

STATES OF JERSEY



REVIEW OF THE DRAFT AMENDMENTS TO THE PUBLIC FINANCES (JERSEY) LAW 2005 (S.R.10/2013): RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

Presented to the States on 9th October 2013
by the Minister for Treasury and Resources

STATES GREFFE

**REVIEW OF THE DRAFT AMENDMENTS TO THE PUBLIC FINANCES
(JERSEY) LAW 2005 (S.R.10/2013): RESPONSE OF THE MINISTER FOR
TREASURY AND RESOURCES**

Ministerial Response to: S.R.10/2013

Ministerial Response required by: 9th October 2013

Review title: Review of the Draft Amendments to the Public Finances (Jersey) Law 2005

Scrutiny Panel: Corporate Services

INTRODUCTION

Whilst the debate on the Amendment to the Public Finances (Jersey) Law 2005 has already taken place, for completeness the Minister for Treasury and Resources wishes to present his formal response. The Minister is grateful for the work carried out by the Corporate Services Scrutiny Panel in undertaking the review.

FINDINGS

	Findings	Comments
1	Without reference to a baseline of recognised professional Financial Management Standards the proposed amendment relies too heavily on the professionalism of individuals.	<p>The Public Finances (Jersey) Law 2005 requires that the role of Treasurer of the States is independent and specifically states that “the Treasurer may not be directed on how a function of the office of Treasurer is to be carried out”.</p> <p>The baseline of professional Financial Management Standards followed by the States of Jersey is Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) as interpreted for the States of Jersey by the Financial Reporting Manual (JFRoM). The JFRoM is based on the UK version of the same document, which is prepared by H.M. Treasury and is subject to scrutiny by an independent board, the Financial Reporting and Advisory Board. Accounting Standards are not static and the JFRoM is updated on an annual basis.</p> <p>Below this level there are Financial Directions which are regularly reviewed, revised and updated to reflect developments in accounting standards and practice.</p>

	Findings	Comments
		The level of detail in these documents is best left outside the Public Finances (Jersey) Law to allow for such updates and modifications.
2	Clarity on what constitutes appropriate Financial Management Standards and appropriate Accounting Standards is required.	<p>The Law in Article 34 states that the Treasurer of the States may issue financial directions which are –</p> <p>(a) required by the Public Finances (Jersey) Law 2005 ; and</p> <p>(b) deemed necessary or expedient for the proper administration of the Law and of the public finances of Jersey.</p> <p>In Article 32 the Treasurer is also required to issue Accounting Standards to enable the annual financial statement to be produced. The Accounting Standards issued by the Treasurer are deemed appropriate as they are those issued by the International Accounting Standards Board, as adapted by H.M. Treasury and approved by the Financial Reporting Advisory Board for the public sector. (See comments in 1 above also).</p>
3	The Treasurer already carries out a continuous advisory role with the Council of Ministers.	<p>The post of Treasurer of the States is independent and cannot be directed on how the role of Treasurer is to be carried out.</p> <p>The Treasurer of the States has an open invitation to attend all Council of Ministers meetings and provides advice and input into those meetings on matters that have financial implications of significance.</p>
4	The Chief Minister is of the view that there must only be one line of accountability to the Council of Ministers and that must be the Chief Executive as defined in the Employment of States of Jersey Employees (Jersey) Law 2005.	The Minister for Treasury and Resources endorses the Panel’s view that the deletion of the paragraph which states “... the Treasurer shall advise the Council of Ministers upon the public finances of Jersey” would not affect the Treasurer’s existing responsibility to continue to offer independent financial advice to the Council of Ministers should she so wish. In light of this the Minister for Treasury and Resources lodged an amendment which resulted in the withdrawal of the aforementioned proposal to amend the Treasurer’s duties “to advise the Council of Ministers upon the public finances of Jersey”.

	Findings	Comments
5	The rationale provided by the Minister for Treasury and Resources for proposing a new responsibility for the Treasurer does not seem to justify the need to include such a provision within Legislation.	See point 4 above.
6	The primary Legislation already specifies that the Treasurer is responsible for advising on the preparation of the Medium Term Financial Plan.	See point 4 above. There is no proposed change to alter the Treasurer's existing responsibility to provide advice on the preparation of the Medium Term Financial Plan.
7	An obligation forced in primary Legislation to provide advice to a specific group such as the Council of Ministers may create conflict through how this reporting is perceived. Any advice provided by the Treasurer to the Council of Ministers must remain to be seen as independent.	See point 4 above.
8	The Panel supports the proposal to expand upon the Treasurer's current role to report directly to the States if public money has been dealt with unlawfully. It is felt that the proposed change will further strengthen compliance requirements and reporting options available to the Treasurer.	The Law already enables the Treasurer to provide reports to the States (after consulting the Comptroller and Auditor General) where money has been dealt with improperly. The amendment merely extends the current provision and introduces the new Article 30(b) (ii).
9	The Panel agrees with the principles contained within draft Article 15 and the rationale behind its proposal.	Noted.
10	The term 'proper practices' would be more appropriate than the term 'Accounting Standards', which has been proposed in draft Article 15.	The term "Accounting Standards" is recognised internationally and any change in terminology may cause confusion. The States follow International Accounting Standards.
11	It has been proposed that Articles 17 and 18 of the principal Law are amended to allow the Minister for Treasury and Resources to approve the transfer of funds between all heads of expenditure <u>for any reason</u> .	Agreed. Article 18 of the Primary legislation already enables funds to be transferred between Heads of Expenditure in certain circumstances this amendment proposes to extend this facility. The Law prevents funds being moved

	Findings	Comments
		around with impunity – transfers between heads of expenditure have to be fully justified and agreed by both the relinquishing and receiving Ministers before being considered by the Minister for Treasury and Resources.
12	Reporting on Budget transfers does not occur within a significant proximity of time to the actual decision to transfer funds in order to allow Scrutiny to take place.	This point is not accepted. Budget transfers are the subject of timely public ministerial decisions by the Ministers of the transferring and receiving departments, and the Minister for Treasury and Resources. Budget transfers are reported in the Minister for Treasury and Resources’ 6 monthly report on Financial matters which is presented to the States. The current arrangements have not caused any problems in practice. This more detailed Report is a new initiative and is produced in response to previous requests from the Corporate Services Scrutiny Panel.
13	The unlimited ability to transfer funds within a Department, which already exists, coupled with the impact of the draft amendment will allow levels of in year flexibility that CIPFA has never encountered previously.	The current Law amendment does not propose any change to this area – Departmental Accounting Officers are responsible for ensuring that a head of expenditure is not exceeded and is used for the purpose it was appropriated. Policy decisions within a Department are set by the Minister with the Chief Officer being responsible for implementing these decisions. The Treasurer has regular meetings with Departmental Accounting Officers to discuss financial matters, especially areas of financial pressure.
14	The inherent flexibility which will be available to Chief Officers and Ministers may have the potential to undermine the rigour of the Medium Term Financial Plan if budgetary resources can be moved about with impunity and/or transferred to contingency “for any reason”.	Funds are not moved around with impunity – transfers have to be fully justified and agreed by both the relinquishing and receiving Ministers and only then by the Minister for Treasury and Resources. Flexibility gives Departments the ability to manage resources to meet service pressures and changing demands within pre-set spending limits. Although an Accounting Officer is able to vires funds within their Departmental Head of Expenditure at the end of a financial year they are required to report against the original detailed budget allocations produced in the Medium Term

	Findings	Comments
		<p>Financial Plan Annex in the Annual Accounts document.</p> <p>The Public Accounts Committee has a role to play in the scrutiny of the Annual Accounts being able to question Ministers and Accounting Officers as to why virements have been approved.</p>
15	<p>In 2011 the Minister proposed, and the States agreed to, a tightening of the provisions that allowed variations of heads of expenditure. Consequently, the Panel found it difficult to grasp the underlying rationale for bringing this amendment to the States 2 years later.</p>	<p>In 2011, the Minister for Treasury and Resources brought amendments to the Public Finances Law which introduced the medium term financial planning process which also made changes that resulted in a general tightening of the provisions that allowed variations to heads of expenditure. Experience has shown that it is necessary for there to be greater flexibility in the rules surrounding the transferability of funds and therefore by proposing these changes the Minister for Treasury and Resources can approve any transfer of funds between heads of expenditure. As stated above these transfers have to have the prior agreement of both the relinquishing and receiving Ministers before being considered by the Minister for Treasury and Resources.</p> <p>Learning from practical experiences which means previous decisions are overturned should not be criticised. Recognising that by setting Heads of Expenditure over a MTFP period of 3 years means adjustments are more likely to be needed. Service changes, changes in regulation and States decisions are all reasons why such transfers may be necessary.</p> <p>The Minister for Treasury and Resources can assure States Members that there is absolutely no intent to allow Departments the ability for unlimited transfers between Heads of Expenditure; that is transfers between departments or capital projects, as opposed to within a department.</p>
16	<p>The concerns raised by the Panel during its review of the MTFP in regards to Departmental spending limits have not been adequately addressed and could potentially be exacerbated if the States agree this draft amendment.</p>	<p>It is important to remember that one of the reasons the States Assembly wanted to introduce the concept of medium term financial planning was to give the States greater control of overall States spending limits.</p> <p>Departments have been allocated tighter</p>

	Findings	Comments
		<p>spending limits for the period of the MTFP and there must be the flexibility to move funds between heads of expenditure so that changing priorities can be met at the same time as maintaining the spending limits approved by the Assembly.</p>
17	<p>A system of checks and balances must be in place to ensure that funds are being appropriately transferred between heads of expenditure after those heads of expenditure have been approved in the MTFP.</p>	<p>All transfers between heads of expenditure will continue to be approved by the relevant departmental Minister, (or in the case of the Non-ministerial departments their Accounting Officer), both relinquishing and receiving the funds prior to the Minister for Treasury and Resources being asked to approve any such transfer. The Minister for Treasury and Resources cannot agree to these transfers unless both departments agree in advance. The States will continue to be notified of all such transfers in the 6 monthly Financial update reports.</p> <p>As stated in 14 above although an Accounting Officer is able to vires funds within their Departmental Head of Expenditure at the end of a financial year they are required to report against the original detailed budget allocations reported in the Medium Term Financial Plan Annex (which was sent to all States Members) in the Annual Accounts document.</p> <p>The Public Accounts Committee has a role to play in the scrutiny of the Annual Accounts being able to question Ministers and Accounting Officers as to why viresments were approved.</p>
18	<p>The Minister for Treasury and Resources has brought forward an amendment to permanently re-instate 11(8) requests despite the introduction of a Contingency Fund and the previous States decision to remove this provision.</p>	<p>The purpose of the central contingency will continue to provide essential flexibility to enable the Minister for Treasury and Resources, following consultation where appropriate, to manage unforeseen unexpected items within overall spending limits as part of the Medium Term Financial Plan. However, the level of contingency held is not huge and it is extremely difficult to provide for every urgent eventuality and even more so now that the States have agreed spending limits for 3 years hence.</p>

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		<p>The Minister's amendment to this area builds upon and strengthens the content of the old 11(8) funding route. The Amendment limits additional funding requests to be brought forward by the Council of Minister if they are satisfied, on the recommendation of the Minister for Treasury and Resources, that there is an urgent need for expenditure and the balance currently available in Heads of Expenditure and the Contingency are insufficient to meet the requested expenditure.</p> <p>The States have the ultimate power to approve or veto an urgent funding request.</p>
19	<p>In 2011 the States was advised that one of the main reasons for proposing a Medium Term Financial Planning process was to assist in a more disciplined approach by the Assembly to growth in expenditure.</p>	<p>Noted.</p>
20	<p>The States was satisfied that central allocations for contingencies, growth expenditure and the ability for departments to vary heads of expenditure provided enough flexibility that the need for, and the use of, 11(8) requests was no longer warranted.</p>	<p>Noted. See comments in 18 above.</p>
21	<p>The proposed amendment contradicts the views that have previously been expressed by the Minister for Treasury and Resources regarding the use of additional funding requests.</p>	<p>The amendment reflects experience since the States approval of the legislation creating the Medium Term Financial Plan, and the production and operation of the first year of that Plan. It has become apparent that there must be a mechanism to allow the Council of Ministers, on the recommendation of the Minister for Treasury and Resources, to seek States approval where there is an urgent need to increase expenditure approvals over and above those contained within the MTFP, where previously approved contingencies are insufficient. The States have the ultimate power to approve or veto an urgent funding request.</p>

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22	The Panel does not understand the exact purpose of this draft amendment given that Article 20 of the Public Finances (Jersey) Law 2005 already provides for the approval of expenditure in emergency situations.	<p>The amendment is quite specific in that the revised funding route will only be used if there are insufficient funds in existing heads of expenditure and the Contingency and there is an urgent expenditure need and only if the Council of Ministers, on the recommendation of the Minister for Treasury and Resources agree that a request should be made.</p> <p>The existing Article 20 of the Law only deals with Emergency expenditure. There have been totally unavoidable requests which fall outside of the areas highlighted in the existing Article 20 (and Article 9) which may require funding. As quoted in correspondence to the Panel the States may be struck with huge Arbitration costs or indeed totally unavoidable Court and Case costs.</p> <p>It is not agreed that there is confusion around the existing Article 20 and an urgent funding need.</p>
23	There were inconsistencies in the evidence we received from the Minister for Treasury and Resources in regards to the intended use of this provision.	The purpose of this amendment is to allow flexibility to deal with the unanticipated and unexpected which do not meet the current definitions in Articles 9 and 20. As purposes are unanticipated and unexpected it is clearly difficult to be more specific.
24	The Panel supports the proposal to extend the Accounting Officer's current role to include a responsibility for the proper financial management of all non-departmental States Income and Special and Trust Funds.	<p>The Corporate Services Panel's support for this proposal is appreciated.</p> <p>The Amendment builds on this role empowering the Minister to appoint an accounting officer for all States income, which includes income tax and impôts and also incorporates the same responsibilities for trust and special funds within the main Law.</p>
25	The draft Legislation now proposes that the Minister for Treasury and Resources, rather than the States, is responsible for appointing Members to the Fiscal Policy Panel.	<p>The appointments process follows the procedures recommended in P.205/2009.</p> <p>The Minister for Treasury and Resources is highly supportive of the need for the Panel to be independent which is why the Law requires that the Minister seek the views of the Appointments Commission prior to an appointment. The Minister is also required to notify the States of his intent to appoint a person to the Panel 2 weeks before making</p>

	Findings	Comments
		the formal appointment.
26	The involvement of the Appointments Commission and the two week 'breathing space' for Members will make the process more robust. However, we do not believe that the draft Legislation will eliminate issues concerning the Panel's independence.	See comments in 25 above.
27	Extra safeguards should be established for the appointment process to ensure that the Fiscal Policy Panel's independence is not compromised in any way.	The Law recognises the importance that the independence of the Fiscal Policy Panel is maintained and ensures that the Panel continues to provide important unbiased, independent economic advice and make recommendations on the prevailing economic climate both within the Island and on a wider basis. Membership of the Panel will continue to be made up of at least 3 high calibre individuals who have the relevant knowledge and experience to carry out the role.
28	The Fiscal Policy Panel is an independent advisory body to the States and this position must be reflected in every aspect of the primary Legislation – including the appointment of Members.	The appointments process follows the procedures recommended in P.205/2009. See comments in 25 above.
29	Despite the Fiscal Policy Panel being an independent advisory body to the States, the Panel has a strong accountability to the Minister for Treasury and Resources.	The inclusion of the appointment and role of the Fiscal Policy Panel in primary legislation is an indication of the importance that the Minister for Treasury and Resources attributes to the work of the Panel. This amendment strengthens the position of the Fiscal Policy Panel, and in no way weakens its independence. The Law amendment specifically states that the Panel may not be directed by anyone on any advice, comments or recommendations it makes. The Panel will be expected to report on the Draft Medium Term Financial Plan, at other times when the Minister for Treasury and Resources requests, whenever there is

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		<p>a significant change in States expenditure or new States expenditure is agreed or if there is a proposal to dispose of a significant States asset. These reports will be issued directly to all States members. The Council of Ministers and Minister for Treasury and Resources will need to have regard to the information provided in these reports.</p> <p>The Panel will continue to produce an Annual Report commenting on the global and Island economy and States finances, including transfers to/from the Strategic Reserve. The amendment has been drafted so as to ensure that this Report is produced in sufficient time for it to be considered by States Members prior to the annual Budget debate.</p>
30	<p>The consolidation of Insurance arrangements and the establishment of the Insurance Fund within Primary Legislation would be a welcomed, positive step forward.</p>	<p>The Corporate Services Panel's support for this proposal is appreciated. This amendment will facilitate the brokering and administration of insurance arrangements across the States and other admitted bodies within a stand-alone Fund. This is not a new initiative – the Treasury already operates comprehensive insurance arrangements.</p> <p>These arrangements have and will continue to enable the States to make substantial financial savings on insurance premiums; as well as ensuring better coverage and management and awareness of risk throughout the organisation; and greater value for money from external insurance policies.</p> <p>A Financial Direction will provide the necessary advice and information on this area but detail of this nature is not appropriate for inclusion in the Law.</p>
31	<p>Further clarity is required on overall Risk Profiles arising from the proposal including; issues around the participation by other persons and bodies and the determination of cost parameters required to service the Fund; and the level required for subsequent re-distribution to the</p>	<p>The Insurance Fund is already operational – the amendment does not give effect to any operational changes. It merely formalises the current arrangements and makes these more transparent.</p> <p>The existing arrangements enable the Minister for Treasury and Resources to enter into insurance arrangements with bodies which have connections with the</p>

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	Consolidated Fund or Contingency.	States. These bodies are charged for any insurance cover provided and will only be accepted into the States scheme once full consideration has been taken of the level and type of insurance cover required and any associated risks. An Insurance Risk Forum and Insurance Group meets regularly and discusses any emerging risks that may need insurance consideration. The outcomes of these meetings are discussed with all insured bodies which allows the States to monitor insurable risks more regularly.
32	Due to the safeguard of required States approval the Panel accept draft Articles 20 and 21, which will enable the Minister for Treasury and Resources to make Regulations to amend Parts 3 and 4 of the principal Law.	Any future changes to Parts 3 and 4 of the Law through the issuance of Regulations will still require States approval in the normal way. The change does not allow unlimited Ministerial intervention to amend the Law – the amendment proposes that certain areas of the Law can be amended via Regulation, which still requires consideration and approval by the Assembly but would not require further approval by the UK Privy Council. This gives greater flexibility to the States and enables faster implementation of States decisions.

RECOMMENDATIONS

	Recommendations	To	Accept/Reject	Comments	Target date of action/ completion
1	The Minister for Treasury and Resources should not propose this amendment until a baseline of recognised professional Financial Management Standards has been established within the draft Legislation.	Reject		The Public Finances (Jersey) Law requires that the role of Treasurer of the States is independent and specifically states that the Treasurer may not be directed as to how a function of the office should be carried out. A baseline of professional Financial Management Standards followed by the	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>States of Jersey is already set in that the States follow Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) as interpreted for the States of Jersey by the Financial Reporting Manual (JFRm). The JFRm is based on the UK version of the same document, which is prepared by H.M. Treasury and is subject to scrutiny by an independent board, the Financial Reporting and Advisory Board. Accounting Standards are not static and the JFRm is updated on an annual basis.</p> <p>Below this level there are Financial Direction which are regularly reviewed and updated to reflect developments in accounting standards and practice.</p> <p>The level of detail in these documents is best left outside the Public Finances (Jersey) Law to allow for such updates and modifications.</p>	
2	The Minister for Treasury and Resources should not propose that the provision for the Treasurer to advise the Council of Ministers on the Public Finances of Jersey is included within primary Legislation.		Accept	The Minister endorses the Panel's view that the deletion of the wording does not affect the Treasurer's existing responsibility to continue to offer independent financial advice to the Council of Ministers	Completed

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>should she so wish.</p> <p>Draft Public Finances (Amendment No. 4) (Jersey) Law 201-(P.73/2013): second amendment was lodged and approved by the States and removed the inclusion of the provision which required the Treasurer to provide advice to the Council of Ministers on financial matters.</p>	
3	The Minister for Treasury and Resources should amend draft Article 15 by inserting 'proper practices' in order to address the issue raised by the Comptroller and Auditor General.		Reject	The term "Accounting Standards" is used in the Public Finances (Jersey) Law 2005 and is recognised throughout the States and any change in terminology would cause confusion.	
4	The Minister for Treasury and Resources should give due consideration to proposing an alternative approach similar to that of Standing Order 168, for the transfer of funds between heads of expenditure.		Reject	<p>This recommendation is not accepted.</p> <p>Funds cannot and are not moved between heads of expenditure with impunity – transfers have to be fully justified and agreed by the Ministers where the transfers are taking place and are only then considered by the Minister for Treasury and Resources. Decisions are reported in public Ministerial Decisions.</p>	
5	The Minister for Treasury and Resources should not propose draft Article 12 to the States Assembly.		Reject	<p>This recommendation is not accepted.</p> <p>Departments are already able to transfer funds between heads of expenditure within certain specified restrictions this</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>Amendment extends the circumstances in which transfers can be made.</p> <p>As stated in the response to the previous recommendation Funds cannot and are not moved between heads of expenditure with impunity – transfers have to be fully justified and agreed by the Ministers where the transfers are taking place and are only then considered by the Minister for Treasury and Resources. Decisions are reported in public Ministerial Decisions.</p>	
6	The States Assembly should not be asked to approve the draft proposal to permanently re-instate the provision which will enable 11(8) Requests.		Reject	<p>This recommendation is not accepted.</p> <p>Since the States approval of the legislation creating the Medium Term Financial Plan it has become apparent that there must be a mechanism to allow the Council of Ministers, on the recommendation of the Minister for Treasury and Resources, to seek States approval where there is an urgent need to increase expenditure approvals over and above those contained within the MTFP, where there are insufficient funds in existing heads of expenditure and previously approved contingencies are not sufficient.</p> <p>It must be emphasised that States approval must</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				be sought for any such additional approvals.	
7	The draft proposal should be amended to allow for FPP Members to be appointed by the States on a Proposition signed by the Minister for Treasury and Resources and the Chief Minister.		Reject	This recommendation is not accepted. The appointments process follows the procedures recommended in P.205/2009 and involves consultation with the Jersey Appointments Commission and a 2 week notice period to the States prior to final appointment of a Panel Member.	
8	The Minister for Treasury and Resources should present a report to the Assembly before the debate outlining the full details of the Insurance Fund arrangements.		Accept	The Minister issued a report on the Insurance Fund prior to the States debate.	Completed