

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 8 of 2005; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2006 (G.S.I. No. 15 of 2006); the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2007 (G.S.I. No. 12 of 2007); the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 43 of 2010); the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020 (G.S.I. No. 90 of 2020). See also the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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The States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005

ARRANGEMENT OF REGULATIONS

PART I THE HOUSING PANEL & HOUSING TRIBUNAL

1. Establishment and constitution of the Panel.
2. Appointment and constitution of the Tribunal.
3. Confidentiality of information.
4. Power of Chairman and Tribunal to seek directions.
5. Procedure and powers of Tribunal.
6. Appointment of Clerk.

PART II APPEALS

7. Right of appeal.
8. Time for appealing.
9. Form of notice of appeal and application.
10. Refusal by Tribunal to hear appeals or applications.
11. Powers of Tribunal on appeal.
12. Appeals from Tribunal to Ordinary Court.
13. Reference of points of law to Ordinary Court.
14. Appeal from Ordinary Court to Court of Appeal.
15. Interpretation of Tribunal's decisions.

PART III INTERPRETATION & GENERAL PROVISIONS

16. Meaning of "relevant decision".
17. Making of representations in respect of certain relevant decisions.
18. Interpretation.
19. General provisions as to orders of the Ordinary Court.
20. Service of documents.
21. Citation.
22. Commencement.

SCHEDULE 1 The Tribunal: procedure and powers.

SCHEDULE 2 Form of notice of appeal to Tribunal and application to Tribunal for further time.

Explanatory Note.

(Made on 6th May, 2005.)

The States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005

THE HOUSING DEPARTMENT, in exercise of the powers conferred on it by sections 1 to 5 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004^a and all other powers enabling it in that behalf, hereby makes the following regulations: –

PART I

THE HOUSING APPEALS PANEL & HOUSING APPEALS TRIBUNAL

[Establishment and constitution of the Panel.]

1. (1) The States shall, on the recommendation of the [Committee for Employment & Social Security] ("**the Committee**"), draw up and maintain a panel to be called the Housing Appeals Panel ("**the Panel**").

(2) The Panel shall consist of such number of persons as in the opinion of the States is necessary for the purpose of hearing and determining appeals against relevant decisions.

(3) The States shall designate one member of the Panel as Chairman of the Panel and another as deputy Chairman thereof.

(4) The following persons may not be appointed to the Panel –

^a Order in Council No. IV of 2005.

Consolidated text

- (a) members of the States of Deliberation or the States of Election within the meaning of the Reform (Guernsey) Law 1948^b,
- (b) members of the States of Alderney or the Chief Pleas of Sark,
- (c) any Constable or Douzenier,
- (d) any procureur or overseer of the poor or member of a parochial outdoor assistance board[,]
- [(e) any person working in the service of the Committee for Employment & Social Security, whether as an employee, statutory office-holder, or otherwise.]

[(5) A member of the Panel shall hold office until whichever is the earliest of –

- (a) the date specified in that behalf in the Resolution of the States confirming the member's appointment,
- (b) the member's death, or
- (c) the member's resignation, effected in accordance with paragraph (6), or
- (d) the member's removal from office, effected in accordance with paragraph (7).

^b Ordres en Conseil Vol. XIII, p. 288; No. V of 1993; No. X of 1998.

(6) A member of the Panel may resign the member's office by giving not less than one month's written notice –

(a) in the case of the Chairman, to the Bailiff, or

(b) in the case of any other member, to the Chairman.

(7) The Full Court may, at the instance of Her Majesty's Procureur, remove a member of the Panel from office if it appears to the Court that the member –

(a) has misbehaved in the member's office as such, or

(b) is incapable of continuing as a member by reason of physical or mental illness, or

(c) has been declared insolvent, or

(d) has been unavailable without reasonable cause to sit as a member of the Panel for a period in excess of six consecutive months.

(8) When a person ceases to be a member of the Panel –

(a) the vacancy does not affect the validity of anything done by the Tribunal, and

(b) any appeal which has been commenced but not completed may be continued, even if the former

member was a member of the Tribunal appointed to hear and determine the appeal.]

NOTES

In regulation 1,

first, the heading was substituted, second, the punctuation in subparagraph (d) of paragraph (4) was substituted and subparagraph (e) thereof was inserted and, third, paragraph (5), paragraph (6), paragraph (7) and paragraph (8) were inserted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, respectively regulation 2, regulation 3 and regulation 4, with effect from 16th September, 2020;

the words in the first and second pairs of square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 7(a) and section 4, and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Appointment and constitution of the Tribunal.

2. (1) A tribunal to be called the Housing Appeals Tribunal ("**the Tribunal**") shall be appointed from the membership of the Panel for the purpose of hearing and determining appeals against relevant decisions.

(2) The Tribunal shall, subject to any provision to the contrary in these regulations, consist of three persons.

(3) The Chairman of the Panel or, if he is unavailable, the deputy Chairman thereof shall –

(a) from the membership of the Panel, appoint the members of the Tribunal who are to hear and determine any appeal against a relevant decision, and

- (b) nominate one of the members so appointed to chair the Tribunal,

and for the avoidance of doubt the Chairman or deputy Chairman may so appoint and nominate himself.

Confidentiality of information.

3. (1) A member of the Panel shall not disclose or cause or permit the disclosure of any document or information which relates to the business or affairs of any person and which is acquired by him in the course of performing his functions as a member of the Panel or of the Tribunal, except –

- (a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired, or
- (b) to the extent that the disclosure is necessary –
 - (i) to enable him to perform his functions as a member of the Panel or of the Tribunal,
 - (ii) in the interests of the investigation, detection, prevention or prosecution of crime, or
 - (iii) to comply with an order of a court.

(2) A person who discloses or causes or permits the disclosure of any document or information in contravention of paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

Power of Chairman and Tribunal to seek directions.

4. (1) If the Chairman of the Panel (or, if he is unavailable, the deputy Chairman thereof) or the Tribunal believes that it would assist in the proper and lawful performance of their respective functions, he (or it) may apply to the [Ordinary Court] for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the [Ordinary Court].

(2) On an application under paragraph (1) the [Ordinary Court] may make such order, on such terms and conditions, as it thinks fit.

(3) An appeal from an order of the [Ordinary Court] under this regulation lies, with leave of the [Ordinary Court] or the Court of Appeal, to the Court of Appeal on a question of law.

(4) 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 regulation as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

NOTE

In regulation 4, the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Procedure and powers of Tribunal.

5. Schedule 1, which is entitled "The Tribunal: procedure and powers" and which lays down –

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

- (a) the procedure to be followed by, and the powers to be available to, the Tribunal in hearing and determining appeals against relevant decisions, and
- (b) other ancillary matters relating to the Tribunal and its proceedings and powers,

has effect.

Appointment of Clerk.

6. (1) [The Committee] shall –

- (a) appoint a Clerk to the Tribunal, and such number of deputy Clerks, on such terms and conditions, and
- (b) provide such other officers and facilities,

as the [Committee] thinks fit.

(2) The Clerk or a deputy Clerk must be present during all proceedings of the Tribunal, but shall not –

- (a) retire with the Tribunal,
- (b) participate in the Tribunal's deliberations, or
- (b) draft or participate in the drafting of the Tribunal's decisions.

NOTE

In regulation 6, 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 4, with effect from 1st May, 2016.

PART II
APPEALS

Right of appeal.

7. (1) A person aggrieved by a relevant decision may, subject to the provisions of these regulations, appeal against the decision to the Tribunal on any of the grounds set out in paragraph (2).

(2) The grounds of an appeal under this regulation are that –

- (a) the decision was *ultra vires* or unreasonable in law,
- (b) a material error as to the facts has been made,
- (c) there was a material procedural error, or
- (d) there was some other error of law, including bad faith or lack of proportionality.

(3) An appeal under this regulation shall be instituted by notice of appeal served on the Clerk stating the grounds and material facts on which the appellant relies.

(4) The Clerk, on receipt of notice of appeal, shall immediately –

- (a) transmit it to the Chairman of the Panel requesting him (or, if he is unavailable, the Deputy Chairman of the

Panel) to appoint, from the membership of the Panel, a Tribunal constituted by three members to hear and determine the appeal, and

- (b) transmit it to the [Committee], to the Chief Officer or (as the case may be) to the Guernsey Housing Association ("**the Association**").

NOTE

In regulation 7, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Time for appealing.

8. (1) The Tribunal shall not hear and determine an appeal against a relevant decision unless notice of appeal under regulation 7 is served on the Clerk –

- (a) before the end of a period of 28 days beginning on the date of the notice of the decision required to be served by the [Committee], the Chief Officer or (as the case may be) the Association on the person aggrieved under [regulation 17(3A)(b)], or
- (b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the person aggrieved served on the Clerk, allow in a case where it is satisfied that it was not reasonably practicable for notice of appeal to be presented within that period.

(2) The Clerk, on receipt of an application for further time under

paragraph (1)(b), shall immediately transmit it to the Chairman of the Panel requesting him (or, if he is unavailable, the Deputy Chairman of the Panel) to appoint, from the membership of the Panel, a Tribunal (constituted by a single member) to hear and determine the application.

(3) Where the Tribunal, on an application under paragraph (1)(b), decides that further time should or should not be allowed for the service of notice of appeal –

- (a) the Tribunal's decision is subject to appeal in accordance with regulation 12, and
- (b) if the Tribunal (or the [Ordinary Court] on appeal under regulation 12) determines that further time should be allowed for the service of notice of appeal, the single member of the Tribunal shall not be appointed as one of the members of the Tribunal who are to hear and determine the appeal.

NOTES

In regulation 8,

the word in the first pair of square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the words in the second pair of square brackets were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 5, with effect from 16th September, 2020;

the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Form of notice of appeal and application.

9. (1) A notice of appeal under regulation 7 and an application for further time under regulation 8(1)(b) –

- (a) shall be served on the Clerk in the form set out in Part I or (as the case may be) Part II of Schedule 2, and
- (b) shall be supported by such information and documents, verified in such manner, as the Clerk may require.

(2) At any time after receipt of a notice of appeal or an application for further time, the Clerk may require the appellant or applicant to furnish such additional information and documents, verified in such manner, as the Clerk thinks fit.

Refusal by Tribunal to hear appeals or applications.

10. (1) The Tribunal may refuse to hear and determine an appeal under regulation 7 or an application for further time under regulation 8(1)(b) –

- (a) in default of compliance by the appellant or applicant with any provision of, or any requirement imposed under, regulation 9, or
- (b) if the appeal or application appears to the Tribunal to be frivolous or vexatious.

(2) The Tribunal shall refuse to hear and determine an appeal under regulation 7 against, or an application for further time under regulation 8(1)(b) in respect of, a relevant decision if no representations have been made in respect of the decision by [the person by whom the right of appeal relating to the decision is exercisable] in accordance with regulation 17(2)(b).

NOTE

In regulation 10, the words in square brackets were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 6, with effect from 16th September, 2020.

Powers of Tribunal on appeal.

11. (1) On an appeal under regulation 7, the Tribunal may –

- (a) dismiss the appeal, or
- (b) quash the relevant decision to which the appeal relates,

and, where the Tribunal quashes the decision, it may remit the matter to the [Committee], the Chief Officer or (as the case may be) to the Association with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal.

(2) The effect of a relevant decision to which an appeal under regulation 7 relates is not, except where the Tribunal orders otherwise, suspended in consequence of the bringing of the appeal.

(3) The [Committee], the Chief Officer or (as the case may be) the Association may, where an appeal under regulation 7 has been instituted, apply to the Tribunal, by notice served on the appellant and the Clerk, for an order that the appeal be dismissed for want of prosecution, and on hearing such an application the Tribunal may –

- (a) dismiss the appeal or dismiss the [Committee]'s, Chief Officer's or Association's application (in either case on

such terms and conditions as the Tribunal may direct),
or

- (b) make such other order as the Tribunal considers just.

NOTE

In regulation 11, 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 4, with effect from 1st May, 2016.

Appeals from Tribunal to [Ordinary Court].

12. (1) A person aggrieved by a decision of the Tribunal on a question of law may, subject to the provisions of paragraphs (2) and (3), appeal therefrom to the [Ordinary Court] in such manner and within such period as may be prescribed by order of the [Ordinary Court].

(2) No decision of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the proceedings from presenting his case fairly before the Tribunal.

(3) This regulation does not confer a right of appeal on a question of law which has been referred to the [Ordinary Court] under regulation 13.

NOTE

In regulation 12, the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Reference of points of law to [Ordinary Court].

13. A question of law arising in connection with the hearing and determination by the Tribunal of an appeal under regulation 7 may, if the Tribunal thinks fit, be referred for decision to the [Ordinary Court] in such manner and within such period as may be prescribed by order of the [Ordinary Court].

NOTE

In regulation 13, the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Appeal from [Ordinary Court] to Court of Appeal.

14. (1) An appeal from a decision of the [Ordinary Court] made on an appeal under regulation 12 or on a reference under regulation 13 lies, with leave of the [Ordinary Court] or Court of Appeal, to the Court of Appeal.

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

NOTE

In regulation 14, the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Interpretation of Tribunal's decisions.

15. (1) Any party to an appeal under regulation 7 which has been

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

decided by the Tribunal may, within a period of one month immediately following the date of the Tribunal's decision (or such other period as the Tribunal may in its absolute discretion allow), apply to the Tribunal for a determination of any question as to the interpretation of the decision.

(2) The Tribunal shall, before making such a determination, hear any representations of the parties as to the question in issue.

(3) The determination of the Tribunal on an application under paragraph (1) shall be stated in writing to the parties and has effect as if it were an original decision.

PART III INTERPRETATION & GENERAL PROVISIONS

Meaning of "relevant decision".

16. In these regulations a "**relevant decision**" means –

- (a) a decision or determination of the Chief Officer relating to a rent and rebate scheme,
- (b) a decision of the [Committee] of the following descriptions –
 - (i) a decision on an application under the States Housing Allocation Policy,
 - (ii) a decision on an application by a person lawfully in occupation of a States residential property to succeed to the States housing

tenancy or statutory tenancy of the property on the death of the existing tenant, or

[(iii) a decision, made in consequence of a review of the occupancy of the property, that –

(A) the property should be re-allocated, [...]

(B) the tenant no longer meets the criteria for eligibility under the States Housing Allocation Policy, [or]

[(C) the tenant should be allocated to a different sized property following the circumstances specified in regulation 9(3)(d) of the States Housing (Statutory Tenancies) (Guernsey) Regulations, 2005,]]

(c) a decision of the Association of the following descriptions –

(i) a decision on an application under the Association's Allocation Policy,

(ii) a decision on an application by a person lawfully in occupation of a residential property in respect of which the Association has granted or is able to grant a tenancy to succeed to the tenancy of the property on the death of the existing tenant, or

- [(iii) a decision, made in consequence of a review of the occupancy of the property, that –
 - (A) the property should be re-allocated, [...]
 - (B) the tenant no longer meets the criteria for eligibility under the Association's Allocation Policy, [or]
 - [(C) the tenant should be allocated to a different sized property where the Association is authorised to dispose of, demolish or re-develop a property,]]
- (d) a decision of the [Committee], the Chief Officer or the Association of any other class or description against which, under the provisions of any regulations made under the Law, an appeal lies to the Tribunal,

and, for the avoidance of doubt and without limitation –

- (A) a matter within the jurisdiction of the [Ordinary Court] under the Stay of Evictions Laws, 1946 and 1954^e (suspension of execution of an eviction order),

^e Ordres en Conseil Vol. XII, p. 262 and Vol. XVI, p. 41.

- (B) a decision of the [Committee] or the Association to exercise any right to terminate the tenancy and retake possession of the property in consequence of non-payment of rent or breach of the terms and conditions of the tenancy, and
- (C) a decision of the [Committee] or the Association to claim arrears of rent or any other sums due under the terms and conditions of the tenancy or damages for any breach thereof,

does not constitute a relevant decision.

NOTES

In regulation 16,

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 4, with effect from 1st May, 2016;

first, sub-paragraph (iii) of paragraph (b) and, second, sub-paragraph (iii) of paragraph (c) were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2006, regulation 1, respectively paragraph (a) and paragraph (b), with effect from 6th May, 2006;

first, the word omitted in the first pair of square brackets within the square brackets in sub-paragraph (iii) of paragraph (b) was revoked, second, the word in the second pair of square brackets therewithin was inserted and, third, sub-paragraph (iii)(C) of paragraph (b) was inserted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2007, regulation 1, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 5th May, 2007;

first, the word omitted in the first pair of square brackets within the square brackets in sub-paragraph (iii) of paragraph (c) was revoked, second, the word in the second pair of square brackets therewithin was inserted and, third, sub-paragraph (iii)(C) of paragraph (c) was inserted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2007, regulation 1, respectively paragraph (d), paragraph (e) and paragraph (f), with effect from 5th May, 2007;

the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

Making of representations in respect of certain relevant decisions.

17. (1) When the [Committee], the Chief Officer or the Association makes a relevant decision, the procedure set out in this regulation shall be followed.

(2) The [Committee], the Chief Officer or (as the case may be) the Association shall serve on [the person by whom the right of appeal relating to the decision is exercisable ("A")] a notice in writing, stating –

- (a) the terms of, and the grounds for, the relevant decision,
- (b) that [A] may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the [Committee], the Chief Officer or (as the case may be) the Association in respect of the decision in such manner as they may from time to time determine, and
- (c) that if [A] does not make representations in accordance with subparagraph (b), the decision shall be final.

[(3) If representations are made by A in accordance with paragraph (2)(b), the Committee, the Chief Officer or (as the case may be) the Association may,

within 28 days of their receipt, request A to provide any further documents and information which it or the Chief Officer (as the case may be) considers are required to complete the review; and if such further documents and information are requested in accordance with this paragraph, A must provide them within 28 days.

(3A) Within 28 days of receipt of representations made in accordance with paragraph (2)(b), or, if further documents and information have been provided in accordance with paragraph (3), within 28 days of receipt of the documents and information, the Committee, the Chief Officer or (as the case may be) the Association shall consider the representations, and, if provided, the further documents and information; and, having done so, shall –

- (a) confirm or vary the relevant decision, or rescind it and make a new decision as to the matter in question, and
- (b) serve on A a notice in writing –
 - (i) stating the terms of, and the grounds for, the decision as confirmed or varied or, as the case may be, the new decision, and
 - (ii) giving particulars of the right of appeal conferred by regulation 7 against that decision.]

(4) If no representations are made by the person concerned in accordance with paragraph (2)(b) –

- (a) the relevant decision of the [Committee], the Chief Officer or (as the case may be) the Association shall be final, and

- (b) no appeal against the decision shall lie to the Tribunal under regulation 7.

(5) [One or more of the periods of 28 days mentioned in paragraphs (2)(b), (3) and (3A)] may be reduced in any case in which the [Committee], the Chief Officer or (as the case may be) the Association considers it essential to do so in the public interest, and if by reason of the public interest the [Committee], the Chief Officer or (as the case may be) the Association considers that the decision in question needs to be taken immediately as a matter of urgency then the procedure set out in this regulation may be dispensed with altogether.

NOTES

In regulation 17,

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 4, with effect from 1st May, 2016;

first, the words in the second, third and fifth pairs of square brackets in paragraph (2) were substituted, second, paragraph (3) was substituted and paragraph (3A) inserted and, third, the words in the first pair of square brackets in paragraph (5) were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 7, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 16th September, 2020.¹

Interpretation.

- 18.** (1) In these regulations, unless the context requires otherwise –

"appeals" includes applications and other proceedings,

"Association" means the Guernsey Housing Association LBG,

"Association's Allocation Policy" means the policy from time to time

implemented and published by the Association setting out the criteria used by the Association in assessing the eligibility of persons to occupy residential property in respect of which the Association has granted or is able to grant a tenancy,

"Chief Officer" means the Chief Officer of the [Committee],

"Clerk" means the Clerk to the Tribunal appointed by the [Committee] under regulation 6, and includes any deputy Clerk so appointed,

"costs of a hearing": see paragraph 5(3) of Schedule 1,

"[Committee]" means the [Committee for Employment & Social Security],

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production, however expressed, include references to the production of a copy of the information in legible form,

[**"Full Court"** means the Royal Court sitting as a Full Court,]

"Law" means the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004,

"Panel" means the Housing Appeals Panel established under regulation 1,

"qualifying individual" means an individual of a class or description specified in a rent and rebate scheme,

"rent and rebate scheme" means a scheme which is approved in a resolution of the [Committee] and the rules of which are laid down by regulations of the [Committee] under section 3(1) of the Law,

"rent rebate" means a rent rebate payable under a rent and rebate scheme,

"relevant decision": see regulation 16,

[...]

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"States Housing Allocation Policy" means the policy from time to time implemented and published by the [Committee] setting out the criteria used by the [Committee] in assessing the eligibility of persons to occupy States residential properties,

"States Housing Policies" means the policies and procedures from time to time implemented and published by the [Committee] and applicable in respect of the occupation and administration of States residential properties under the terms and conditions of statutory tenancies,

"States housing tenancy" means any tenancy agreement existing between a tenant and the States (acting by and through the [Committee]) which relates to the occupation of States residential property and, for the avoidance of doubt, excludes a statutory tenancy,

"States residential property" means any residential property an estate of inheritance of which is vested in the States (or in which the States has any other form of property right enabling it to grant or create a States

housing tenancy or a statutory tenancy),

"statutory tenancy" means a tenancy which exists in respect of a property by virtue of section 2(2) of the Law where a person is permitted by the States (acting by and through the [Committee]) to occupy any States residential property on terms and conditions prescribed by regulations of the [Committee] under section 2(1)(a) of the Law,

"statutory tenant" means a person who occupies a States residential property under a statutory tenancy and who is the statutory tenant by virtue of regulations under section 2 of the Law,

"terms and conditions" includes covenants,

"Tribunal" means the Housing Appeals Tribunal established under regulation 2,

and other expressions have the meanings given by the Law.

(2) Any reference in these regulations to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of these regulations.

NOTES

In regulation 18,

^f Ordres en Conseil Vol. XIII, p. 355.

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 4, section 2, Schedule 1, paragraph 7(a) and section 4, and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the definition of the expression "Full Court" in paragraph (1) was inserted and the words omitted in square brackets immediately after the definition of the expression "relevant decision" therein were revoked by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 9, with effect from 16th September, 2020.

The functions, rights and liabilities of the Housing Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 7(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

General provisions as to orders of the [Ordinary Court].

- 19.** An order of the [Ordinary Court] under these regulations –
- (a) may be amended or repealed by a subsequent order hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
 - (c) may make provision for the payment of fees.

NOTE

In regulation 19, the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from

16th September, 2020.

Service of documents.

20. (1) Any document other than a summons to be given or served under or for the purposes of these regulations may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office outside Guernsey,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on the Clerk, the Tribunal, the [Committee] or the Chief Officer, by being left at, or sent by post or transmitted

to, the principal offices of the [Committee] in Guernsey,

- (f) on the Association, by being left at, or sent by post or transmitted to, the principal offices of the Association in Guernsey,

and in this regulation the expression "**by post**" means by ordinary letter post, registered post or recorded delivery service and the expression "**transmitted**" means transmitted by facsimile transmission, electronic mail or other similar means which produce or enable the production of a document containing the text of the communication.

(2) If a person notifies the Clerk, the Tribunal, the [Committee], the Chief Officer or the Association of an address for service within Guernsey for the purposes of these regulations, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this regulation, the document may be served by being published in La Gazette Officielle on two occasions, respectively falling in successive weeks, and a document served under this paragraph is sufficient if addressed to the person for whom it is intended.

(4) Paragraphs (1) to (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of paragraphs (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Clerk, the Tribunal, the [Committee], the Chief Officer or the Association under or for the purposes of these regulations shall be deemed to have

been given or served until it is received.

(6) If a person on whom a document is to be served under these regulations is a minor or person under legal disability, the document shall be served on his guardian, and if there is no guardian, the party wishing to effect service may apply to the [Ordinary Court] for the appointment of a person to act as guardian for the purposes of these regulations.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of these regulations to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day; and in this regulation a "**non-business day**" means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^g.

(8) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

NOTES

In regulation 20,

^g Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994.

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 4, with effect from 1st May, 2016;

the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this regulation to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Citation.

21. These regulations may be cited as the States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005.

Commencement.

22. These regulations shall come into force on the 7th May, 2005.

THE TRIBUNAL: PROCEDURE & POWERS

Voting in Tribunal.

1. (1) Each member of the Tribunal has, subject to subparagraph (2), one vote, and the decisions of the Tribunal shall be taken by a simple majority.

(2) The person chairing the Tribunal has an original vote and also, where there is an equality of votes, a casting vote.

Procedure in hearings before Tribunal.

2. Where a Tribunal is appointed to hear and determine an appeal against a relevant decision –

(a) the Tribunal shall afford the parties a reasonable opportunity of appearing and being heard or, if all parties so elect, of submitting a statement in writing to the Tribunal,

(b) the Tribunal may admit any evidence given for the purposes of the hearing and determination of the appeal notwithstanding any rule of law relating to hearsay or otherwise as to the admissibility of evidence,

(c) the parties are entitled to be present during any hearing by the Tribunal of representations made in person, and for the purposes of this subparagraph –

(i) the appellant may be represented by any person, whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that

there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent the appellant,

- (ii) the [Committee] may be represented by any person who is legally qualified, by any officer of the [Committee] or by any other person appointed by the Chief Officer to represent it,
 - (iii) the Chief Officer may be represented by any person who is legally qualified, by any officer of the [Committee] or by any other person appointed by him to represent him,
 - (iv) the Association may be represented by any person who is legally qualified, by any officer of the Association or by any other person appointed by the Association to represent it,
- (d) the Tribunal shall afford the parties a reasonable opportunity of replying to the representations made by the other party, either by appearing and being heard in person or (if the original representations were made in writing) by a statement in writing,
- (e) the Tribunal shall consider all representations and replies submitted to it by the parties,
- (f) the Tribunal may at any time require either party to furnish further particulars in writing within such time as

it may direct with regard to any question referred to it and shall afford the other party a reasonable opportunity of replying in writing,

- (g) the Tribunal may call for such documents and examine such persons (including the parties) on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Tribunal,
- (h) the parties may, if authorised to do so by the Tribunal, cause a summons to be served on any person, in the same manner as that in which a summons may be served in a civil action before the [Ordinary Court], summoning that person to attend any hearing of the Tribunal to give evidence or produce any document likely to assist the Tribunal in determining any question before it, and a person so summoned is under the same obligation as to the giving of any evidence or the production of any document as if he were summoned to give the evidence or produce the document in a civil action before the [Ordinary Court],
- (i) the Tribunal may adjourn any hearing from time to time as it thinks fit,
- (j) if it is proved to the satisfaction of the Tribunal that the parties have been notified of the place, date and time of a hearing, and one of the parties fails to appear at the hearing, the Tribunal may proceed to determine any matter in dispute in the absence of that party,

- (k) the decision of the Tribunal shall be in writing, signed by the person chairing the Tribunal and transmitted as soon as reasonably practicable to the parties, and
- (l) the Tribunal may, subject to the above provisions –
 - (i) determine its own procedure, and
 - (ii) give such directions, subject to such terms and conditions, as it thinks fit for the purposes of the hearing and determination of the appeal.

Hearings to be in public.

3. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise.

(2) The Tribunal may at any time exclude any person from a hearing or any part thereof.

Powers of Tribunal as to summoning witnesses, etc.

4. The Tribunal has, for the purposes of hearing and determining an appeal against a relevant decision, the same powers as the [Ordinary Court] in respect of –

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by the person chairing the Tribunal is equivalent to a formal process issued in that behalf in an action before the [Ordinary Court].

Costs.

5. (1) The Tribunal may, subject to the provisions of subparagraph (4), order that the whole or any part of the costs of a hearing shall be paid by one or more of the parties in such amount or proportion and on such basis as the Tribunal may direct.

(2) An order for costs under subparagraph (1) –

- (a) is enforceable as a judgment debt by the person in whose favour the order was made, and
- (b) carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985^h from the date of the order until the order is satisfied, and the interest may be recovered by the person in whose favour the order was made as part of the award of costs.

(3) The expression "**costs of a hearing**" (without prejudice to the generality of the expression) includes –

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs,

^h Ordres en Conseil Vol. XXIX, p. 135, amended by Order of the Royal Court No. I of 1996.

- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding and conduct of the hearing and the determination of the appeal incurred by the States (other than as a party to the hearing), and
 - (c) the costs, fees, expenses and allowances of the Tribunal and the members thereof.
- (4) The Tribunal may not order –
- (a) the payment of costs on a full or partial indemnity basis,
 - (b) the giving of security for costs,
 - (c) the taxation of costs, or
 - (d) the payment of the costs of legal representation of any of the parties.
- (5) The provisions of this paragraph do not apply in relation to the [Ordinary Court] and are accordingly without prejudice to the powers of the [Ordinary Court] in relation to costs.

Offences in relation to hearings, etc.

6. (1) A person who –
- (a) in proceedings before the Tribunal, or in making any statement or providing any information or document to the Clerk or the Tribunal when acting in the

performance or purported performance of their respective functions –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,
- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend,
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so –
- (i) to take the oath or affirmation,

- (ii) to produce any document in his possession, custody or power, or
- (iii) to answer any question put to him,
- (d) does any other thing before the Tribunal which, if done before the [Ordinary Court], would constitute a contempt of court, or
- (e) discloses, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before the Tribunal when the Tribunal was sitting in camera,

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

Allowances and expenses of members of Tribunal.

7. There shall be paid to the members of the Tribunal such allowances as the [Committee] may determine together with the travelling and other expenses incurred by them in connection with the performance of their functions as a member of the Tribunal.

NOTES

In Schedule 1,

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 4, with effect from 1st

May, 2016;

the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

[PART I

NOTICE OF APPEAL TO THE HOUSING APPEALS TRIBUNAL

- | | |
|----|---|
| 1. | Please complete this form and return it with your supporting documents to:

The Clerk to the Housing Appeals Tribunal, PO Box 43, Sir Charles Frossard House, La Charroterie, St Peter Port, Guernsey, GY1 1 FH. |
| 2. | If you need advice or a copy of the legislation please contact the Clerk to the Housing Appeals Tribunal on 717367. |

Your Contact Details

I/1 We (delete as appropriate) wish to appeal to the Housing Appeals Tribunal against a decision of the [Committee for Employment & Social Security]/Guernsey Housing Association dated (insert the date of the letter setting out the decision of the [Committee for Employment & Social Security] or Guernsey Housing Association). Please note that you should submit your appeal within 28 days of receiving the letter. If you miss the deadline please contact the Clerk to the Housing Appeals Tribunal on 717367 as soon as possible.

Your names(s)			
Your address			
Your daytime telephone		Your email	

If you wish to have a representative with you at the hearing please give their contact details and let your representative know that the Clerk to the Tribunal will contact them.

Representative's Contact Details

Name			
Contact address			
Daytime telephone		Email	

Hearing Arrangements

A Housing Appeals Tribunal hearing is normally held in public but the Tribunal can order part or all of a hearing to be held in private if it considers there is sufficient reason why the public and media should be excluded. If you want the hearing to take place in private please tick this box and also include your reason(s) on a separate piece of paper. The Clerk to the Tribunal will contact you.

--

Grounds For Appeal

All appeals have to be in accordance with Regulation 7 of the States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005 which say there are four legal grounds under which a person can appeal to the Housing Appeals Tribunal Panel. Please indicate the grounds for your appeal by ticking the appropriate box (or boxes) below.

- | | | | | | |
|--|--|--|--|--|--|
| <p>1) <i>"the decision was ultra vires or unreasonable in law"</i></p> <p>2) <i>"a material error as to the facts has been made"</i></p> <p>3) <i>"there was a material procedural error"</i></p> <p>4) <i>"there was some other error of law, including bad faith or lack of proportionality"</i></p> | <table border="1" style="border-collapse: collapse;"> <tr><td style="width: 40px; height: 20px;"></td></tr> </table> | | | | |
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Please note that the Appeals Procedure Leaflet gives more information about each of these grounds of appeal. If you are still unsure, please contact the Clerk to the Tribunal on 717367.

Detail Of Appeal Case

The Housing Appeals Tribunal needs you to explain the facts that you will put forward in support of your appeal on the above grounds. Please include this information below (and continue on a separate sheet of paper, if necessary):

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Please list below all the documents that you are including in support of your appeal.

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Your Signature(s)

.....]

PART II

FORM OF APPLICATION TO TRIBUNAL FOR FURTHER TIME

The Clerk to the Housing Appeals Tribunal
P O Box 43
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1 FH

I (full name)

of (address)

.....

being aggrieved by a decision of the [Committee for Employment & Social Security]
{or – the Guernsey Housing Association} given on {insert date of
decision}, and wishing to appeal against it, hereby apply for further time to present
my appeal against the decision on the grounds that –

{Please state why it was not reasonably practicable for you to present a notice of
appeal against the decision within the 28 day period set out in Regulation 8 of the
States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005. If possible
please attach a copy of the decision letter from the [Committee]/Association}

.....

.....

I believe that for the reasons set out above I require a further days in which to present my appeal.

I understand that this application for further time will be determined by the Housing Appeals Tribunal constituted by a single member.

I further understand that if I am aggrieved by the decision of the Tribunal on a question of law I may appeal to the [Ordinary Court] in accordance with the provisions of Regulation 12.

Signature

Date

NB:- if you wish to be represented by some other person when your application for further time is heard by the Tribunal please complete the details of your representative in the space provided –

Name of representative

His or her full address

.....

NOTES

In Schedule 2,

Part I was substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2010, regulation 1, Schedule, with effect from 23rd April, 2010;

the words, first, "Committee for Employment & Social Security" and, second, "Committee" in square brackets, wherever occurring, were

Consolidated text

substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 7(a) and section 4, and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the words "Ordinary Court" in square brackets, wherever occurring, were substituted by the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2020, regulation 8, with effect from 16th September, 2020.

EXPLANATORY NOTE

*(This note is not part of the regulations)***

These regulations establish the Housing Appeals Tribunal for the purpose of hearing appeals against decisions of the Housing Department relating to the operation of the rent rebate scheme and other matters concerning States housing, and provide for a right of appeal by States housing tenants. The regulations also apply to relevant decisions of the Guernsey Housing Association.

¹ Prior to its substitution, paragraph (3) was amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.