

STATES OF JERSEY



DRAFT COMPTROLLER AND AUDITOR GENERAL (JERSEY) LAW 201- (P.98/2014): AMENDMENT

**Lodged au Greffe on 17th June 2014
by the Public Accounts Committee**

STATES GREFFE

1 PAGE 19, ARTICLE 1 –

In Article 1(1) delete the definition “Board”.

2 PAGE 21, ARTICLE 7 –

For paragraph (1) substitute the following paragraph –

“(1) The States may revoke the appointment of a person to the office of Comptroller and Auditor General on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee.”.

3 PAGE 26, ARTICLE 15 –

For Article 15 substitute the following Article –

“15 Order establishing board

- (1) The Chief Minister may, by Order, establish a board of individuals to carry out functions in relation to the office of the Comptroller and Auditor General.
- (2) An Order made under paragraph (1) may specify –
 - (a) the name of the board;
 - (b) the constitution of the board;
 - (c) the functions of the board in relation to the office of the Comptroller and Auditor General;
 - (d) the duties of the Comptroller and Auditor General in relation to the board;
 - (e) the appointment, dismissal and removal from office of members of the board; and
 - (f) the resources of the board.
- (3) Before making an Order under this Article, the Chief Minister must consult with the Chairman of the Public Accounts Committee and obtain his or her agreement to the Order.”.

NOTE: If this amendment is adopted, Schedule 1 to the Law falls away.

4 PAGE 27, ARTICLE 18 –

In Article 18(1) and (2) delete the words “, with the advice of the Board,”.

5 PAGES 27–28, ARTICLE 19 –

- (1) In Article 19(2) –
 - (a) for the word “shall” substitute the word “may”;
 - (b) for the words “the Board” substitute the words “the board, if any, established under Article 15”.
- (2) In Article 19(3) delete the words “to the Chief Minister and”.

6 PAGES 28–29, ARTICLE 20 –

In Article 20 –

- (a) for paragraph (3) substitute the following paragraph –
 - “(3) The Comptroller and Auditor General must provide the report to the Greffier of the States.”;
- (b) for paragraphs (6), (7), (8) and (9) substitute the following paragraphs –
 - “(6) If, in the course of carrying out an audit or making a report, the Comptroller and Auditor General suspects any criminal activity, the Comptroller and Auditor General must, as soon as practicable, report the suspicion to the Attorney General.
 - (7) A report made in accordance with paragraph (6) need not be in writing.”.

PUBLIC ACCOUNTS COMMITTEE

REPORT

Background

The Committee regrets that it has been necessary to complicate the Assembly's consideration of the Draft Comptroller and Auditor General (Jersey) Law 201-, particularly given the volume of public business already lodged for debate. This amendment is nevertheless needed to ensure that the States have the option to properly implement the specific recommendations made by the Comptroller and Auditor General (C&AG) in her report R.77/2013, and to address several related issues affecting the office of the C&AG.

R.77/2013 was presented to the States in July of last year. The Committee endorsed in full the recommendations made in the report and was anxious to see them implemented as soon as possible. In this regard, it was the Committee's understanding in October 2013 – following a meeting between the Chief Minister and the Chairman of the PAC – that law drafting instructions were being prepared to achieve full implementation. Progress after that date was, however, slow. Inquiries have since revealed that no formal drafting instructions concerning this matter were submitted to the Law Draftsman before 24th February 2014.

For the avoidance of doubt, the Committee was first given sight of the draft Law on 8th May 2014, less than 2 weeks before it was lodged "*au Greffe*." Had the consultation period been a little longer, the need for this amendment could perhaps have been avoided.

The individual amendments

1 PAGE 19, ARTICLE 1

This amendment is consequential to that proposed at 3 below.

2 PAGE 21, ARTICLE 7

This amendment would deliver appropriate security of tenure for the office-holder whilst still providing the States with a mechanism for securing revocation of appointment.

At present, a proposition seeking revocation of the C&AG's appointment can be lodged "*au Greffe*" if 12 members of the States put their signature to it. Such a proposition could be expected to have a significant impact on the office-holder well before the commencement of any States debate. In contrast, only the Minister for Treasury and Resources can currently bring a proposition seeking the revocation of the appointment of the Treasurer of the States.

3 PAGE 26, ARTICLE 15

This amendment would delete the Advisory Board model proposed by the Council of Ministers and replace it with an appropriate Order-making power to be exercised in consultation with, and with the prior endorsement of, the Chairman of the Public Accounts Committee.

R.77/2013 called for the establishment of ‘a small Board, independent of but reporting to the States and meeting only a few times a year, to which the C&AG has an accountability for the internal management of the Office, including for financial resources, human resources and quality control.’ The purpose of the Board proposed by the Council of Ministers is materially different, insofar as it would expect to advise the C&AG on the execution of her duties. R.77/2013 recommended that a senior figure from public audit in the United Kingdom be invited to draft terms of reference for the Board. In the event, the Council of Ministers proceeded without expert external assistance. This perhaps explains why the resulting Article 15 proposes the establishment of a fundamentally different body to that which was recommended by the C&AG, and with terms of reference and governance arrangements that are less than fully consistent with best practice.

The Committee attaches a high priority to the establishment of a Board to oversee the work of the C&AG’s office. This amendment is therefore designed to give the Council a further opportunity to implement the spirit and the letter of the R.77/2013 recommendations. In this regard and for the avoidance of doubt, the current Chairman of the PAC might be reluctant to endorse any draft Order that stops short of –

- (a) establishing appointment mechanisms for Board members and budgetary arrangements that would be similar to those of the C&AG (thereby securing the independence of the Board from the Executive), and
- (b) specifying that the C&AG must be a member of the Board (thereby protecting the C&AG against the prospect of direction).

4 PAGE 27, ARTICLE 18

This amendment is consequential to that proposed at 3 above.

5 PAGES 27–28, ARTICLE 19

Whereas Article 19 in its unamended form would require the appointment of auditors, this amendment would give the PAC the option to appoint. It would also remove the reference to the Board consequent to the proposed amendment to Article 15.

The Council of Ministers declares in its accompanying report that there are no financial or manpower implications arising from the draft Law. A requirement to appoint auditors is, however, likely to generate a cost to the PAC and, the Committee presumes, a new call on the States Assembly budget. In this particular case, it may not be necessary to incur that additional cost by default.

The PAC is aware that the C&AG intends to publish her accounts in full via the States Assembly and the Jersey Audit Office website. This action will allow anyone to scrutinise the C&AG’s expenditure. Such scrutiny will, in due course, be supplemented by that of the Board to be established under Article 15. The PAC considers that an option to appoint auditors would provide an additional level of financial protection without committing the States to additional expenditure year on year.

The amendment to Article 19(3) is designed to clarify that the C&AG is accountable to the States Assembly. Given that the act of formally presenting any report to the States causes that report to be available to all States Members – including the Chief Minister – immediately, the PAC considers it unnecessary to cite the Chief Minister in this Article.

6 PAGES 28–29, ARTICLE 20

The purpose of this amendment is to simplify Article 20 in 3 ways.

First, and as per the proposed amendment to Article 19(3) cited above, it would give the C&AG a single obligation to present all finalised reports to the States. The Committee considers it unnecessary to include a list of recipients at Article 20(3) because the act of presentation automatically causes all such reports to be circulated directly to all States Members and made freely available online.

Secondly, it would allow for the draft report circulation procedure to be addressed, and updated as necessary, in a procedural statement to be issued by the C&AG. The circulation procedure for draft reports produced by Scrutiny Panels and the Public Accounts Committee is already defined in a Code of Practice. This amendment would put the C&AG's procedure on a similar footing.

Thirdly, it would delete the obligation within Article 20(8) to report '*a substantial irregularity*' to specific individuals, whilst maintaining the requirement to report criminal activity. The term '*substantial irregularity*' is thought to be rather nebulous, while the obligation to make a report to a set list of specific individuals seems inappropriate given the risk, however theoretical, that a person holding one of the offices listed could one day be the subject of concern.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this amendment, save that the amendment described at 5 above could be expected to mitigate the financial implications of the Council of Ministers' proposed amendment to Article 19.