

STATES OF JERSEY



DRAFT PUBLIC FINANCES (JERSEY) LAW 201- (P.28/2019): AMENDMENTS (P.28/2019 Amd., P.28/2019 Amd.(2), P.28/2019 Amd.(3) AND P.28/2019 Amd.(5)) – COMMENTS

**Presented to the States on 4th June 2019
by the Minister for Treasury and Resources**

STATES GREFFE

COMMENTS

1. The principles of the Draft Public Finances (Jersey) Law 201- ([P.28/2019](#)) were adopted by the States Assembly on 30th April 2019. At that time, the Corporate Services Scrutiny Panel called in the draft Law for further review under Standing Order 72.
2. The Minister for Treasury and Resources acknowledges the work undertaken by the Corporate Services Scrutiny Panel in reviewing this important piece of legislation, enabling it to be returned to continue the States' debate on 4th June 2019.
3. The Corporate Services Scrutiny Panel has lodged the following amendments to the Draft Public Finances (Jersey) Law 201- –
 - ❖ Financing ([P.28/2019 Amd.\(5\)](#));
 - ❖ Internal audit ([P.28/2019 Amd.\(2\)](#));
 - ❖ Government Plan amendments and authorities; ([P.28/2019 Amd.](#)) and
 - ❖ Official Analyst ([P.28/2019 Amd.\(3\)](#)).
4. The Minister has considered the various amendments put forward, and has decided to accept the majority of those proposed by the Panel except for two – the setting of a maximum financing (borrowing) limit, and amendments to the internal audit function. The Minister has lodged an amendment to the latter ([P.28/2019 Amd.\(2\)Amd.](#)).
5. The Minister set out to introduce an enabling piece of legislation, and not to retain an overly prescriptive approach, in line with KPMG's recommendations in their review of the [Public Finances \(Jersey\) Law 2005](#). However, the Minister has taken a pragmatic approach in accepting the majority of the Panel's proposals. The Minister wishes to make the point that many of the issues highlighted in the Scrutiny Panel's amendments would have been addressed in the Public Finances Manual.
6. The Minister is pleased to note that the Chartered Institute of Public Finance and Accountancy ("CIPFA"), who were asked to do a high-level review of this legislation by the Corporate Services Scrutiny Panel, largely endorsed the proposals put forward in the draft legislation. CIPFA commented: "*In summary, the revised Public Finances Law is to be broadly commended through the introduction of key elements of good practice financial management, including an attempt to provide a better balance on prescriptive issues that would not normally be found within typical public finances related legislation within other jurisdictions.*".
7. **Financing (including borrowing)** – The Minister has not lodged an amendment to the financing proposals put forward by the Scrutiny Panel (see [P.28/2019 Amd.\(5\)](#), Part 1 "PAGE 31, ARTICLE 14 –") which, if approved, would reinstate the borrowing limits from the existing Public Finances Law into the new Law. The Minister will be proposing that the Assembly does not accept the Panel's proposals, but maintains the approach in the draft legislation which defines that financing, other than the limited sums which the Minister has power to approve, is approved in the Government Plan and remains, therefore, quite rightly a decision of the Assembly.

8. Financing proposals should be based on affordability, ability to repay, and the value for money of the option, rather than on pre-set arbitrary maximum financing limits.
9. The Council of Ministers is required in the Government Plan to take into account the medium- and longer-term sustainability of its proposals, and any financing will have to be justified as part of this requirement. There is further protection, in that the Fiscal Policy Panel is required to comment on States' assets and liabilities, which must include any financing proposals, in its annual report. The Minister believes that it is important to retain that part of Article 13 which requires that anyone proposing an amendment to the Government Plan takes these issues into account too. It seems incongruous that the States will have proposals from the Council which have been financially assessed, and then not require that same financial rigour to be applied to options put forward by other parties. The Minister's amendment does, however, remove what may have been a practical barrier to Members lodging amendments.
10. When any financing proposals are also developed, the Assembly will need to consider the implications that these may have on the public administration's credit rating.
11. The proposal from the Corporate Services Scrutiny Panel to set a maximum financing limit based on States' income from taxation and duties from the previous financial year is not an appropriate way forward without further research. The inclusion of such a limit suggests that this maximum limit is both affordable and sustainable – the figure proposed by Scrutiny is a re-insertion of the figure included in the current Law, and there has been no assessment of its affordability or sustainability. Furthermore, the Minister has been advised by KPMG as part of their review of the Law, that the setting of maximum financing limits in legislation does not follow best practice.
12. An unresearched statutory maximum financing limit could be restrictive and result in delays to much-needed projects, and instead of controlling expenditure could result in additional costs being borne, and wrong decisions being made.
13. The Minister believes that there is more benefit to be gained from the Panel's proposal that the Law requires the Council of Ministers to publish its policy and framework within which financing proposals will be considered. The inclusion of this amendment and the setting of a maximum financing limit in Law are incompatible. It is far better to have a well-reasoned and researched policy which sets a formula for calculating a maximum financing limit. This Policy will be brought forward later in the year by the Council of Ministers in the Government Plan.
14. **Overdraft limit** – The Minister is content to accept Scrutiny's proposal to set a maximum overdraft limit. The fact that the Minister is able to authorise an overdraft does not give the Minister any power to fund additional States' expenditure – authority to approve spending is made by the Assembly in the Government Plan.

15. The limit proposed by Scrutiny effectively means that the States could have an overdraft limit approaching £200 million. The current overdraft limit with the bank is £5 million. The Minister has every intention of maintaining the £5 million.
16. **Internal Audit** – the Minister recognises the strength of feeling of States Members on this subject, and whilst believing that the correct place for arrangements concerning Internal Audit is within the Public Finances Manual, accepts that the Panel’s amendment, as amended by her own amendment, will provide a workable solution (*see* Scrutiny’s amendment [P.28/2019 Amd.\(2\)](#), Part 3(c) “PAGE 37, ARTICLE 32 –”) and the Minister for Treasury and Resources’ amendment to this ([P.28/2019 Amd.\(2\)Amd.](#)) If the Panel (and the Assembly) accept the Minister’s amendment, the Minister will, in turn, accept the Panel’s amendment, as amended.
17. The Minister’s amendment to the Panel’s proposals on Internal Audit proposes that the existing Article 32(2)(c) of the draft Law is retained. This paragraph recognises –
- the importance of the internal audit function, by requiring the Treasurer to establish a system of internal auditing in support of the Treasurer’s role, to ensure the proper stewardship and administration of the public finances of Jersey. Furthermore, the Minister believes that maintaining this responsibility of the Treasurer underlines the importance of Internal Audit; and
 - that the Treasurer has a responsibility to advise the Comptroller and Auditor General (“C&AG”), as well as the Principal Accountable Officer (“PAO”) (where appropriate) of the results of internal audits.
18. The Minister’s amendment also corrects the inappropriate requirement of the current legislation that the chief internal auditor is responsible for ensuring that States’ finances are regulated, controlled and supervised in accordance with the Law. It is impossible for a chief internal auditor to achieve this alone, as they are rightly functions of the Minister and the Treasurer.
19. It has always been the Minister’s intent that the reporting lines and role of the internal audit function would be included in the Public Finances Manual. Copies of the relevant section on Internal Audit have already been prepared and circulated to Scrutiny. This includes details on the standards to be adopted by Internal Audit, and the independent reporting lines available.
20. **General Comments – Government Plan, amendments and authorities** – As part of the consultation process for the new Law, a Ministerial Sub-Group (comprising the Chief Minister, Minister for External Relations, Minister for Education, and the Minister for the Environment) was established to review its content before it was lodged. The Minister is grateful for the work undertaken by this Sub-Group. The Sub-Group was particularly keen to ensure that the Government Planning process took on board the issue of sustainable well-being, recognising that this was a new initiative which would be developed over time. The fact that the Scrutiny amendment proposes that this initiative MUST form part of the Government Planning process is an indication that sustainable well-

being is seen as an important issue. The amendment is accepted, noting that this aspect of the Government Plan will be developed and enhanced over successive annual Plans.

21. The Minister for Treasury and Resources accepts the Panel's proposal which removes the need for the Minister to consent to any financing or transfer from other Funds before a Government Plan can be approved. The Minister accepts that there are other ways in which a Minister for Treasury and Resources can indicate that they do not agree to such proposals.
22. The extension of the period of notice that the Minister needs to give the Assembly before approving a re-allocation between heads of expenditure from 2 to 4 weeks is accepted. It will, as the Panel suggests, give greater time for States Members to consider any transfer and, if they have concerns, to discuss the proposal with the Minister and, if necessary, bring forward a question or proposition to query the re-allocation.
23. The Minister accepts that the Panel wish to see a summary of information in the 6-monthly report referred in Article 23. It was not the Minister's intent to exclude allocations made under Article 24 (being allocations made in the case of a state of emergency, or where there is an immediate threat to the health or safety of inhabitants or to the stability of the economy/environment), merely that Article 24 already provides for the Assembly to be notified of any approvals made by the Minister as soon as practicable.
24. Policy for the Reserve Head of Expenditure – The Minister accepts the Panel's proposal that the Law specifies that the Minister publish this Policy. It had already been the Minister's intention that this would happen. It is difficult to see how the Assembly could approve an allocation to this area without knowledge of the relevant Policy for its use.
25. Accountability/authority issues – The Minister accepts the Panel's amendment that the Treasurer should not be able to delegate their functions to the Principal Accountable Officer – in practice this would never happen, but the Minister is happy to provide the security that the Panel require on this matter. The Minister is also content to accept the Panel's proposal that the Law specifies that the PAO is accountable to the Council of Ministers and answerable to the Public Accounts Committee.
26. The Minister is aware of the interest from States Members in the Public Finances Manual, and is content to accept the Panel's proposals that the Manual will be presented to the Public Accounts Committee, with any updates notified to that Committee. This enhanced process, and the fact that the Manual will be publicly available, should mean that States Members are able to hold the Minister to account for its content and any changes made to it.
27. Finally, the Minister is content to accept the Panel's proposal that the Official Analyst be reinstated in the list of Non-ministerial States bodies. A review of the governance of regulatory bodies is currently being undertaken, and once this is complete, any necessary amendment to the Law may be proposed.

Concluding comments

28. The Minister is content to accept all the amendments to the draft Law put forward by the Panel, apart from those relating to the setting of a maximum financing limit, and the Internal Audit proposals, for the reasons highlighted above.
29. In accepting the proposals put forward by the Panel, the Minister is conscious that there is a balance to be achieved between ensuring that the Law is principle-based, whilst also recognising the requirements of the Assembly. The Minister has taken a pragmatic view in accepting the majority of the Panel's proposals, recognising that many of the amendments put forward by Scrutiny would have been dealt with in the Public Finances Manual.
30. The Minister would like to record her appreciation to the Panel for their review, and their interaction with the Department in undertaking the review of this piece of legislation over many months.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A due to the Minister's wish to prepare information which is as comprehensive and informative as possible for Members.