

PROJET DE LOI

ENTITLED

The Police Complaints (Guernsey) Law, 2008 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* No. XIX of 2009; as amended by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011 (No. XVI of 2011); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Designation of Officers (Bailiwick of Guernsey) Law, 2016 (No. ** of 2016); the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011 (G.S.I. No. 16 of 2011).

PROJET DE LOI

ENTITLED

The Police Complaints (Guernsey) Law, 2008

ARRANGEMENT OF SECTIONS

PART I

ESTABLISHMENT OF GUERNSEY POLICE COMPLAINTS COMMISSION

1. Establishment of the Guernsey Police Complaints Commission.

PART II

COMPLAINTS AND OTHER MATTERS CONCERNING MEMBERS OF THE FORCE

2. Matters to which Part II does not apply.
3. Duty of appropriate authority in relation to evidence.
4. Duty of appropriate authority in relation to the Register.
5. Informal resolution of complaints and appointment of investigating officer.
6. Referral of other matters to the Commission.
7. Supervision of investigation of member of the Force.
8. Reports etc. on supervised investigation of member of the Force.
9. Steps to be taken after supervised investigation of member of the Force.
10. Powers of Commission as to disciplinary charges.
11. Hearing of disciplinary charges preferred at the direction of the Commission.
12. Disciplinary appeals.
13. Regulations.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

14. Delegation by Chief Officer.
- 14A. Delegation by the Committee.
15. Reports.
16. Restriction on disclosure of information.
17. Restrictions on subsequent proceedings.

- 18 Territorial application.
19. Interpretation.
20. Power to make Ordinances.
21. General provisions as to Ordinances and regulations.
22. Short title and commencement.

SCHEDULE The Guernsey Police Complaints Commission.

PROJET DE LOI

ENTITLED

The Police Complaints (Guernsey) Law, 2008

THE STATES, pursuant to their Resolutions of the 26th January, 2005^a and the 28th November 2008^b, have approved the following provisions which, subject to the sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

ESTABLISHMENT OF GUERNSEY POLICE COMPLAINTS COMMISSION

Establishment of the Guernsey Police Complaints Commission.

1. (1) There is established the Guernsey Police Complaints Commission ("**the Commission**"), which has the functions set out in this Law.

(2) The Schedule has effect in relation to the Commission.

NOTE

In accordance with the provisions of the Designation of Officers (Bailiwick of Guernsey) Law, 2016, section 12, with effect from 5th December, 2016, for the avoidance of doubt and for the purposes of this Law and any Ordinance or subordinate legislation made under it –

(a) *a police officer who is designated as having the powers of a*

^a Article VI of Billet d'État No. I of 2005.

^b Article XIX of Billet d'État No. XV of 2008.

customs officer or an immigration officer remains a member of the salaried police force of the Island of Guernsey, despite the designation, and

- (b) *a customs officer or an immigration officer who is designated as having the powers and privileges of a police officer does not become a member of the salaried police force of the Island of Guernsey by reason of the designation.*
-

PART II
COMPLAINTS AND OTHER MATTERS CONCERNING
MEMBERS OF THE FORCE

Matters to which Part II does not apply.

2. (1) Nothing in this Part has effect in relation to a complaint in so far as it relates to the direction or control of the Island Police Force ("**the Force**") by the Chief Officer.

(2) If any conduct to which a complaint wholly or partly relates is or has been the subject of criminal or disciplinary charges, none of the provisions of this Part which relate to the recording and investigation of complaints has effect in relation to the complaint in so far as it relates to that conduct.

Duty of [appropriate authority] in relation to evidence.

3. Where a complaint is submitted to the [appropriate authority], [it] shall take any steps that appear to [it] to be desirable for the purpose of obtaining or preserving evidence relating to the conduct in respect of which the complaint is submitted.

NOTES

In section 3,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word "it" in square brackets, wherever occurring, was substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Duty of [appropriate authority] in relation to the Register.

4. (1) The [appropriate authority] shall maintain a register of complaints ("**the Register**").

(2) Upon submission of a complaint to [it], the [appropriate authority] shall record it in the Register.

(3) In relation to each complaint submitted to [it], the [appropriate authority] shall record in the Register –

(a) the nature of the complaint,

[(b) the steps taken in dealing with the complaint, including any disciplinary proceedings brought under this Law, and

(c) the outcome of the complaint, including any finding or decision in any disciplinary proceedings brought under this Law.]

(4) The [appropriate authority] shall, as soon as practicable, notify a complainant in writing of the outcome of the complaint.

(5) The [appropriate authority] shall, when requested by the Commission, make the Register available to it for inspection.

(6) The Register shall not be available for public inspection.

NOTES

In section 4,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word "it" in square brackets, wherever occurring, was substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

paragraph (b) and paragraph (c) of subsection (3) were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Informal resolution of complaints and appointment of investigating officer.

5. (1) If it appears to the [appropriate authority] that a complaint is suitable for informal resolution, [it] shall seek to resolve it informally and may appoint a person, who may be a member of the Force or a police officer from some other force, but who shall not be a member of the Commission, to do so on [its] behalf.

(2) A complaint is not suitable for informal resolution unless –

(a) the complainant gives his consent, and

Consolidated text

- (b) the [appropriate authority] is satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge.

(3) If it appears to the [appropriate authority] that a complaint is not suitable for informal resolution or that, after attempts have been made to resolve a complaint informally, informal resolution of the complaint is impossible or the complaint is, for any other reason, unsuitable for informal resolution, [it] shall –

- (a) notify the Commission of the complaint, and
- (b) subject to section 7(3), appoint a member of the Force or a police officer from some other force to investigate it formally.

(4) The [appropriate authority] may ask the chief officer of some other force to provide a police officer of his force for appointment under subsection (1) or (3)(b).

(5) No officer may be appointed under this section unless he is –

- (a) of at least the rank of Inspector,
- (b) of at least the rank of the member of the Force against whom the complaint is made, and
- (c) approved in that behalf by the Commission.

(6) A member of the Force or a police officer from some other

force may not be appointed to investigate a complaint under subsection (3)(b) if he has previously been appointed in relation to, or otherwise substantially participated in, its informal resolution.

NOTES

In section 5,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the words "it" and "its" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

In accordance with the provisions of the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011, regulation 55(3) and (4), with effect from 1st July, 2011 and for the purposes of paragraph (a) of subsection (2) of this section, a complainant must be informed, prior to giving consent to informal resolution of the complaint, of the effect of regulation 55(4) of the 2011 Regulations (that any such consent cannot be withdrawn after the procedure for informal resolution of the complaint has been commenced) and of regulation 57 thereof (rights of appeal relating to informal resolution).

Referral of other matters to the Commission.

6. The [appropriate authority] may refer to the Commission any matter which –

(a) appears to [it] to indicate that a member of the Force may have committed –

(i) a criminal offence, but only if Her Majesty's Procureur agrees that a reference should be

made, or

- (ii) an offence against discipline, and

- (b) is not the subject of a complaint,

if it appears to [it] that the matter ought to be referred by reason of its gravity or public importance or any exceptional circumstances.

NOTES

In section 6,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word "it" in square brackets, wherever occurring, was substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Supervision of investigation of member of the Force.

- 7. (1) The Commission shall supervise the investigation –
 - (a) of any complaint alleging that the conduct of a member of the Force resulted in the death of or serious injury to some other person, whether or not in custody, and

 - (b) of any other description of complaint that may be prescribed.

- (2) The Commission may supervise the investigation –
 - (a) of any complaint the investigation of which it is not required to supervise under subsection (1), and
 - (b) of any matter referred to it under section 6,

if it considers that it is desirable in the public interest that it should supervise that investigation.

- (3) Where an investigation is supervised by the Commission, it may require –
 - (a) that no appointment shall be made of a person to investigate the complaint or matter unless it has given notice to the [appropriate authority] that it approves the member of the Force or police officer from some other force whom [it] proposes to appoint, or
 - (b) if such an appointment has already been made and the Commission is not satisfied with the person appointed, that –
 - (i) the [appropriate authority] shall, as soon as is reasonably practicable, select another member of the Force or police officer from some other force and notify the Commission of the proposed appointment, and

- (ii) that appointment shall not be made unless the Commission gives notice to the [appropriate authority] that it approves the person to be appointed.

(4) In supervising an investigation into a complaint, the Commission –

- (a) may require the investigating officer to report to the Commission from time to time on the conduct and progress of the investigation, and
- (b) may require the investigating officer to produce to the Commission at any time for consideration all documents, materials and information available to, or in the possession or control of, the investigating officer including (without limitation) statements (whether in writing, or tape or video recorded, or otherwise) and any evidence, or copies and transcripts thereof.

(5) The [Committee] may by regulation confer power on the Commission, subject to any restrictions or conditions specified in any such regulation, to impose requirements as to a particular investigation additional to any requirement imposed by virtue of subsection (3).

(6) It shall be the duty of a member of the Force and an investigating officer to comply with any requirement imposed on him by virtue of any regulation made under subsection (5).

NOTES

In section 7,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word "it" in square brackets, wherever occurring, was substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word in square brackets in subsection (5) was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

In accordance with the provisions of the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011, regulation 8, with effect from 1st July, 2011 and for the purposes of paragraph (b) of subsection (1) of this section, the Commission must supervise, in addition to complaints of the kind referred to in paragraph (a) of subsection (1) of this section, a formal investigation of a complaint if it relates to the conduct of a senior-ranking officer.

Reports etc. on supervised investigation of member of the Force.

8. (1) If, during the course of an investigation supervised by the Commission relating to a complaint, it becomes clear to the investigating officer that the complaint is frivolous, vexatious or otherwise an abuse of process, he shall report that finding to the [appropriate authority] and recommend that the investigation should not be pursued further.

(2) Where the investigating officer makes a report and recommendation to the [appropriate authority] under subsection (1), the [appropriate authority] may, with the concurrence of the Commission and, in the case of a criminal allegation, with the concurrence of Her Majesty's Procureur, direct that the investigation shall not be pursued further.

(3) At the end of an investigation supervised by the Commission, the investigating officer shall –

(a) submit a report on the investigation to the Commission, and

(b) send a copy of the report to the [appropriate authority] and, in the case of a criminal allegation, to Her Majesty's Procureur.

(4) After considering a report submitted to it under subsection (3), the Commission shall prepare a statement –

(a) stating whether the investigation has or has not been conducted to its satisfaction, and

(b) specifying any respect in which it has not been so conducted.

(5) The Commission may prepare separate statements in respect of the criminal and disciplinary aspects of an investigation.

(6) The Commission shall submit the statement to –

(a) the [appropriate authority], and

(b) where the statement is in respect of a criminal allegation, the [appropriate authority] and Her Majesty's Procureur.

(7) Where it is practicable to do so, and unless Her Majesty's Procureur in any case directs otherwise, the Commission shall send a copy of the statement to –

- (a) the member of the Force whose conduct has been investigated, and
- (b) if the investigation related to a complaint, the complainant.

NOTE

In section 8, the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Steps to be taken after supervised investigation of member of the Force.

9. (1) Where an investigation has been supervised by the Commission, no disciplinary charge shall be preferred before the [appropriate authority] receives the report and statement required to be submitted to [it] under section 8 (3)(b) and (6).

(2) After considering a report and statement submitted to him under section 8(3)(b) and (6)(b), Her Majesty's Procureur shall inform the [appropriate authority] whether or not criminal proceedings will be initiated, and the [appropriate authority] shall inform the Commission of that decision.

(3) After either Her Majesty's Procureur has informed the [appropriate authority] that criminal proceedings will not be initiated or such

proceedings are concluded, the [appropriate authority] shall send the Commission a memorandum, signed by [it] and stating whether [it] intends to prefer disciplinary charges in respect of the conduct which was the subject of the investigation and, if not, [its] reasons for not doing so.

NOTES

In section 9,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the words "it" and "its" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Powers of Commission as to disciplinary charges.

10. (1) Where, following an investigation supervised by the Commission, the [appropriate authority] does not propose to prefer disciplinary charges, the Commission may recommend [it] to prefer such disciplinary charges as it may specify, but only after hearing the [appropriate authority] thereon.

(2) Subject to subsection (6), the [appropriate authority] may not withdraw charges which [it] has preferred in accordance with a recommendation under subsection (1).

(3) If, after the Commission has made a recommendation under subsection (1) and consulted the [appropriate authority], [it] is still unwilling to prefer such charges as the Commission consider appropriate, it may direct [it] to prefer such charges as it may specify.

(4) Where the Commission gives the [appropriate authority] a direction under subsection (3), it shall furnish [it] with a written statement of its reasons for doing so.

(5) Subject to subsection (6), it shall be the duty of the [appropriate authority] to prefer and proceed with charges specified in a direction given under subsection (3).

(6) The Commission may give the [appropriate authority] leave –

- (a) not to prefer charges which subsection (5) would otherwise oblige [it] to prefer, and
- (b) not to proceed with charges with which subsections (2) or (5) would otherwise oblige [it] to proceed.

(7) The Commission may request the [appropriate authority] to furnish it with such information as it may reasonably require for the purpose of discharging its functions under this section and the [appropriate authority] shall comply with any such request.

NOTES

In section 10,

the words "appropriate authority" in square brackets, wherever occurring, were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the word "it" in square brackets, wherever occurring, was substituted by the Police Complaints (Guernsey) Law, 2008

(Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

In accordance with the provisions of the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011, regulation 38(7), with effect from 1st July, 2011, and notwithstanding paragraphs (1) to (6) but subject to paragraph (8) of the said regulation 38, the disciplinary charges that may, respectively, be recommended or directed under subsection (1) or subsection (3) of this section include a charge of gross misconduct at a special case hearing, and this section shall have effect accordingly.

Hearing of disciplinary charges preferred at the direction of the Commission.

11. [(1) A disciplinary charge preferred at the direction of the Commission given under section 10(3) shall be heard by the Police Complaints Tribunal ("**the Complaints Tribunal**") which shall consist of the following members appointed by the Chairman of the Commission –

- (a) a serving or retired senior-ranking officer of another police force, as chairman
- (b) a qualified lawyer, and
- (c) a member of the Commission who has not been concerned with the case.]

(2) ...

(3) The Complaints Tribunal shall decide whether the member of the Force is guilty of the disciplinary charge and their decision may be a majority decision.

(4) The chairman of the Complaints Tribunal, after consulting

with the other members of the tribunal, shall determine any punishment to be imposed.

(5) Where –

- (a) a disciplinary charge is to be heard in accordance with this section, and
- (b) there is another disciplinary charge against the member of the Force which, in the opinion of the [appropriate authority], can conveniently and fairly be determined at the same time,

the [appropriate authority] may direct that this section shall apply also to the hearing of the other charge.

NOTES

In section 11,

subsection (1) was substituted, and subsection (2) repealed, by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the words in square brackets in subsection (5) were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

Disciplinary appeals.

12. (1) The [Committee] may prescribe those disciplinary proceedings to which the provisions of this section (in addition to proceedings in respect of a disciplinary charge preferred at the direction of the Commission

pursuant to section 10(3)) shall apply, and reference in this Law to "prescribed disciplinary proceedings" shall be construed accordingly.

(2) A member of the Force who is found guilty of a disciplinary charge, whether at a hearing held under section 11 or in prescribed disciplinary proceedings, may appeal against –

- (a) the decision on the disciplinary charge, and
- (b) the punishment imposed.

(3) An appeal shall be made to the Police Appeal Tribunal ("**the Appeal Tribunal**") whose membership is prescribed under section 13(1)(h).

(4) Subject to subsection (5), an appeal must be made within the period of 28 days beginning on the day the appellant is notified in writing of the decision against which he wishes to appeal.

(5) Where the Appeal Tribunal is satisfied, on the application of the appellant, that by reason of the special circumstances of the case it is just and proper so to do, it may extend the period within which an appeal must be made whether or not the period of 28 days referred to in subsection (4) has expired.

(6) An appeal under this section shall be instituted by serving written notice as follows –

- (a) if the appeal is against the decision of the Complaints Tribunal, on the Commission, or
- (b) in any other case, on the [appropriate authority].

(7) The Commission or the [appropriate authority] (as the case may be) shall have the right to be heard on the appeal, and the appellant shall have the final right of reply.

(8) The appellant may conduct his appeal in person, or be represented by an advocate or by a member of the Force selected by him.

(9) The Appeal Tribunal may –

(a) allow the appeal,

(b) dismiss the appeal,

(c) subject to subsection (10), substitute some other punishment, or

(d) subject to subsection (14), remit the matter to the [respondent to the appeal, for a rehearing].

(10) The Appeal Tribunal may not substitute another punishment under subsection (9)(c) unless –

(a) the person or persons who heard the disciplinary charge could have imposed it, and

(b) it is less severe than the punishment imposed by that person or those persons.

(11) Subject to subsection (12), all the costs and expenses of an

appeal under this section, including the costs of the parties, shall be defrayed out of the revenues of the States.

(12) Without prejudice to its other powers in respect of costs, the Appeal Tribunal may direct an appellant to pay all, or any part, of –

- (a) his own costs,
- (b) the costs of the Appeal Tribunal, and
- (c) the costs of any other party to, or person heard at, the appeal, including the Commission and the Chief Officer,

as the Appeal Tribunal may determine.

(13) The Appeal Tribunal may direct that –

- (a) all, or any part, of the appeal should be heard in private,
- (b) all or any of the persons referred to during the course of the appeal proceedings, or in the judgment, should remain anonymous, and
- (c) all, or any part, of its judgment should not be published, except as to the result.

[(14) If on an appeal it appears to the Appeal Tribunal that –

- (a) all or any part of the decision or the punishment appealed was *ultra vires* or unreasonable,
- (b) there is critical new evidence that could not have been considered at the hearing held under section 11 or, as the case may be, the prescribed disciplinary proceedings, leading to the decision or the punishment appealed, or
- (c) there was a serious breach of the procedures or other unfairness which could have materially affected the decision or the punishment appealed,

the Appeal Tribunal may remit the case for rehearing as to all or part of the relevant proceedings, with such directions or determinations as the Appeal Tribunal shall deem just and appropriate.]

(15) A question of law arising in connection with the hearing and determination by the Appeal Tribunal of an appeal under this Law may, if it thinks fit, be referred for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(16) An appeal on a point of law, certified as such by the Bailiff or a single judge of the Court of Appeal, by any party to a hearing before the Appeal Tribunal shall lie from a decision of the Appeal Tribunal to the Royal Court, save that an appeal does not lie in respect of a question of law which has been referred to the Royal Court under subsection (15).

(17) An appeal from a decision of the Royal Court made on a reference under subsection (15) or an appeal under subsection (16) by any party to

the hearing before the Appeal Tribunal lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal.

(18) Section 21 of the Court of Appeal (Guernsey) Law, 1961^c ("powers of a single judge"), applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

NOTES

In section 12,

the word in square brackets in subsection (1) was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016;

the words in square brackets in, first, paragraph (b) of subsection (6) and, second, subsection (7) were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the words in square brackets in paragraph (d) of subsection (9) were substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

subsection (14) was substituted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

The following Regulations have been made under section 12:

Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011.

Regulations.

13. (1) The [Committee] may by regulation make provision for –

^c Ordres en Conseil Vol. XVIII, p. 315.

Consolidated text

- (a) the informal resolution of complaints about members of the Force, and for giving any such member an opportunity to comment orally or in writing on the complaint,
- (b) the investigation of any complaint or matter in respect of a member of the Force, whether supervised by the Commission or otherwise,
- (c) the disciplinary code for members of the Force, save that any regulations made under this paragraph shall have no effect until approved by resolution of the States,
- (d) the hearing of disciplinary charges against a member of the Force, whether preferred on the recommendation or at the direction of the Commission or otherwise, including provision for the representation of such a member at such a hearing and for the disclosure of documents to him for the purposes of the hearing,
- (e) the suspension of a member of the Force pending the investigation of any complaint or matter,
- (f) the punishment by way of dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution of a member of the Force found guilty of an offence against discipline,

- (g) the procedures of the Commission in discharging its functions under this Part, including the discharge of any function of the Commission by one or more of the Commission's members,
- (h) the membership, powers and procedures of the Appeal Tribunal, save that any regulations made under this paragraph shall have no effect until approved by resolution of the States,
- (i) the provision of information to complainants in respect of the way in which their complaints have been dealt with, and the power of complainants to appeal to the Commission in respect of the way in which their complaints have been dealt with by the Force, and
- (j) the general purposes of carrying this Law into effect.

(2) The [Committee] may prescribe by regulations anything which may or shall be prescribed for the purposes of this Part.

NOTES

In section 13, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

The following Regulations have been made under section 13:

*Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011;
Police Complaints (Conduct Proceedings and Investigations)*

(Guernsey) Regulations, 2011.

PART III
MISCELLANEOUS AND SUPPLEMENTAL

Delegation by Chief Officer.

14. The Chief Officer may delegate any of his functions under this Law or in relation to a disciplinary investigation or disciplinary proceedings to the Deputy Chief Officer, or to such other officer not below the rank of Superintendent as the Chief Officer shall nominate, and references in this Law to "Chief Officer" shall be construed accordingly.

[Delegation by the [Committee].

14A. For the avoidance of doubt, the [Committee] may delegate any of its functions under this Law or in relation to a disciplinary investigation or disciplinary proceedings to any employee of the States of Guernsey responsible to the [Committee], and references in this Law to "the [Committee]" shall be construed accordingly.]

NOTES

Section 14A was inserted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011.

In section 14A, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

Reports.

15. (1) The Commission shall, at the request of the [Committee] or

Her Majesty's Procureur, report on such matters relating generally to the Commission's functions as the [Committee] or Her Majesty's Procureur may specify, and the Commission may for that purpose carry out research into any such matters.

(2) The Commission may report to the [Committee] on any matters coming to its notice under this Law to which it considers that the [Committee]'s attention should be drawn by reason of their gravity or public importance or of other exceptional circumstances.

(3) The Commission shall send a copy of any report made under subsection (2) to Her Majesty's Procureur and the Chief Officer.

(4) As soon as is practicable after the end of each calendar year –

(a) the Commission shall prepare a report upon the discharge of its functions during that year and submit it to the [Committee], and

(b) the [Committee] shall present the report to the States.

(5) The Chairman shall report to the [Committee] upon the administration and operation of the Commission or any aspect thereof when requested to do so by the [Committee].

NOTE

In section 15, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

Restriction on disclosure of information.

16. (1) No information received by the Commission in connection with any of its functions shall be disclosed by any person who is or has been a member, officer or servant of the Commission except –

- (a) to the [Committee], or a member, officer or servant of the Commission or, so far as may be necessary for the proper discharge of the functions of the Commission, to other persons,
- (b) to Her Majesty's Procureur,
- (c) for the purposes of any criminal, civil or disciplinary proceedings, or
- (d) in the form of a summary or other general statement made by the Commission which does not identify the person from whom the information was received or any person to whom it relates.

(2) Any person who discloses information in contravention of paragraph (1) shall be guilty of an offence and liable on conviction to a fine not exceeding level 5 on the uniform scale.

NOTE

In section 16, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

Restrictions on subsequent proceedings.

17. (1) Subject to subsection (2), no statement made by any person for the purpose of the informal resolution of a complaint under Part II shall be admissible in any subsequent criminal, civil or disciplinary proceedings.

(2) A statement is not rendered inadmissible by section (1) if it consists of or includes an admission relating to a matter which does not fall to be resolved informally.

Territorial application.

18. For the avoidance of doubt, the provisions of this Law shall apply to a member of the Force wheresoever in the Bailiwick of Guernsey or elsewhere his conduct occurs.

Interpretation.

19. (1) In this Law, unless the context requires otherwise –

["**appropriate authority**", in relation to any complaint or proceedings,

–

(a) in any case where the complaint or those proceedings concern the conduct of a senior-ranking officer, means the [Committee], and

(b) in any other case, means the Chief Officer,]

"**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"bankrupt" in relation to an individual, includes an individual –

- (a) whose affairs have been declared to be in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick, or
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^d,

"Commission" means the Guernsey Police Complaints Commission established by section 1, or any member carrying out the Commission's functions in accordance with any regulation made under this Law,

"Chairman" means the Chairman of the Commission appointed under paragraph 1(2) of the Schedule,

"Chief Officer" means, subject to section 14, the Chief Officer of the Force,

"chief officer of some other force" means a chief officer of a force in the British Islands,

^d Ordres en Conseil Vol. VIII, p. 310.

"complaint" means any complaint about the conduct of a member of the Force which is submitted –

- (a) by, or on behalf and with the consent of, a member of the public,
- (b) by a member of the Force otherwise than in the course of his duty, or
- (c) by Her Majesty's Procureur,

"conduct" includes acts, omissions and statements (whether actual, alleged or inferred),]

"[Committee]" means the States of Guernsey [Committee for Home Affairs],

"disciplinary charge", subject to subsection (1A), means disciplinary proceedings,]

"disciplinary proceedings" includes proceedings under any provision of this Law or any regulations made under it,]

"document" means anything in which information of any description is recorded and includes any recording of a visual image or images,]

"enactment" means a Law, an Ordinance and any subordinate legislation,

"functions" includes powers and duties,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"investigating officer" means the member of the Force or police officer from some other force appointed to carry out an investigation,

"Island Police Force" means the police force comprising –

- (a) members of the salaried police force of the Island of Guernsey, and
- (b) such members of the special constabulary of the Island of Guernsey as are prescribed,

"member" or **"member of the Force"** means any member of the Island Police Force,]

"police officer from some other force" means a police officer from a force in the British Islands,

"prescribed" means prescribed by regulations made by the [Committee],

"prescribed disciplinary proceedings" has the meaning given in section 12,

"Principal Law" means the Loi ayant rapport à la Police Salariée

pour l'Île Entière, 1920^e,

["**qualified lawyer**"] means a person who meets the requirements of paragraphs (a) and (b) –

- (a) the person is –
 - (i) an Advocate of the Royal Court of Guernsey,
 - (ii) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, who is engaged in the practise of law,
 - (iii) a solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland, or
 - (iv) a person entitled to practise law as a member of the legal profession in any other Commonwealth jurisdiction,

of not less than five years standing, and

- (b) the person's name is on a list of persons approved by the [Committee] and Her Majesty's Procureur as qualified to conduct regulated proceedings for the purposes of the Law by reason of their relevant

^e Ordres en Conseil Vol. VI, p. 176.

experience in or knowledge of employment-related proceedings or proceedings concerning discipline,]

"Register" has the meaning given in section 4(1),

["regulated proceedings" means proceedings set out in regulations made under this Law, including appeal proceedings under section 12 of this Law,]

["senior-ranking officer" means a member of the Island Police Force holding the rank of Superintendent or above,]

["serving or retired senior-ranking officer of another police force"

–

- (a) means any police officer who holds the rank of, or any person who has retired from service as, Chief Constable, Deputy Chief Constable, Assistant Chief Constable or its equivalent in –
 - (i) any police force in England, Wales, Northern Ireland or Jersey, or
 - (ii) the Isle of Man constabulary, but
- (b) excludes any person who has at any time been a member of the Island Police Force,]

"subordinate legislation" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made

under any enactment and having legislative effect, and

["**this Law**" includes any Ordinance or subordinate legislation made under it,]

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^f.

[(1A) Unless the context requires otherwise –

- (a) any reference in this Law to preferring or bringing a "**disciplinary charge**" means to bring disciplinary proceedings under this Law, and
- (b) any reference in this Law to deciding or finding that a member of the Force is guilty of a "**disciplinary charge**" means to decide or find that the conduct of that member amounts to misconduct or gross misconduct (as these terms are defined in regulations made under this Law),

and cognate references shall be construed accordingly.]

(2) Unless the context requires otherwise, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^f Ordres en Conseil Vol. XXXI, p. 278.

NOTES

In section 19,

subsection (1A), and the definitions of the expressions "appropriate authority", "conduct", "disciplinary charge", "disciplinary proceedings", "document", "member" or "member of the Force", "qualified lawyer", "regulated proceedings", "senior-ranking officer", "serving or retired senior-ranking officer of another police force" and "this Law" in subsection (1), were inserted by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 2, Schedule, with effect from 29th June, 2011;

the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "Committee" and, third, the word "Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 7, section 2, Schedule 1, paragraph 6(a) and section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to members of the salaried police force of the Island of Guernsey shall include a reference to members of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

In accordance with the provisions of the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011, regulation 65, with effect from 1st July, 2011, for the purposes of paragraph (b) of the definition of the expression "Island Police Force" herein, all members of Division B of the Guernsey Special Constabulary constituted by the Special Constabulary Ordinances, 1950 to 1985 are prescribed to be part of the Island Police Force.

Power to make Ordinances.

20. (1) The States may by Ordinance –

Consolidated text

- (a) amend sections 1 to 12, 14 to 16(1), 17 to 19, 22 and the Schedule, where it appears to the States to be necessary for any of the purposes described in subsection (2), and
 - (b) make such additional provision as they think fit for the purposes of carrying this Law into effect.
- (2) The purposes are –
- (a) improving or enhancing the effective discharge by the Commission of its functions,
 - (b) maintaining public confidence in both the independence of the Commission and its effectiveness in the discharge of its functions, or
 - (c) ensuring that the practices and procedures governing –
 - (i) investigations into the conduct of, and
 - (ii) disciplinary proceedings brought against,police officers are structured and regulated in the manner that best promotes the fairness, impartiality and independence of those investigations and proceedings.
-

NOTE

The following Ordinance has been made under section 20:

Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011.

General provisions as to Ordinances and regulations.

- 21.** (1) An Ordinance or regulation under this Law –
- (a) may be amended or repealed by a subsequent Ordinance and regulation made hereunder, and
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.
- (2) Any power conferred by this Law to make an Ordinance or regulation may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Other than in the case of regulations made under section 13(1)(c) or (h), any regulations made under this Law shall be laid before a meeting of the States as soon as may be after being made and if, at that meeting or the next subsequent meeting, the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under the regulations or to the making of new regulations.

Short title and commencement.

22. (1) This Law may be cited as the Police Complaints (Guernsey) Law, 2008.

(2) This Law shall come into force on such day as the States may by Ordinance appoint, and different days may be appointed for different provisions of this Law and for different purposes.

NOTE

The Law was brought into force on 1st July, 2011 by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011, section 1, subject to the saving and transitional provisions in section 4 of the 2011 Ordinance.

SCHEDULE

THE GUERNSEY POLICE COMPLAINTS COMMISSION

Constitution of the Commission.

1. (1) The Commission shall consist of a Chairman and five ordinary members.

(2) The Chairman and ordinary members shall be appointed by the States on the recommendation of the [Committee], but so that no such person shall be appointed otherwise than on the recommendation of the [Committee].

(3) Before recommending a person to the States for appointment as the Chairman or an ordinary member of the Commission, the [Committee] may require that person to provide, and to authorise the [Committee] to obtain, such particulars (including previous convictions) and references as the [Committee] may reasonably require to ascertain his suitability for chairmanship or membership (as the case may be) of the Commission.

(4) Subject to subparagraph (5) the Chairman and ordinary members shall be appointed for a term of four years.

(5) Three of the five ordinary members of the Commission to be appointed upon the coming into force of this Law shall be appointed for a term of two years.

(6) Members of the Commission may be reappointed.

(7) A person may not be a member of the Commission if –

- (a) he is or has previously been a member of the Force, or a member of any other police force,
- (b) he is a Deputy of the States or a Jurat,
- (c) he is in the full time employment of the States, or
- (d) he is a person of such description as may be prescribed by regulations made by the [Committee].

Incorporation of the Commission.

2. The Commission is a body corporate.

Members.

3. (1) A member may resign from office at any time.
- (2) Any resignation by a member must be in writing and made to the [Committee], and the [Committee] will notify the States of it at the first available opportunity thereafter.
- (3) Any member of the Commission may be removed from office by the [Committee], if the [Committee] is satisfied that –
- (a) he has without reasonable cause failed to carry out his duties,
 - (b) he has been convicted of a criminal offence,
 - (c) he has become bankrupt,

- (d) he is incapacitated by physical or mental illness, or
- (e) he is otherwise unable or unfit to perform his duties.

Administration and expenses.

4. (1) The Commission may appoint a secretary and (after consultation with the [Committee]) such other officers as it thinks fit.

(2) There shall be paid out of the revenues of the States such salaries and allowances to the secretary and officers of the Commission, and such allowances (including attendance allowances) and expenses of the Commission and its members, as the [Committee] may determine.

(3) The [Committee] must cause to be kept records and accounts of the finances of the Commission, and the Commission must co-operate with the [Committee] to enable it to do so.

Meetings.

5. (1) The Commission must meet at least once every year, and also from time to time as necessary.

(2) In the absence of the Chairman, any ordinary member may take the chair.

(3) A quorum at any meeting is three members.

(4) The Chairman must meet the [Committee] at the time of presenting the Commission's report under section 15(4) and must attend other meetings if requested to do so.

Operation.

6. Subject to any regulations made by the [Committee] under this Law –
- (a) the Commission will carry out its duties in such a manner as it from time to time determines and may regulate its own procedures, and
 - (b) the Chairman may make arrangements for the discharge, under the general direction of the Commission, of any of the Commission's functions by one or more of the Commission's members.

NOTE

In the Schedule, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.
