is hopeful that this new process will allow

relatively minor complaints to be resolved much more quickly and simply than is possible under the present system. In addition it is hoped that the new procedure might encourage more members of the public to use the system if they consider that complaints can be dealt with more simply. If an informal resolution fails, or is not considered appropriate, the case would be referred to a full Board in the usual way.

Time limits for the production of documents (Article 7)

One of the difficulties with the operation of the present system identified by the Committee is that it can take some considerable time for some Committees and Departments to respond to requests from the Greffier or a Board for information and documents. This, in turn, can lead to delays in the handling of cases. Although the Committee appreciates that some Departments face considerable workload pressures, it considers that appropriate priority must be given to the production of information when complaints are being dealt with under the system. It is, of course, commonplace in court cases for documents and submissions to have to be produced according to a fixed timetable and the purpose of the amendment to Article 8 of the principal Law found in this Article is to fix a one month time limit for information to be produced. As there may occasionally be exceptional circumstances when this deadline cannot be met the Greffier or a Board can agree a longer period if necessary. Although there is no evidence that delays currently occur in the States Greffe when complaints are submitted, the Committee has nevertheless included a provision in amended Article 3(1) that the Greffier must begin the enquiry into the case 'with the least possible delay'.

Publication of the outcome of cases (Article 8)

One of the defects of the present system identified by the Committee's review was that there is inadequate publicity given to the outcome of cases. Although an annual report must be published to summarise the outcome of cases this can, of course, be published many months after the cases have been dealt with.

Under this amendment the findings of a Board would be given to the PPC at the same time as being sent to the parties and, under amended Article 8(6) of the principal Law, the Committee would then be required to present this report to the States (in practice this would be done by way of an R.C.) If the Board found in favour of the complainant and requested a reconsideration of the case the outcome of the reconsideration would also have to be presented to the States so that members would eventually have a full picture of the way the case had been dealt with. The present requirement for a further report to be presented to the Committee by a Board if the Board is concerned about the way a case has been reconsidered remains in the amended law. Although there is no formal requirement for the States to debate the outcome of cases it would, of course, be open to any member to lodge a proposition concerning the case.

The Committee is hopeful that the new requirements to bring the findings into the public domain as soon as they are finalised will significantly increase the profile of the work of the Panel and increase awareness of the system. Decisions by Committees to reject the findings of Boards are thankfully rare although such cases do, of course, often generate significant comment. The new requirement for the Minister or Department's response to be published as soon as it is finalised will, it is hoped, ensure that the Minister concerned gives clear reasons for his or her decision which all members of the States can judge immediately to assess if the response is reasonable.

Annual report (Article 9)

The present requirement for an annual report to be produced remains although, because of the new requirement for the publication of each Board's findings as they are produced, the report will only contain a summary of findings. The report will nevertheless contain details of any cases resolved through the informal resolution procedure so that there is a full record of all cases dealt with.

Conclusion

The Committee is aware that some members have continued to call for the establishment of an ombudsman in Jersey to replace the present system of administrative appeals. The Committee agrees that there may be a need for an ombudsman in relation to the finance industry, and possibly in relation to the Jersey Financial Services Commission, and it has recently approached the Economic Development Committee to enquire on progress in this area. The Committee does not, however, believe that it is necessary or appropriate for an ombudsman to be created to investigate complaints against public administration. The reasons for this decision were set out in R.C. 20/2004 as follows –

The options for change in Jersey

44. *As mentioned earlier it would seem essential that the current administrative appeals system is amended because of the perceived lack of confidence in it. The Committee has therefore given careful consideration to the*

various options available.

45. *The Committee accepts that the establishment of an Ombudsman in Jersey might, in itself, be sufficient to re-establish confidence in a system of informal dispute resolution.*

46. *One obvious disadvantage of appointing an Ombudsman is, however, the likely cost. At present there is virtually no real cost of operating the administrative system as none of the Panel are remunerated in any way for the work they undertake and administrative support is provided by the Greffier of the States (in practice largely by the Deputy Greffier of the States and the Greffier's secretary). Although it may be possible to find a person who would be willing to undertake the duties of Ombudsman in an honorary capacity it would seem more likely that it would be necessary to create a salaried position with some level of administrative support. It is possible that the total annual cost, allowing for office rental and ancillary costs, would be in excess of £300,000 which could be difficult to justify in the present financial circumstances. The Clothier report suggested that an Ombudsman could be shared with other Channel Islands but this would seem to imply that the Ombudsman might not always be readily available to deal with complaints which would run contrary to the desire to provide a swift response to complaints.*

47. *It has been suggested by some that an Ombudsman in Jersey could deal with complaints over a wide range of areas including both public sector complaints and sectors such as financial services. This could, of course, lead to economies of scale and make it easier to justify the cost of setting up and running a scheme, especially if financial institutions were required to contribute to the costs of the scheme as is the case in other jurisdictions. Nevertheless it would be necessary to find an Ombudsman with sufficient experience and ability to deal with different types of complaints, ranging from detailed banking matters to complaints about maladministration in the public sector. In addition it could lead to confusion if an Ombudsman was able to make binding recommendations in some circumstances and not in others. The Committee does not therefore believe that this option is feasible.*

48. *Having given the matter careful consideration, the Privileges and Procedures Committee is not minded to recommend that a public sector Ombudsman be established in the Island at the present time. The Committee notes that some of those who have advocated the establishment of an Ombudsman have done so because they believe that the current system lacks 'teeth' but, as shown above, no public sector Ombudsman in the U.K. can make binding findings and there is no logical reason to expect that Committees and, in future, Ministers, would be more responsive to the findings of an Ombudsman than they are at present to the findings of Boards. Any system is likely to be criticised by those who do not obtain the redress they are seeking and the Committee believes that the figures on the outcome of complaints made to the U.K. Local Government Ombudsman, referred to in paragraphs 29 and 30^[1] above, dispel any notion that the U.K. system provides the perfect remedy for everyone who makes a complaint.*

49. *The present administrative appeals system, which relies on well respected, independent, members of the community with a wide range of professional and personal backgrounds, has many advantages and the Committee notes that the Jersey scheme has met the strict criteria set out by the British and Irish Ombudsman Association, of which the Island is an Associate member, as an effective scheme.*

The Committee is hopeful that, once these amendments are adopted, the principal perceived defects of the present system will be overcome and the system will be able to operate even more effectively. If the amendments are adopted the Committee will be able to deal with the other 2 recommendations in RC. 20/2004, which do not require legislative changes, namely increasing awareness of the scheme and issuing new guidelines on its operation.

Financial and manpower implications

There are no additional financial or manpower implications arising from this amending law although the requirement for a response to be given to the Greffier within a fixed period may require reprioritisation of resources in some Departments on occasions.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 6th September 2005 the Privileges and Procedures Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Privileges and Procedures Committee the provisions of the Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

The object of this draft Law is to amend the Administrative Decisions (Review) (Jersey) Law 1982 in order –

- (a) to change the names of the Panel and the Boards under the Law to States of Jersey Complaints Panel and States of Jersey Complaints Boards: *Articles 2, 5 and 6* of the draft Law;
- (b) to give to the Chairman or a Deputy Chairman of the Panel the role of deciding whether to refer a matter to a Board (without changing the role of the Greffier of the States as preliminary investigator in cases not concerning the States Greffe): *Articles 3 and 4*;
- (c) to make it clear that the Greffier should perform the role of investigator with the least possible delay: *Article 3*;
- (d) to make it clear that the Chairman or Deputy Chairman may attempt to resolve the matter of a complaint by informal means before deciding to refer it to a Board: *Article 3*;
- (e) to require the Chairman or Deputy Chairman to give reasons for any decision not to entertain a complaint: *Article 3*;
- (f) to clarify Article 6 of the 1982 Law: *Article 6*;
- (g) to add a reference to a time limit of one month for responding to a request from the Greffier or a Board for documents when the Greffier or Board is investigating a complaint and to widen the reference to documents so that it includes information in general: *Article 7*;
- (h) to require a copy of the response of a Minister, Department or person to a Board decision to be forwarded to the Privileges and Procedures Committee: *Article 8*;
- (i) to require a copy of that response, and a copy of any report of a Board on a failure to act on its findings, to be presented to the States: *Article 8*;
- (j) to require the annual report of the Panel (also presented to the Privileges and Procedures Committee and then to the States) to include a segment on matters informally resolved under the new procedure: *Article 9*.

Article 1 of the draft Law defines the principal law for the purposes of the draft Law.

Article 10 ensures that complaints already being dealt with when the draft Law comes into force will not have to be made afresh because of the changes made by the draft Law, and that the existing Panel and Boards may continue in existence despite those changes.

Article 11 sets out the short title of the draft Law and makes provision for its commencement.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 replaced</u>
<u>3</u>	<u>Article 3 replaced</u>
<u>4</u>	<u>Article 4 amended</u>
<u>5</u>	<u>Article 5 amended</u>
<u>6</u>	<u>Article 6 replaced</u>
<u>7</u>	<u>Article 8 amended</u>
<u>8</u>	<u>Article 9 amended</u>
<u>9</u>	<u>Article 10 replaced</u>
<u>10</u>	<u>Savings and transitional</u>
<u>11</u>	<u>Citation and commencement</u>



Jersey

DRAFT ADMINISTRATIVE DECISIONS (REVIEW) (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Administrative Decisions (Review) (Jersey) Law 1982.

Adopted by the States [date to be inserted]
Sanctioned by Order of Her Majesty in Council [date to be inserted]
Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, the “principal Law” means the Administrative Decisions (Review) (Jersey) Law 1982. [\[1\]](#)

2 Article 1 replaced

For Article 1 of the principal Law there shall be substituted the following Article –

“1

In this Law –

‘Board’ means a States of Jersey Complaints Board constituted in accordance with Article 6;

‘Greffier’ means the Greffier of the States or the Deputy Greffier of the States;

‘Panel’ means the States of Jersey Complaints Panel constituted in accordance with Article 5.”.

3 Article 3 replaced

For Article 3 of the principal Law there shall be substituted the following Article –

“3

(1) On receipt of any such application the Greffier shall, with the least possible delay, enquire into the facts of the matter and then present to the Chairman (or one of the Deputy Chairmen) of the Panel a report on that enquiry.

(2) The Chairman (or Deputy Chairman) shall, on the basis of that report (or, in the case of a matter referred under paragraph (6), on the basis of that reference) and of any other

information he or she may have or obtain, decide whether the circumstances justify a review of the matter by a Board.

- (3) If the Chairman (or Deputy Chairman) decides that a review of the matter by a Board is justified, he or she may nevertheless first attempt informal resolution of the matter and in that case may use whatever means that he or she considers reasonable in the circumstances to achieve such a resolution.
- (4) If the Chairman (or Deputy Chairman) decides that a review of the matter is justified and that informal resolution of the matter is not appropriate or has failed (or proved not to be satisfactory), the Greffier shall cause to be constituted a Board, and the Chairman (or Deputy Chairman) shall refer the complaint to the Board so constituted.
- (5) If the Chairman (or Deputy Chairman) decides that a review of the matter is not justified, he or she shall set out in writing the reasons for that decision and the Greffier shall then forward to the applicant notice of the decision and include in that notice those reasons as so set out.
- (6) Notwithstanding paragraph (1) if –
 - (a) the matter complained of relates to any matter of administration by the States Greffe or by any person acting on behalf of the States Greffe; or
 - (b) the complainant is an officer of the States Greffe,the Greffier shall, without enquiring into the facts of the matter for the purposes of this Article, forthwith refer the matter to the Chairman (or one of the Deputy Chairmen) of the Panel for such action as the Chairman or Deputy Chairman might consider necessary.”.

4 Article 4 amended

In Article 4 of the principal Law –

- (a) for the words “The Greffier shall not refer any complaint to a Board if in the Greffier’s opinion” there shall be substituted the words “The Chairman (or a Deputy Chairman) of the Panel shall not decide that any circumstances justify a review of any matter by a Board if in his or her opinion”;
- (b) in paragraph (b) for the word “Greffier” there shall be substituted the words “Chairman (or Deputy Chairman)”.

5 Article 5 amended

In Article 5 of the principal Law –

- (a) paragraph (1) shall be deleted;
- (b) in paragraph (2), the numbering “(2)” shall be deleted.

6 Article 6 replaced

For Article 6 of the principal Law there shall be substituted the following Article –

“6

- “(1) A States of Jersey Complaints Board shall be constituted from the States of Jersey Complaints Panel.
- (2) A Board shall be composed of 3 persons selected from the Panel by the Chairman of the Panel, and one of those persons shall be the Chairman of the Panel or one of the Deputy

Chairmen of the Panel.”.

7 Article 8 amended

In Article 8 of the principal Law, for the words “call for documents from” there shall be substituted the words “require any document or information to be provided within one month (or such longer time as the Board, or the Greffier, respectively may allow) by”.

8 Article 9 amended

In Article 9 of the principal Law –

- (a) in paragraph (1) after the words “person concerned” there shall be inserted the words “and present a copy of its report to the Privileges and Procedures Committee”;
- (b) for paragraph (4) there shall be substituted the following paragraphs–
 - “(4) On being so informed, the Board shall present a copy of the information to the Privileges and Procedures Committee.
 - (5) In any case where a Board requests 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.
 - (6) The Privileges and Procedures Committee shall present to the States a copy of any information or report that it receives under this Article.”.

9 Article 10 replaced

For Article 10 of the principal Law there shall be substituted the following Article–

“10

- (1) The Panel shall present in every year a report to the Privileges and Procedures Committee on the following –
 - (a) the complaints received under this Law;
 - (b) the results of any attempt at informal resolution of the subject matter of such a complaint;
 - (c) a summary of the findings of any Board;
 - (d) the steps taken by the relevant Minister, Department or person when a Board has requested a reconsideration of the matter of such a complaint.
- (2) The Privileges and Procedures Committee shall present a copy of the report to the States.
- (3) The Privileges and Procedures Committee may examine the Panel on the contents of the Panel’s report and may present to the States the Committee’s own comments on the report.”.

10 Savings and transitional

- (1) An application made under the principal Law as in force on the day immediately before the commencement day, and not, at that day, referred by the Greffier to a Board of Administrative Appeal, shall be taken to have been made under the principal Law as amended by this Law and shall be dealt with accordingly.
- (2) A Board of Administrative Appeal constituted under the principal Law before the commencement day and that, at that day, is still in existence and has not made its decision on any matter already referred to it may continue to deal with that matter and make its decision on that matter in accordance with the

principal Law as in force immediately before that day.

- (3) However, for the purposes of Articles 9 and 10 of the principal Law as amended or replaced by this Law, the decision shall be taken to be a decision of a Board under the principal Law as amended by this Law.
- (4) The Administrative Appeals Panel, if appointed under the principal Law before the commencement day and still in existence on that day, shall be taken on and from that day to be the States of Jersey Complaints Panel appointed under the principal Law as amended by this Law.
- (5) In this Article, “commencement day” means the day on which this Law comes into force.

11 Citation and commencement

- (1) This Law may be cited as the Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 200-.
- (2) This Law shall come into force on such day as the States may by Act appoint.

[1] *These paragraphs showed that in 2002/3 only 21.11% of complaints submitted to the U.K. Local Government Ombudsmen resulted in the complainants receiving the remedy they were originally seeking when submitting the complaint.*

[1] *Chapter 16.025.*