

STATES OF JERSEY



DRAFT COMPTROLLER AND AUDITOR GENERAL (JERSEY) LAW 201-

Lodged au Greffe on 22nd May 2014
by the Council of Ministers

STATES GREFFE



Jersey

DRAFT COMPTROLLER AND AUDITOR GENERAL (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Comptroller and Auditor General (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 21st May 2014

REPORT

Introduction

The Council of Ministers is pleased to present this draft legislation, which covers the establishment and role of the Comptroller and Auditor General (C&AG) in public audit in Jersey.

This Law replaces and re-enacts Part 6 of the Public Finances (Jersey) Law 2005 (the “Public Finances Law”), regarding the appointment, functions and powers of the Comptroller and Auditor General, and has been amended to incorporate recommendations made by the current Comptroller and Auditor General, Ms Karen McConnell, in her report entitled “Public Audit in Jersey”.

These recommendations were proposed in order to meet the following objectives –

- To safeguard the independence of the Comptroller and Auditor General;
- To ensure clarity in the remit of the Comptroller;
- To guarantee good governance of the Office and accountability without any compromise to the independence of the C&AG; and
- To secure effective management arrangements for the Office of the Comptroller and Auditor General to ensure, efficiency, resilience, good internal controls and compliance with the Public Finances Law.

Great care has been taken to ensure that any amendments to the current legislative requirements recognise the distinct characteristics and structures of the States of Jersey.

This standalone legislation builds upon the strong base for the role of the Comptroller and Auditor General hitherto incorporated within the Public Finances Law, and strengthens it to reflect the highest level of international auditing standards and the experience of other jurisdictions which have well-founded and proven independent auditing structures.

In order to achieve effective audit, the legislation further enhances the established strong base for the Comptroller and Auditor General to be independent and effective, and empowers the Comptroller to report without political influence, and without fear or favour.

Part 2 – Appointment and Administration

This Part replicates in the main the process for the appointment and administration of the office of the Comptroller and Auditor General previously established in the Public Finances Law.

The decision to appoint a person to the position of Comptroller and Auditor General remains with the States Assembly on a proposition signed by both the Chief Minister and the Chairman of the Public Accounts Committee. The Jersey Appointments Commission retains a role in the appointment process. However, the Law is strengthened in that there is now a requirement for a person appointed as Comptroller and Auditor General to have the appropriate qualifications and experience to undertake the role.

The legislation now provides that the Comptroller and Auditor General is appointed for a fixed term of 7 years, which cannot be extended or renewed. The underlying aim here is to secure the independence of the Comptroller, whilst at the same time adhering to recognised international standards followed by other jurisdictions. In order to further enhance the independence of the Comptroller and Auditor General, the

legislation now prevents a former post-holder, for the period of 2 years after he or she ceases to hold office, to take any employment (paid or otherwise) within any States department or independently audited States body.

There is still a requirement in the legislation that the Comptroller and Auditor General is required to gain the prior consent of the Chief Minister and the Chairman of the Public Accounts Committee if he or she wishes to undertake any other professional work or appointment.

The previous provisions set in the Public Finances Law covering the procedures for the revocation of appointment of the C&AG and any vacancy in that role are replicated in this standalone Law. Responsibility for ensuring that the Comptroller and Auditor General has sufficient resources to carry out his or her functions falls to the States, with these funds being allocated as part of the usual Medium Term Financial Plan process set in the Public Finances Law.

A new provision has been included to protect the Comptroller and Auditor General, and his or her officers, employees and agents, from civil liability for acts done in the discharge of the functions of the Comptroller and Auditor General, provided that they did not act in bad faith. Protection is retained after the person leaves the office or employment, and is in line with recognised international standards and is a common feature of public audit legislation in other jurisdictions.

Part 3 – Powers and duties

This Part of the legislation builds upon the current duty for the Comptroller to ensure that the public finances of Jersey are dealt with in accordance with the Public Finances Law. This is rightly expanded to require that the C&AG also ensures that special funds, the Social Security Fund, the Social Security (Reserve) Fund, the Health Insurance Fund and the Long-Term Care Fund are regulated, controlled and supervised in accordance with the Laws under which they are maintained.

The Comptroller retains responsibility to ensure that the States' annual financial statement is audited and reported on where appropriate. Although this responsibility mirrors that in the existing Public Finances Law, the responsibility has been considerably widened, as the contents of the annual financial statement have been expanded by an amendment to the Public Finances Law which rightly provides that the annual financial statement must include the accounts of the Social Security Fund, the Social Security (Reserve) Fund, the Health Insurance Fund and the Long-Term Care Fund.

The legislation continues to give the Comptroller and Auditor General the power to report on the accounts of other entities which receive support from the States or those in which the States have a shareholding.

As in the current legislation, the Comptroller and Auditor General is able to delegate his or her functions.

The draft legislation continues to promote strongly the independence of the Comptroller and Audit General, whilst still requiring the post-holder to liaise and have strong links with the Public Accounts Committee when carrying out their functions.

In order to build upon the existing requirement for the Comptroller to be accountable to the States Assembly, currently achieved through the publication and presentation to the States of an annual report on the Office's activities (now extended to include the publication of the Office's accounts), the post-holder will also publish, and keep under review, information about how he or she will discharge his or her functions. Accountability is further enhanced by the requirement for the C&AG to present all completed reports on any matter to the States.

Part 4 – Powers and enforcement

This Part re-enacts the existing powers that the Comptroller has to summons a person to answer questions and to provide information, and also details the penalties, which may be financial or involve imprisonment, which may be imposed if a person fails to provide information or provides false information to the Comptroller, or obstructs the Comptroller from carrying out his or her duties.

The Comptroller and Auditor General’s Advisory Board is a new initiative and one which is required to build upon the independent nature of the C&AG, especially as the Comptroller’s role is neither subject to the normal Accounting Officer controls nor the usual internal audit review. The Board is tasked with scrutinising the way which the Comptroller utilises his or her resources and overseeing the governance arrangements.

Part 5 – Closing

In order to bring about consistency to the way in which external auditors are appointed to bodies which are classified as States aided independent bodies (but are not Companies), changes are required to other pieces of legislation to enable the Comptroller to appoint external auditors.

Under the current Public Finances legislation, there is no detail on the length of time for which a person can be appointed to the role of Comptroller. Transitional arrangements are therefore required in order to enable the current post-holder to be appointed for a further term up to the 7 year maximum period set in the new legislation.

Financial and manpower implications

There are no additional financial or manpower implications for the States expected to arise from this legislation.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the Draft Comptroller and Auditor General
(Jersey) Law 201-**

These Notes have been prepared in respect of the Draft Comptroller and Auditor General (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would replace and re-enact Part 6 of the Public Finances (Jersey) Law 2005 (“the 2005 Law”), regarding the appointment, functions and powers of the Comptroller and Auditor General (“CAG”). Such provisions as may be relevant to any human rights issues are re-enacted provisions presently contained in the said Part 6 (which was the subject of ECHR review when the 2005 Law was drafted).

As the aim of any law is important for the question of proportionality of any measure touching on human rights, it is worth noting the aim of the provisions in the draft Law, which is to ensure that the States Assembly has the information to know how the money of the States has been spent, and whether such expenditure is in keeping with the relevant appropriation. The role of a legislature in a democracy is to hold administration to account, and so the function of a Supreme Auditing Institution such as Jersey’s Comptroller and Auditor General, is to provide a systematic and independent flow of information on every part of administration. Although, independent of those who are elected, the office of Comptroller and Auditor General exists as a function of democratic accountability.

Article 8 – The right to respect for private life

General comments and principles

The provision of the European Convention that will be relevant to the powers of the Comptroller and Auditor General. Such powers may affect Article 8 – the right to respect for private life. This needs to be considered in respect to Part 4 of the draft Law (“Powers and Enforcement”). The earlier provisions (with 2 minor exceptions) in the draft Law do not give rise to any meaningful human rights issues; for example, the most intrusive such power is that under draft Article 14, being the power to audit a “States aided independent body”, but it is difficult to see why a power to audit a body to whom the States give money should be considered as a violation of privacy.

An interference with this right, which might arise from the disclosure or exchange of such information, must be justified under Article 8(2) ECHR, meaning it must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; (c) necessary in a democratic society; and (d) proportionate in the general sense of being a fair balance between the rights of the individual and the interests of the community. With that in mind, the Law Officers stress the importance of the office of Comptroller and Auditor General, and that the powers of the office are used, not in respect of the public at large, but in respect of the States administration and those bodies which are state-funded.

In a more general sense, the CAG is not charged to make a determination, as such, of a civil right; and hence Article 6(1) ECHR (the right to a fair trial) is not engaged by

this Law. Firstly, no rights are determined, the powers relate to obtaining information only. Secondly, in respect of the overwhelming majority of cases, the issues will not be “civil rights” as it relates to the use of public money by public or substantially public bodies.

Discussion of relevant provisions of Part 4 of the draft Law

Article 8 ECHR (the right to respect for home and private life) is potentially engaged by powers in Article 21.

The range of information sought under *Article 21* might conceivably include details regarding individuals, particularly names, addresses or other personal data protected under Article 8 ECHR as part of the subject’s private life.

The following may be noted in this context –

- The power of the CAG to summons individuals to appear or produce records, and to answer questions. See *Article 21* which replaces Article 55 of the 2005 Law.

An interference with the Article 8 ECHR right under *Article 21* of the draft Law would be deemed justifiable. The information-gathering provisions are clear and the rationale for their application, i.e. to ensure that the CAG is able to exercise his or her statutory functions. The purpose of those functions, and thus the aim of the legislation, falls within that of the economic well-being of the country to which Article 8(2) ECHR refers, as well as being necessary for the efficient functioning of democratic accountability. As noted above, the power to obtain information is at the heart of the work of the Comptroller and Auditor General, so such a power is readily justifiable. The obvious limitation on information powers associated with human rights is that of legal professional privilege. Article 55 of the 2005 Law was subject to Article 63 of the 2005 Law confirming that nothing in the Law required a person to produce a record or to provide information that the person would in an action in the Royal Court be entitled to refuse to produce or provide on the grounds of legal professional privilege. The same provision as in Article 63 is made in *Article 26* of the draft Law. Bearing in mind that the UK Supreme Court in the recent *Prudential* case reined back on the more absolutist stance taken by the House of Lords in *Morgan Grenfell*, no opinion is given here as to whether the legal professional privilege exception is strictly required by human rights considerations in this context. Should there be any future desire to restrict legal professional privilege in this context, such a step might be proportionate, and would require separate consideration.

- The power of the CAG to enter and inspect buildings or premises and to inspect records and movable property (see *Article 22* which replaces Article 56 of the 2005 Law).

As with Article 56 of the 2005 Law, the power under *Article 22* of the draft Law to enter and inspect is confined to any building or other premises occupied or controlled by any States funded body. That the Comptroller and Auditor General should have such a power is clearly of considerable utility, and plainly it can be no violation to enter the premises of the States or those of bodies who have either been constituted as, or willingly agreed to be, States funded bodies. (The Law Officers note that this provision refers to “States funded bodies” not the broader category of “States aided independent bodies”, who are subject to a power to audit accounts. In *Article 22* there is the potential for the Comptroller and Auditor General to investigate beyond the States. In relation to a building or other premises lawfully occupied any other person, the CAG cannot enter without first giving the occupier reasonable notice of the intention to enter; and where the building or other premises is or forms part of a residence, without first obtaining the consent of the occupier to enter. In other words,

there is no right to demand entrance to dwelling houses – such a right would probably have to come with prior judicial oversight to give a statement of compatibility, see *Funke v France*.

In respect of business premises, this is an inherently less serious matter in terms of Article 8 rights than a right to enter private premises – the degree of human rights scrutiny is thus considerably lower. In terms of the proportionality of creating this right, it is worth noting the application of this power will inherently come with doing business with the States. Furthermore, the right to enter business premises under this provision is not a power to force entry, ultimately enforcement of the right comes by way of a prosecution for an offence. Administratively, such regulatory offences are prosecuted by the Attorney General, although there will no longer be a positive legal requirement that offences in respect of the Comptroller's powers should be prosecuted by or with the consent of the Attorney General as provided for by Article 66 of the Public Finances (Jersey) Law 2005. However, the important point is that any business that objected to the use of the power would have a right to vindicate their position before the court if they had a reasonable excuse for refusing entry to the premises.

- *Article 23* replaces Article 58 of the 2005 Law, and makes it an offence to fail or refuse to comply with a requirement imposed under *Article 21*, viz to appear before the CAG; to produce a specified record; to answer truthfully any question; to provide information contained in a record in a legible and comprehensible form; to state, to the best of the person's knowledge and belief, where a record is.

See above the commentary in relation to *Article 21* of the draft Law (to which *Article 23* is related). The offence is that of failure or refusal to co-operate in many different ways – which means that it will be necessary for the prosecutor to prove that the individual or institution involved could have complied, but has chosen not to. For example, no person would be required to prove that they did not possess a document. In common with Article 58 of the 2005 Law, a defence is provided for person charged with an offence to show that there was a reasonable excuse for the failure or refusal. In other words, a burden of proof is placed on the defence. This will be ECHR compliant, provided that there is an objective justification for reversing the burden of proof, although given that the offence is of a regulatory nature, carrying a fine of level 4 on the Standard Scale. In respect of the offences involved, the existence of a reasonable excuse as motivating the failure or refusal, will typically be in the knowledge of the Defendant. Where the reasonable excuse for non-compliance is that the request from the Comptroller and Auditor General was itself unlawful by reason of unreasonableness, it may be that the Defendant need only show a *prima facie* argument to throw the burden back on the prosecutor to justify the use of the Comptroller's power as lawful. It is impossible to anticipate all scenarios, but nothing in the draft Law impedes the ability of the Courts to deal justly with burden of proof issues on ordinary principles.

Further provisions of potential relevance

A new provision creates a restriction on the Comptroller and Auditor General's future freedom of employment:

- *Article 6* which prevents a former CAG for 2 years after ceasing to hold office, from taking employment or office as a States' employee or with any States funded body or independently audited States body.

This provision represents good practice to ensure the independence of the office.

The immunity provision is drawn to the States Assembly's attention:

- *Article 10* protects the Comptroller and Auditor General and his or her officers, employees and agents, from civil liability for acts done in good faith in the discharge of the functions of the Comptroller and Auditor General.

This reproduces the immunity held by those discharging functions under Article 69 of the Public Finances (Jersey) Law 2005 with one addition. Article 69 allows for liability in respect of bad faith; Article 10 of the draft Law does not prevent liability for a breach of a duty to comply with the Human Rights (Jersey) Law 2000.

Conclusion

For the above reasons, the draft Law is compatible with human rights principles.

Explanatory Note

This Law replaces and re-enacts Part 6 of the Public Finances (Jersey) Law 2005 (the “Public Finances Law”), regarding the appointment, functions and powers of the Comptroller and Auditor General.

If, in the course of re-enactment, a provision has been altered, the alteration is described in this note. Otherwise, if a provision of this Law re-enacts a provision of the Public Finances Law without change, this note simply records the origin of the provision of this Law.

Part 1 – Interpretation

Article 1 is the interpretation provision. Whilst some expressions are defined for the purposes of this draft Law, the definitions in the Public Finances Law are, generally, applied for the purposes of this draft Law.

Part 2 – Appointment and Administration

Article 2 provides for the establishment of the office of Comptroller and Auditor General. This Article replaces Article 40 of the Public Finances Law.

Article 3 provides for the appointment of the Comptroller and Auditor General. It replaces Article 41 of the Public Finances Law. There is a new requirement that a person must not be appointed unless he or she has the appropriate qualifications and experience. The rules on offices and employments that the Comptroller and Auditor General may not hold whilst in post are restated.

Article 4 provides for the terms and conditions of appointment of the Comptroller and Auditor General, and replaces Article 42 of the Public Finances Law. The terms and conditions are altered so that the Comptroller and Auditor General is appointed for a fixed term of 7 years, which cannot be extended. A person may only hold the office of Comptroller and Auditor General once.

Article 5 prevents the Comptroller and Auditor General undertaking any other professional work or appointment without the prior consent of the Chief Minister and the Chairman of the Public Accounts Committee. It replaces Article 43 of the Public Finances Law.

Article 6 is a new provision, applying to a former Comptroller and Auditor General for the period of 2 years after he or she ceases to hold office. During that period, the person may not take an employment or office described in Article 3(5).

Article 7 provides for the revocation of the Comptroller and Auditor General’s appointment by the States, and replaces Article 44 of the Public Finances Law.

Article 8 describes circumstances in which the office of Comptroller and Auditor General is vacated. It replaces Article 45 of the Public Finances Law.

Article 9 requires the States to ensure that the Comptroller and Auditor General has sufficient resources to carry out his or her functions. It replaces Article 50 of the Public Finances Law. Currently, under Article 50, it is the duty of the Chief Minister to ensure that the Comptroller and Auditor General has sufficient resources. This change is linked with the amendments of the Public Finances Law, in *Schedule 2*, regarding the way in which estimates of the Comptroller and Auditor General are dealt with when a draft medium term financial plan or draft budget is prepared. Those amendments are described below. New provision is added with the effect that the transactions, internal controls and systems of the Comptroller and Auditor General are not subject to internal audit by the chief internal auditor.

Article 10 is a new provision to protect the Comptroller and Auditor General and his or her officers, employees and agents, from civil liability for acts done in the discharge of the functions of the Comptroller and Auditor General, provided that the person has not acted in bad faith or that the act did not contravene a human right. The protection is retained after the person leaves the office or employment, or ceases to be an agent.

Part 3 – Powers and duties

Article 11 expresses the Comptroller and Auditor General's duty to ensure that the public finances of Jersey are dealt with in accordance with the Public Finances Law. The Article replaces Article 46. The Comptroller and Auditor General's duty is expanded to require that he or she also ensures that special funds, the Social Security Fund, the Social Security (Reserve) Fund, the Health Insurance Fund and the Long-Term Care Fund are also regulated, controlled and supervised in accordance with the Laws under which they are maintained. In addition, the functions described in paragraph (2) to (4) are restated. The Comptroller and Auditor General's powers to report upon independently audited States bodies and States aided independent bodies are relocated to, respectively, Articles 13 and 14.

Article 12 requires the Comptroller and Auditor General to ensure that the annual financial statement of the States is audited. It replaces Article 47 of the Public Finances Law. Although this Article is not altered, the contents of the annual financial statement of the States are expanded by an amendment of Article 32 of the Public Finances Law (*see Schedule 2, paragraph 3*). The amendment provides that the annual financial statement must include the accounts of the Social Security Fund, the Social Security (Reserve) Fund, the Health Insurance Fund and the Long-Term Care Fund.

Article 13 gives the Comptroller and Auditor General the power to report on the accounts of an independently audited States body. It replaces Article 48 of the Public Finances Law. The power to report, expressed in paragraph (1)(b), replaces the duty currently in Article 46(3)(b) and (c) of the Public Finances Law.

Article 14 gives the Comptroller and Auditor General the power to audit the accounts of a States aided independent body. It replaces Article 49 of the Public Finances Law. The power is expanded to all bodies that receive money from the States to carry out their activities. Formerly, the power applied only to bodies that received an amount in excess of a threshold prescribed by Order of the Minister for Treasury and Resources. The threshold was set at £5,000. The power in paragraph (3) replaces the reporting duty currently in Article 46(3)(b) and (c) of the Public Finances Law.

Article 15 is a new provision, giving effect to *Schedule 1. Schedule 1*, described in more detail below, provides for the establishment and functions of an Advisory Board to the Comptroller and Auditor General.

Article 16 confers a general power on the Comptroller and Auditor General to delegate his or her functions. It replaces Article 51 of the Public Finances Law. Article 51 currently provides that the States may, by Regulations, provide for delegation by the Comptroller and Auditor General. Regulations have been made to permit delegation by the Comptroller and Auditor General – see Regulation 15 of the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005. Regulation 15 will cease to have effect when this Article comes into force.

Article 17 provides for the independence of the Comptroller and Auditor General, although he or she is required to liaise with the Public Accounts Committee when carrying out those functions, and must attend all meetings of that Committee. Article 17 replaces Article 52 of the Public Finances Law.

Article 18 is a new provision, requiring the Comptroller and Auditor General to publish a statement about how he or she will discharge his or her functions. The information will also be laid before the States.

Article 19 requires the Comptroller to provide to the Chief Minister an annual report on his or her activities and a copy of his or her audited accounts. The report and accounts must also be provided to the Greffier of the States, who must lay them before the States. *Article 19* replaces Article 53 of the Public Finances Law. The requirement to provide audited accounts is new.

Article 20 requires the Comptroller and Auditor General to prepare a report if he or she has conducted an audit or made a report in exercise of his or her powers under this Law. It replaces Article 54 of the Public Finances Law. The requirement to prepare a report on an audit or report that is then sent to specified persons and laid before the States is widened so as to apply to all audits and reports undertaken by the Comptroller and Auditor General.

Part 4 – Powers and enforcement

Article 21 confers power on the Comptroller and Auditor General to summons individuals to appear or produce specified records, and to answer questions. It replaces Article 55 of the Public Finances Law.

Article 22 confers power on the Comptroller and Auditor General to enter and inspect buildings or premises occupied or controlled by a States funded body and, whilst on such premises, to inspect records and movable property. Article 22 replaces Article 56 of the Public Finances Law.

Article 23 makes it an offence to fail to comply with a requirement imposed under Article 21. It replaces Article 58 of the Public Finances Law.

Article 24 makes it an offence to destroy or alter information, with intent to deceive. Article 24 replaces Article 59 of the Public Finances Law.

Article 25 makes it an offence to obstruct a person discharging a function under this Law. It replaces Article 62 of the Public Finances Law.

Part 5 – Miscellaneous and closing

Article 26 places restrictions on the records and information that a person may be required to produce under this Law. It is the equivalent of Article 63 of the Public Finances Law.

Article 27 gives effect to *Schedule 2*, which amends enactments and an Act of the States to provide for the Comptroller and Auditor General to appoint auditors required under the enactments and Act. Currently, the various enactments provide for appointment by authorities such as the Chief Minister, Minister for Treasury and Resources, the Minister for Economic Development, the Minister for Social Security and the Data Protection Commissioner.

Article 28 gives effect to *Schedule 3*, which amends enactments consequentially upon this Law. In particular, Part 6 of the Public Finances Law is repealed. Also, the Health Insurance (Jersey) Law 1967, the Long-Term Care (Jersey) Law 2012 and the Social Security (Jersey) Law 1974 are amended to require that accounts of Funds maintained under those Laws are prepared in accordance with accounting standards issued under the Public Finances Law.

Article 29 makes transitional provision for the commencement of this Law. It allows the present Comptroller and Auditor General to be reappointed to office, provided that his or her aggregate term of office does not exceed 7 years.

Article 30 provides for the citation of this Law and its commencement one month after it is registered.

Schedule 1 establishes the Advisory Board to the Comptroller and Auditor General. The Comptroller and Auditor General is a member of the Board by virtue of his or her office. Other members of the Board are appointed by the Chief Minister and the Chairman of the Public Accounts Committee. A member is appointed for a fixed term of up to 5 years. A member's appointment can be extended or renewed, but a person cannot hold office as a member for more than 10 years in total. A member resigns by giving notice to the Chief Minister and the Chairman of the Public Accounts Committee. Otherwise, the appointment of a member may be terminated by the Chief Minister and the Chairman of the Public Accounts Committee. The grounds for revocation are set out in paragraph 2(3).

Paragraph 3 of Schedule 1 establishes the independence of the Board.

Paragraph 4 of Schedule 1 describes the functions of the Board.

Schedule 2 amends enactments to provide for auditors formerly appointed for bodies by Ministers and other public authorities to be appointed instead by the Comptroller and Auditor General.

Schedule 3 also amends enactments. Most of the amendments are consequential upon the enactment of this Law. The changes to the Public Finances Law are substantive.

The Public Finances Law is amended so that the proposed revenue expenditure and proposed capital expenditure of the Comptroller and Auditor General is dealt with in the same way as such expenditure of the States Assembly. The estimates of revenue expenditure of the Comptroller and Auditor General will be submitted by the Chairman of the Public Accounts Committee. They must be included in a draft medium term financial plan as submitted, although the Assembly has the power to amend them. The same procedure would apply if there were estimates of capital expenditure submitted, on behalf of the Comptroller and Auditor General, and included in a draft budget.



Jersey

DRAFT COMPTROLLER AND AUDITOR GENERAL (JERSEY) LAW 201-

Arrangement

Article

PART 1	19
INTERPRETATION	19
1 Interpretation	19
PART 2	20
APPOINTMENT AND ADMINISTRATION	20
2 Office of Comptroller and Auditor General	20
3 Appointment of the Comptroller and Auditor General	20
4 Terms and conditions of appointment	21
5 Restrictions on professional activities	21
6 Restrictions on activities of former Comptroller and Auditor General	21
7 Revocation of appointment	21
8 Vacancy in office	22
9 Resources	23
10 Limitation of civil liability	23
PART 3	24
POWERS AND DUTIES	24
11 General duties of Comptroller and Auditor General	24
12 Duty to ensure that the annual financial statement of the States is audited	25
13 Powers relating to independently audited States body	25
14 Powers relating to States aided independent body	26
15 Advisory Board to the Comptroller and Auditor General	26
16 Delegation of functions	27
17 Independence	27
18 Statement of manner in which functions are to be discharged	27
19 Duty to prepare annual report and accounts of office	27
20 Duty to report	28

PART 4	29
<hr/>	
POWERS AND ENFORCEMENT	29
21 Power to summons people to appear and to provide records.....	29
22 Power to enter and inspect	30
23 Offence: failure to appear, to answer questions or to provide information.....	30
24 Offence: providing false record or information	30
25 Offence: obstruction.....	31
 PART 5	 31
<hr/>	
MISCELLANEOUS CLOSING	31
26 Privilege, protection and self-incrimination.....	31
27 Appointment of auditors	32
28 Consequential and related amendments of enactments.....	32
29 Transitional arrangements.....	32
30 Citation.....	32
 SCHEDULE 1	 33
<hr/>	
ADVISORY BOARD TO THE COMPTROLLER AND AUDITOR GENERAL	33
1 Establishment and appointment of Advisory Board to the Comptroller and Auditor General.....	33
2 Resignation or termination of appointment of member of Board	33
3 Independence of Board	34
4 Functions of Board.....	34
5 Duty of Comptroller and Auditor General to provide information.....	34
6 Resources of Board.....	34
 SCHEDULE 2	 36
<hr/>	
ENACTMENTS AND ACTS OF THE STATES AMENDED – APPOINTMENT OF AUDITORS	36
1 Competition Regulatory Authority (Jersey) Law 2001 amended	36
2 Jersey Advisory and Conciliation (Jersey) Law 2003 amended	36
3 Gambling Commission (Jersey) Law 2010 amended	36
4 Financial Services Commission (Jersey) Law 1998 amended.....	37
5 Act of the States dated the 18th June 1991 adopting P.91/1991 – Jersey Dental Scheme	37
 SCHEDULE 3	 38
<hr/>	
ENACTMENTS AMENDED	38
1 Corruption (Jersey) Law 2006 amended.....	38
2 Data Protection (Jersey) Law 2005 amended	38
3 Public Finances Law amended.....	38
4 Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005 amended	40

5	Health Insurance (Jersey) Law 1967 amended.....	40
6	Long-Term Care (Jersey) Law 2012 amended.....	40
7	Social Security (Jersey) Law 1974 amended	41



Jersey

DRAFT COMPTROLLER AND AUDITOR GENERAL (JERSEY) LAW 201-

A LAW to continue the office of Comptroller and Auditor General, to provide for the functions of that office and for connected purposes

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law, unless a contrary intention appears –

“Board” means the Advisory Board to the Comptroller and Auditor General, established under Article 15 and Schedule 1;

“Chief Executive Officer” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005¹;

“Comptroller and Auditor General” means the person for the time being holding or carrying out the duties of the office of Comptroller and Auditor General established by Article 2;

“Jersey Appointments Commission” means the Commission established under Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005;

“Public Finances Law” means the Public Finances (Jersey) Law 2005²;

“States’ employee” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005.

- (2) In this Law, unless a contrary intention appears, expressions that are not defined in paragraph (1) but are defined in the Public Finances Law have the same meaning as in that Law.

PART 2

APPOINTMENT AND ADMINISTRATION

2 Office of Comptroller and Auditor General

There shall be an office of Comptroller and Auditor General.

3 Appointment of the Comptroller and Auditor General

- (1) The office of Comptroller and Auditor General shall be held by a person appointed by the States on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee.
- (2) The States shall debate the proposition in camera.
- (3) Before recommending to the States the appointment of a person to the office of Comptroller and Auditor General the Chief Minister and the Chairman of the Public Accounts Committee must take into account the views and recommendations of the Jersey Appointments Commission.
- (4) The Chief Minister and the Chairman of the Public Accounts Committee must not propose a person for appointment as Comptroller and Auditor General unless satisfied that the person has the qualifications and experience necessary to discharge the functions of that office.
- (5) A person, on being appointed to the office of Comptroller and Auditor General –
- (a) shall cease to hold any employment as a States' employee; and
 - (b) shall cease to hold any other office or employment (whether or not for remuneration) with any States funded body or independently audited States body.
- (6) A person, whilst holding the office of Comptroller and Auditor General, shall be disqualified for holding any employment or office described in paragraph (5).
- (7) The Chief Minister and the Chairman of the Public Accounts Committee may appoint a person to carry out the duties of the office of Comptroller and Auditor General while –
- (a) the office is vacant; or
 - (b) the holder of the office is unable to perform the functions of the office.
- (8) The Chief Minister must report an appointment under paragraph (7) to the States at the first practicable opportunity.

4 Terms and conditions of appointment

- (1) Subject to paragraphs (2) and (3) and any other provision of this Law, a person appointed to the office of Comptroller and Auditor General shall hold the office on such terms and conditions as are agreed between the person, the Chief Minister and the Chairman of the Public Accounts Committee.
- (2) A person shall be appointed to the office of Comptroller and Auditor for a fixed term of 7 years, which cannot be extended.
- (3) A person cannot be appointed to the office of Comptroller and Auditor General more than once.

5 Restrictions on professional activities

The Comptroller and Auditor General must not –

- (a) accept any other appointment to, or carry out the functions of, any other paid office;
- (b) enter into any other contract of employment (whether or not for remuneration); or
- (c) carry on practice in any other profession either alone or in partnership with any other person,

except with and in accordance with the approval of the Chief Minister and the Chairman of the Public Accounts Committee, which shall not be unreasonably withheld.

6 Restrictions on activities of former Comptroller and Auditor General

- (1) This Article applies upon the revocation or expiry of the term of office of a Comptroller and Auditor General (a “former Comptroller and Auditor General”).
- (2) A former Comptroller and Auditor General must not, during the period of 2 years following the revocation or expiry of his or her term of office as Comptroller and Auditor General, hold any employment or office described in Article 3(5).

7 Revocation of appointment

- (1) The States may revoke the appointment of a person to the office of Comptroller and Auditor General –
 - (a) on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee; or
 - (b) on a proposition signed by at least 12 members of the States.
- (2) The States shall debate the proposition in camera.
- (3) The proposition must allege one of the following grounds for revocation, namely, that the person holding the office of Comptroller and Auditor General –

-
- (a) has not carried out the duties of the office in a competent manner;
 - (b) is incapacitated either mentally or physically from carrying out the duties of the office;
 - (c) has neglected to carry out all or any of the duties of the office;
 - (d) has failed to comply with Article 5;
 - (e) has failed to comply with any term or condition of his or her appointment;
 - (f) has indulged in dishonourable conduct;
 - (g) has, without the approval of both the Chief Minister and the Chairman of the Public Accounts Committee, taken leave of absence not provided for by his or her terms and conditions of appointment; or
 - (h) has been convicted of an offence and, by virtue of the conviction, has shown himself or herself not to be a fit and proper person to continue to hold office.
- (4) The report accompanying the proposition must set out details of the evidence to be relied upon to support the allegation.
 - (5) The proposition must not be lodged unless the person holding the office of Comptroller and Auditor General –
 - (a) has been given a copy of the report mentioned in paragraph (4); and
 - (b) has been given such reasonable opportunity as the circumstances allow to prepare a written statement in respect of the evidence mentioned in the report.
 - (6) Any statement prepared in accordance with paragraph (5)(b) must accompany the proposition when it is lodged.
 - (7) When the proposition has been lodged the Chief Minister may, with the approval of the Chairman of the Public Accounts Committee, suspend the Comptroller and Auditor General from office.
 - (8) If the proposition –
 - (a) is withdrawn;
 - (b) is not approved by the States after debate; or
 - (c) is not debated by the States within 3 months of being lodged,the Comptroller and Auditor General must be restored to office without loss of remuneration or any other benefits.

8 Vacancy in office

- (1) The office of Comptroller and Auditor General becomes vacant if the term of appointment of the person holding the office expires.
- (2) It also becomes vacant if the person holding the office –
 - (a) dies;
 - (b) gives the Chief Minister and the Chairman of the Public Accounts Committee written notice of resignation from the appointment;

- (c) accepts nomination to become a member of the States;
 - (d) is appointed to any paid office or other place of profit under the Crown;
 - (e) becomes a paid officer in the service of any parochial authority;
 - (f) is compulsorily detained or subject to a guardianship order under the Mental Health (Jersey) Law 1969³;
 - (g) has a curator of his or her person or property appointed;
 - (h) has an attorney appointed without whom he or she may not act in matters movable or immovable;
 - (i) becomes bankrupt or makes a composition or arrangement with his or her creditors;
 - (j) is convicted of an offence involving corruption; or
 - (k) whether in Jersey or elsewhere, is convicted of any offence and ordered to be imprisoned.
- (3) The office of Comptroller and Auditor General also becomes vacant if the States, acting in accordance with Article 7, revoke the appointment of the person holding the office.

9 Resources

- (1) The States must ensure that the Comptroller and Auditor General is provided with sufficient resources to carry out his or her functions.
- (2) Notwithstanding paragraph (1), the transactions, internal controls and systems of the Comptroller and Auditor General shall not be subject to any audit under Article 36(1) of the Public Finances Law.

10 Limitation of civil liability

- (1) This Article applies to –
 - (a) a person who is or has been the Comptroller and Auditor General; and
 - (b) a person who is or has been or is acting or has acted as, an officer, employee or agent of the Comptroller and Auditor General.
- (2) A person to whom this Article applies is not liable in damages for any act done in the discharge, or purported discharge, of the functions of the Comptroller and Auditor General under this Law or any other enactment.
- (3) Paragraph (1) does not apply –
 - (a) if it is shown that the act was done in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000⁴.

PART 3**POWERS AND DUTIES****11 General duties of Comptroller and Auditor General**

- (1) It is the duty of the Comptroller and Auditor General to provide the States with independent assurance that –
 - (a) the public finances of Jersey are being regulated, controlled, supervised and accounted for in accordance with the Public Finances Law and that the provisions of that Law are otherwise being duly complied with;
 - (b) special funds are being regulated, controlled, supervised and accounted for in accordance with the Public Finances Law and the proposition or enactment that established the fund;
 - (c) the Social Security Fund and the Social Security (Reserve) Fund are being regulated, controlled, supervised and accounted for in accordance with the Social Security (Jersey) Law 1974⁵ and that the provisions of that Law are otherwise being duly complied with;
 - (d) the Health Insurance Fund is being regulated, controlled, supervised and accounted for in accordance with the Health Insurance (Jersey) Law 1967⁶ and that the provisions of that Law are otherwise being duly complied with; and
 - (e) the Long-Term Care Fund is being regulated, controlled, supervised and accounted for in accordance with the Long-Term Care (Jersey) Law 2012⁷ and that the provisions of that Law are otherwise being duly complied with.
- (2) The duty under paragraph (1) shall also be taken to require the Comptroller and Auditor General to consider and report to the States on the matters described in paragraph (3) in respect of the bodies and funds described in paragraph (4).
- (3) The matters are –
 - (a) general corporate governance arrangements;
 - (b) the effectiveness of internal controls, and of the internal auditing of those controls;
 - (c) whether resources are being used economically, efficiently and effectively; and
 - (d) actions needed to bring about improvement, where improvement is needed.
- (4) The bodies and funds are –
 - (a) the States;
 - (b) States funded bodies; and
 - (c) any fund mentioned in this Article.

12 Duty to ensure that the annual financial statement of the States is audited

- (1) When the annual financial statement in respect of the accounts of the States for a financial year is sent to the Comptroller and Auditor General by the Treasurer in accordance with Article 32(1)(b) of the Public Finances Law, the Comptroller and Auditor General must ensure –
 - (a) that an audit of it is completed, whether by the Comptroller and Auditor General or whether by a person appointed by the Comptroller and Auditor General for the purpose;
 - (b) that a certificate from the person carrying out the audit is attached to the statement; and
 - (c) that the statement with the attached certificate and any note mentioned in paragraph (3) are forwarded to the Minister,
before the end of the period of 5 months after the end of the financial year.
- (2) The certificate mentioned in paragraph (1)(b) must certify whether the annual financial statement properly represents the activities of the States for the financial year and whether Article 32(2) of the Public Finances Law has been complied with.
- (3) The Comptroller and Auditor General may also attach to the statement a note drawing the attention of the States –
 - (a) to any matter in the statement that the Comptroller and Auditor General considers should be of concern to the States or should receive the attention of the States; and
 - (b) to any matter that prevented or hindered an audit of any part of the statement or, in the Comptroller and Auditor General's opinion, constituted a significant breach of a provision of the Public Finances Law or of any other enactment referred to in Article 11(1)(b) to (e) of this Law.
- (4) The Minister for Treasury and Resources and Treasurer must each sign the annual financial statement.
- (5) The Minister for Treasury and Resources must then present the statement, the certificate mentioned in paragraph (1)(b) and any note mentioned in paragraph (3) to the States as soon as practicable.
- (6) The States may, on a proposition lodged by the Minister for Treasury and Resources, extend the time within which an action specified in paragraph (1) must be taken.

13 Powers relating to independently audited States body

- (1) The Comptroller and Auditor General may at any time make a report on –
 - (a) the accounts of an independently audited States body;
 - (b) all or any of the matters described in Article 11(3)(a) to (d) in respect of an independently audited States body.
- (2) When requested to do so by the Comptroller and Auditor General, an independently audited States body must make such records and accounts

available to the Comptroller and Auditor General as are required to enable a report to be made in accordance with paragraph (1).

- (3) Where the body is unincorporated, the person or persons with possession of the accounts and other records of the body must comply with paragraph (2).
- (4) This Article does not prejudice any other right the Comptroller and Auditor General may have to audit the accounts of the body or any requirement imposed by an enactment or Act of the States for the Comptroller and Auditor General to appoint the auditors of the accounts of the body.

14 Powers relating to States aided independent body

- (1) This Article applies to a body (including an individual and a corporation sole), whether or not incorporated, that in a financial year receives an amount of money from the States to aid it to carry out its activities.
- (2) The Comptroller and Auditor General may audit the accounts of the body, arrange for them to be audited or ensure that they are audited, in so far as it is necessary to do so to ensure that the amount the body received from the States by way of aid during the relevant financial year was used for the purpose intended by the States.
- (3) The Comptroller and Auditor General may at any time make a report upon all or any of the matters described in Article 11(3)(a) to (d) in respect of a States aided independent body.
- (4) When requested to do so by the Comptroller and Auditor General the body must make such of its records and accounts available to the Comptroller and Auditor General as are required for an audit to be carried out in accordance with paragraph (2) or a report to be made under paragraph (3).
- (5) Where the body is unincorporated the person or persons with possession of the accounts and other records of the body must comply with paragraph (4).
- (6) This Article shall not prejudice any other right the Comptroller and Auditor General may have to audit the accounts of the body.
- (7) A body to which this Article applies is in this Law referred to as a “States aided independent body”.

15 Advisory Board to the Comptroller and Auditor General

Schedule 1 has effect to provide for the establishment and functions of the Advisory Board to the Comptroller and Auditor General and the duties of the Comptroller and Auditor General in relation to the Board.

16 Delegation of functions

- (1) Subject to this Article, the Comptroller and Auditor General may delegate any of his or her functions under this Law or any other enactment to any person.
- (2) The Comptroller and Auditor General shall not delegate a function to a person unless the Comptroller and Auditor General is satisfied that the person has the required qualifications and necessary experience to carry out the function in a satisfactory manner.
- (3) The Comptroller and Auditor General may delegate a function subject to such terms, conditions and other limitations as he or she considers appropriate.
- (4) The delegation of a function does not prevent the exercise of the function by the Comptroller and Auditor General himself or herself.

17 Independence

- (1) The Comptroller and Auditor General may not be directed on how any function of the office of Comptroller and Auditor General is to be carried out.
- (2) However, the Comptroller and Auditor General must liaise with the Public Accounts Committee when carrying out those functions, and shall attend all meetings of that Committee.
- (3) The Comptroller and Auditor General may seek legal advice from the Attorney General on any subject relevant to the functions of the office of the Comptroller and Auditor General, and the Attorney General may provide that advice.

18 Statement of manner in which functions are to be discharged

- (1) The Comptroller and Auditor General shall, with the advice of the Board, prepare and publish a statement of the manner in which he or she proposes to discharge his or her functions under this Law and any other enactment.
- (2) The Comptroller and Auditor General shall, with the advice of the Board, keep under review and revise, as needed, the statement prepared and published under paragraph (1).
- (3) The Comptroller and Auditor General must provide a copy of the statement, and any revision of it, to the Greffier of the States.
- (4) The Greffier of the States shall lay the statement, and any revision of it, before the States.

19 Duty to prepare annual report and accounts of office

- (1) The Comptroller and Auditor General must, each year –
 - (a) prepare a report in respect of the activities of the office of Comptroller and Auditor General for the previous year; and

- (b) provide a copy of the report to the Chief Minister and to the Greffier of the States.
- (2) The accounts of the Comptroller and Auditor General shall be audited by auditors appointed by the Chairman of the Public Accounts Committee, after consultation with the Board.
- (3) The Comptroller and Auditor General must, each year, provide a copy of his or her audited accounts for the previous year to the Chief Minister and to the Greffier of the States.
- (4) The Greffier of the States shall lay the report and audited accounts before the States.

20 Duty to report

- (1) This Article applies where, in accordance with this Law, the Comptroller and Auditor General has carried out an audit or made a report (other than a report required by Article 19).
- (2) The Comptroller and Auditor General must prepare a report setting out the results of the audit or incorporating the report.
- (3) The Comptroller and Auditor General must provide the report to –
 - (a) the Chief Minister;
 - (b) the Chairman of the Public Accounts Committee;
 - (c) the Minister for Treasury and Resources;
 - (d) the Chief Executive Officer;
 - (e) the Treasurer;
 - (f) each Minister (if any) with responsibility to the States for a body to which the report relates;
 - (g) where the report relates to a States funded body, its accounting officer;
 - (h) where the report relates to a States aided independent body or an independently audited States body, that body; and
 - (i) the Greffier of the States.
- (4) The Greffier of the States shall lay the report before the States.
- (5) In the report the Comptroller and Auditor General must mention any matter of concern or any matter that should receive attention.
- (6) If as a result of an audit or a report, the Comptroller and Auditor General believes that action is necessary in relation to the efficiency and economy with which a body to which the audit or report relates uses its resources, the Comptroller and Auditor General must –
 - (a) prepare a draft report setting out the action that needs to be taken; and
 - (b) send a copy of the draft to the chief officer of the body, requesting written comments in respect of the draft.

- (7) The Comptroller and Auditor General must send a copy of his or her report and any comments of the chief officer to the people mentioned in paragraph (3) –
 - (a) as soon as practicable after receiving the comments of the chief officer; or
 - (b) if no comments are received within a reasonable time of being requested, after a reasonable time.
- (8) If, in the course of carrying out an audit or making a report, the Comptroller and Auditor General discovers facts that appear to indicate a substantial irregularity, the Comptroller and Auditor General must, as soon as practicable, report the discovery to the people mentioned in paragraphs (3)(a), (b), (c) and (d) and, if the Comptroller and Auditor General suspects any criminal activity, to the Attorney General.
- (9) A report made in accordance with paragraph (8) need not be in writing.

PART 4

POWERS AND ENFORCEMENT

21 Power to summons people to appear and to provide records

- (1) The Comptroller and Auditor General may in the exercise of his or her functions do all or any of the following –
 - (a) summons a person to appear before the Comptroller and Auditor General or to produce a specified record, or to do both;
 - (b) require a person to answer questions;
 - (c) require a person who has access to a record to provide the information contained in it to the Comptroller and Auditor General in a legible and comprehensible form.
- (2) The power under paragraph (1)(a) to require a record to be produced includes a power –
 - (a) if the record is produced, to retain the record or to take copies of or extracts from the information it contains; and
 - (b) if the record is not produced, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where it is.
- (3) If records are retained a list of the records must be supplied to the person from whom they were obtained.
- (4) A record retained under paragraph (2)(a) –
 - (a) may be retained for one year; but
 - (b) if within that year proceedings to which the record is relevant are commenced against any person, may be retained until the conclusion of those proceedings.
- (5) If –

- (a) the Comptroller and Auditor General has retained a record under paragraph (2)(a); and
 - (b) a person reasonably requires the record for his or her business,
- the Comptroller and Auditor General must provide the person with a copy of it as soon as reasonably practicable.

22 Power to enter and inspect

- (1) The Comptroller and Auditor General may, in the exercise of his or her functions under this Law –
 - (a) enter and inspect any building or other premises occupied or controlled by any States funded body; and
 - (b) while in the building or premises, inspect any records, stores, goods, plant, machinery, cash and other valuables.
- (2) If such a building or other premises are lawfully occupied by some other person the Comptroller and Auditor General shall not enter the building or other premises pursuant to paragraph (1) –
 - (a) without first giving the occupier reasonable notice of the Comptroller and Auditor General's intention to enter; and
 - (b) where the building or other premises is or forms part of a residence, without first obtaining the consent of the occupier to enter.

23 Offence: failure to appear, to answer questions or to provide information

- (1) A person shall be guilty of an offence if, when summonsed or required to do so by the Comptroller and Auditor General acting in accordance with Article 21, the person fails or refuses –
 - (a) to appear before the Comptroller and Auditor General;
 - (b) to produce a specified record;
 - (c) to answer truthfully any question;
 - (d) to provide information contained in a record in a legible and comprehensible form; or
 - (e) to state, to the best of his or her knowledge and belief, where a record is.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine of level 4 on the standard scale.
- (3) It shall be a defence for a person charged with an offence under paragraph (1) for the person to show that there was a reasonable excuse for the failure or refusal.

24 Offence: providing false record or information

- (1) A person shall be guilty of an offence if, when required to produce a record under this Law or knowing that a record may be required to be produced under this Law, the person, with intent to deceive –

- (a) destroys the record or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve; or
 - (b) alters it in any way to make the information it contains false or misleading in any material way.
- (2) A person shall be guilty of an offence if, when required to provide information under this Law, the person knowingly provides information that is false, misleading or incomplete in any material way.
 - (3) A person guilty of an offence under paragraph (1) or paragraph (2) shall be liable to imprisonment for a term of 5 years and to a fine.

25 Offence: obstruction

- (1) A person shall be guilty of an offence if he or she hinders or obstructs a person in the exercise by that person of a function under this Law.
- (2) A person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.

PART 5**MISCELLANEOUS CLOSING****26 Privilege, protection and self-incrimination**

- (1) Nothing in this Law requires a person to produce a record or to provide information that the person would in an action in the Royal Court be entitled to refuse to produce or provide on the grounds of legal professional privilege.
- (2) However, a lawyer must disclose the name and address of a client if required to do so by a person acting in accordance with this Law.
- (3) Where a person provides, in compliance with a request made in accordance with this Law, a record or other information in respect of another person the provision of that record or information shall not be regarded as a breach of any duty owed by the first person to the second person or to any other person.
- (4) An answer given by a person to a question put to the person in exercise of a power conferred by this Law may be used in evidence against the person.
- (5) However, in criminal proceedings in which the person is charged with an offence, other than an offence under Article 24 –
 - (a) no evidence relating to the answer may be adduced; and
 - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

27 Appointment of auditors

Schedule 2 has effect to amend enactments and an Act of the States with the regard to the appointment of auditors.

28 Consequential and related amendments of enactments

Schedule 3 has effect to amend enactments consequentially upon the enactment of this Law and for related purposes.

29 Transitional arrangements

Notwithstanding Article 4(2) and (3), the person who, on the day Article 4 comes into force, holds the office of Comptroller and Auditor General may be re-appointed to that office, provided that he or she is not re-appointed for a term that would cause his or her period in the office to exceed, in the aggregate, 7 years.

30 Citation

This Law may be cited as the Comptroller and Auditor General (Jersey) Law 201- and shall come into force one month after it is registered.

SCHEDULE 1

(Article 15)

ADVISORY BOARD TO THE COMPTROLLER AND AUDITOR GENERAL**1 Establishment and appointment of Advisory Board to the Comptroller and Auditor General**

- (1) There shall be an Advisory Board to the Comptroller and Auditor General.
- (2) The Comptroller and Auditor General shall be a member of the Board by virtue of his or her office.
- (3) The Chief Minister and the Chairman of the Public Accounts Committee shall appoint at least 3 persons as members of the Board, one of them as the Chairman of the Board.
- (4) The persons appointed by the Chief Minister and the Chairman of the Public Accounts Committee as members of the Board must have the appropriate qualifications and experience to discharge the functions described in paragraph 4.
- (5) Before appointing a member of the Board, the Chief Minister and the Chairman of the Public Accounts Committee must take into account the views and recommendations of the Jersey Appointments Commission.
- (6) The Chief Minister and the Chairman of the Public Accounts Committee must, at least 2 weeks before appointing a member of the Board, present to the States a notice of their intention to make the appointment.
- (7) A person cannot be appointed, under sub-paragraph (3), for a term exceeding 5 years.
- (8) Subject to sub-paragraph (9), a person may be appointed under sub-paragraph (3) more than once.
- (9) A person cannot be appointed to office as a member of the Board for terms exceeding, in the aggregate, 10 years.
- (10) An appointment under sub-paragraph (3) shall, subject to this Law, be on such terms and conditions as are agreed between the person, the Chief Minister and the Chairman of the Public Accounts Committee.

2 Resignation or termination of appointment of member of Board

- (1) A member of the Board (other than the Comptroller and Auditor General) may resign by notice in writing given to the Chief Minister and the Chairman of the Public Accounts Committee.
- (2) The Chief Minister and the Chairman of the Public Accounts Committee may terminate the appointment of a member of the Board (other than the Comptroller and Auditor General).

-
- (3) The grounds for termination of the appointment of a member of the Board (other than the Comptroller and Auditor General) are that the member –
 - (a) is incapable, by reason of illness, of discharging his or her duties as a member;
 - (b) has been made bankrupt;
 - (c) has not, through his or her absence, discharged his or her duties as a member; or
 - (d) is otherwise unable or unfit to discharge his or her duties as a member.
 - (4) The Chief Minister and the Chairman of the Public Accounts Committee must, not more than 2 weeks after they have terminated the appointment of a member of the Board, present to the States a notice that the appointment has been terminated.

3 Independence of Board

The Board may not be directed on how any function of the Board is to be carried out.

4 Functions of Board

- (1) The Board must –
 - (a) when requested by the Comptroller and Auditor General, advise him or her on the discharge of the functions of the Comptroller and Auditor General;
 - (b) scrutinise the use, by the Comptroller and Auditor General, of resources provided under Article 9; and
 - (c) oversee the governance arrangements of the Comptroller and Auditor General.
- (2) If the Board is of the opinion that a matter concerning the use of resources by, or the governance arrangements of, the Comptroller and Auditor General should be brought to the attention of the States, the Board must provide the report to the Greffier of the States.
- (3) The Greffier of the States shall lay the report before the States.

5 Duty of Comptroller and Auditor General to provide information

The Comptroller and Auditor General must provide the Board with such information as the Board reasonably requires to discharge its functions.

6 Resources of Board

- (1) The States must ensure that the Board is provided with appropriate and sufficient resources to discharge its functions.

- (2) Notwithstanding sub-paragraph (1), the transactions, internal controls and systems of the Board shall not be subject to any audit under Article 36(1) of the Public Finances Law.

SCHEDULE 2

(Article 27)

ENACTMENTS AND ACTS OF THE STATES AMENDED – APPOINTMENT OF AUDITORS**1 Competition Regulatory Authority (Jersey) Law 2001 amended**In the Competition Regulatory Authority (Jersey) Law 2001⁸ –

- (a) in Article 1 after the definition “Authority” there shall be inserted the following definition –
 - “ ‘Comptroller and Auditor General’ has the same meaning as in the Comptroller and Auditor General (Jersey) Law 201-⁹;”;
- (b) in Article 17(1)(b) after the words “financial year and” there shall be inserted the words “, after the accounts have been audited in accordance with paragraph (3),”;
- (c) in Article 17(3)(a) for the words “Minister for Treasury and Resources” there shall be substituted the words “Comptroller and Auditor General”.

2 Jersey Advisory and Conciliation (Jersey) Law 2003 amendedIn the Jersey Advisory and Conciliation (Jersey) Law 2003¹⁰ –

- (a) In Article 1 after the definition “collective employment dispute” there shall be inserted the following definition –
 - “ ‘Comptroller and Auditor General’ has the same meaning as in the Comptroller and Auditor General (Jersey) Law 201-¹¹;”;
- (b) for paragraph 9 of the Schedule there shall be substituted the following paragraph –

“9 Public Finances (Jersey) Law 2005

For the purposes of Article 3(2)(a) of the Public Finances (Jersey) Law 2005, money received by JACS is not money received by or on behalf of the States.”;

- (c) in paragraph 10(1)(b) of the Schedule after the words “financial year and” there shall be inserted the words “, after the accounts have been audited in accordance with sub-paragraph (3),”;
- (d) in paragraph 10(3)(a) of the Schedule for the word “Minister” there shall be substituted the words “Comptroller and Auditor General”.

3 Gambling Commission (Jersey) Law 2010 amendedIn the Gambling Commission (Jersey) Law 2010¹² –

- (a) in Article 1(1) after the definition “Commissioner” there shall be inserted the following definition –
 - “ ‘Comptroller and Auditor General’ has the same meaning as in the Comptroller and Auditor General (Jersey) Law 201-¹³;”;
- (b) in Article 18(3) for the words “the accounts and report” there shall be substituted the words “the accounts, audited in accordance with paragraph (4), and the report”;
- (c) in Article 18(4)(a) for the word “Minister” there shall be substituted the words “Comptroller and Auditor General”.

4 Financial Services Commission (Jersey) Law 1998 amended

In the Financial Services Commission (Jersey) Law 1998¹⁴ –

- (a) in Article 1(1) after the definition “Commissioner” there shall be inserted the following definition –
 - “ ‘Comptroller and Auditor General’ has the same meaning as in the Comptroller and Auditor General (Jersey) Law 201-¹⁵;”;
- (b) in Article 21(2) for the words “the accounts and report” there shall be substituted the words “the accounts, audited in accordance with paragraph (3), and the report”;
- (c) in Article 21(3)(a) for the word “Minister” there shall be substituted the words “Comptroller and Auditor General”.

5 Act of the States dated the 18th June 1991 adopting P.91/1991 – Jersey Dental Scheme

The Act of the States dated the 18th June 1991 adopting P.91/1992, as amended from time to time, shall be amended so as to provide that, notwithstanding Article 7(1) of that Act, the accounts of the scheme for a financial year shall be audited by auditors appointed by the Comptroller and Auditor General.

SCHEDULE 3

(Article 28)

ENACTMENTS AMENDED**1 Corruption (Jersey) Law 2006 amended**

In Article 4(1)(r) of the Corruption (Jersey) Law 2006¹⁶ for the words “appointed under Article 41 of the Public Finances (Jersey) Law 2005” there shall be substituted the words “appointed under Article 3 of the Comptroller and Auditor General (Jersey) Law 201-¹⁷ or a person for the time being appointed under Article 3(7) of that Law”.

2 Data Protection (Jersey) Law 2005 amended

In the Data Protection (Jersey) Law 2005¹⁸, paragraph 8 of Schedule 5 shall be deleted.

3 Public Finances Law amended

In the Public Finances Law¹⁹ –

- (a) in Article 1(1) for the definition “Comptroller and Auditor General” there shall be substituted the following definition –
 - “ ‘Comptroller and Auditor General’ has the same meaning as in the Comptroller and Auditor General (Jersey) Law 201-²⁰;
- (b) after Article 8(3) there shall be inserted the following paragraph –
 - “(3A) The revenue head of expenditure proposed for a financial year for the Comptroller and Auditor General under paragraph (2)(c)(i) must be the amount of the estimate of revenue expenditure provided under Article 24C.”;
- (c) for Article 8(4) there shall be substituted the following paragraph –
 - “(4) Paragraphs (3) and (3A) do not prohibit the lodging of an amendment to the draft medium term financial plan that would vary the revenue head of expenditure of the States Assembly or Comptroller and Auditor General for a financial year.”;
- (d) in Article 8(5) –
 - (i) after sub-paragraph (c) there shall be added the word “and”,
 - (ii) the word “and” following sub-paragraph (d) shall be deleted,
 - (iii) sub-paragraph (e) shall be deleted;
- (e) in Article 8(7) for the words “(other than the States Assembly)” there shall be substituted the words “(other than the States Assembly or Comptroller and Auditor General)”;

- (f) in Article 10(4) after the words “under Article 24B,” there shall be inserted the words “or of the Comptroller and Auditor General, provided under Article 24C.”;
- (g) in Article 10(5) after the words “the States Assembly” there shall be inserted the words “or the Comptroller and Auditor General”;
- (h) in Article 10(7) –
 - (i) the word “and” shall be added following sub-paragraph (e)(ii),
 - (ii) sub-paragraph (f) and the word “and” following it shall be deleted;
- (i) in Article 10(9) for the words “(other than the States Assembly)” there shall be substituted the words “(other than the States Assembly or Comptroller and Auditor General)”;
- (j) in Article 18(2) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
 - “(aa) in the case of a transfer from a head of expenditure of the Comptroller and Auditor General, the chairman described in Article 24C(1);”;
- (k) in Article 24A(1)(b) for the words “States Assembly,” there shall be substituted the words “States Assembly or Comptroller and Auditor General.”;
- (l) in Article 24B –
 - (i) in paragraph (4) the word “and” following sub-paragraph (a)(ii) shall be deleted,
 - (ii) paragraph (4)(b) shall be deleted,
 - (iii) paragraph (5) shall be deleted;
- (m) after Article 24B there shall be inserted the following Article –

“24C Estimates for Comptroller and Auditor General

- (1) In this Article ‘chairman’ means the chairman of the Public Accounts Committee established by standing orders in accordance with Article 48 of the States of Jersey Law 2005²¹.
- (2) When requested by the Minister, the chairman must provide the Minister with such estimates and other information in respect of the Comptroller and Auditor General as the Minister requires for the purposes described in Article 24A(2), whether for one or more financial years or for any other period.
- (3) Article 24A(3) applies to a request by the Minister under this Article as it applies to a request under Article 24A.
- (4) The chairman must, before providing the estimates of the Comptroller and Auditor General for a financial year specified by the Minister, consult the Minister –
 - (a) where the information is requested for the purposes of the preparation by the Council of Ministers of a draft medium

- term financial plan, on the proposed policy of the Council of Ministers for the plan; or
- (b) where the information is requested for the purposes of the preparation of a draft budget by the Minister, on the Minister's proposed policy for the budget.”;
- (n) in Article 32 –
- (i) after paragraph (1) there shall be inserted the following paragraph –
- “(1A) The statement must include –
- (a) the accounts of the Social Security Fund maintained under Article 30 of the Social Security (Jersey) Law 1974²² and of the Social Security (Reserve) Fund maintained under Article 31 of that Law;
- (b) the accounts of the Health Insurance Fund established under Article 21 of the Health Insurance (Jersey) Law 1967²³; and
- (c) the accounts of the Long-Term Care Fund established under Article 2 of the Long-Term Care (Jersey) Law 2012²⁴.”;
- (ii) in paragraph (3) after the words “Paragraph (4) applies where” there shall be inserted the words “paragraph (1A) or”;
- (o) Part 6 shall be repealed;
- (p) Article 58 shall be repealed.

4 Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005 amended

Regulation 15 of the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005²⁵ shall be revoked.

5 Health Insurance (Jersey) Law 1967 amended

For Article 21(2) of the Health Insurance (Jersey) Law 1967²⁶ there shall be substituted the following paragraph –

“(2) Annual accounts shall be prepared in accordance with the accounting standards referred to in Article 32(2) of the Public Finances (Jersey) Law 2005²⁷.”.

6 Long-Term Care (Jersey) Law 2012 amended

For Article 11(1) of the Long-Term Care (Jersey) Law 2012²⁸ there shall be substituted the following paragraph –

“(1) Annual accounts shall be prepared in accordance with the accounting standards referred to in Article 32(2) of the Public Finances (Jersey) Law 2005²⁹.”.

7 Social Security (Jersey) Law 1974 amended

For Article 30(4) of the Social Security (Jersey) Law 1974³⁰ there shall be substituted the following paragraph –

“(4) Annual accounts shall be prepared in accordance with the accounting standards referred to in Article 32(2) of the Public Finances (Jersey) Law 2005³¹.”.

-
- 1 *chapter 16.325*
 - 2 *chapter 24.900*
 - 3 *chapter 20.650*
 - 4 *chapter 15.350*
 - 5 *chapter 26.900*
 - 6 *chapter 26.500*
 - 7 *chapter 26.600*
 - 8 *chapter 05.075*
 - 9 *P.98/2014*
 - 10 *chapter 05.400*
 - 11 *P.98/2014*
 - 12 *chapter 11.280*
 - 13 *P.98/2014*
 - 14 *chapter 13.250*
 - 15 *P.98/2014*
 - 16 *chapter 08.090*
 - 17 *P.98/2014*
 - 18 *chapter 15.240*
 - 19 *chapter 24.900*
 - 20 *P.98/2014*
 - 21 *chapter 16.800*
 - 22 *chapter 26.900*
 - 23 *chapter 26.500*
 - 24 *chapter 26.600*
 - 25 *chapter 24.900.81*
 - 26 *chapter 26.500*
 - 27 *chapter 24.900*
 - 28 *chapter 26.600*
 - 29 *chapter 24.900*
 - 30 *chapter 26.900*
 - 31 *chapter 24.900*