

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Corporate Services Scrutiny Panel

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



Presented to the States on 28th August 2013

S.R.10/2013

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1. CHAIRMAN'S FOREWORD

- 1.1 The Corporate Services Panel was in general support of the Medium Term Financial Plan and the related amendments to the Public Finances (Jersey) Law. It was felt that these represented a determined effort to introduce more rigour into the financial management of the States.
- 1.2 Some of the amendments which have been the subject of this review have continued the strengthening of discipline with regard to financial management. However, the Panel was concerned to note that some of the latest proposals relaxed the more disciplined approach. In addition some of the proposals depended on the personalities rather than procedures which, whilst it may be valid today, could cause problems in the future.
- 1.3 The Panel does not agree with the proposal for the Treasurer to be identified in primary legislation as undertaking a function which she is already entitled to do, i.e. to serve as an advisor to the Council of Ministers. This confuses the line of accountability between the Corporate Management Board and the Council of Ministers and could also be seen as compromising the independence of the Treasurer.
- 1.4 We were also concerned at the proposal to bring back 11(8) requests. In the previous amendments the Minister explained that this would no longer be required since a variety of contingency funds have all been implemented and these, it was explained at the time, have obviated the necessity for the 11(8) requests. The Panel is not convinced that reinstatement of 11(8) requests is necessary.
- 1.5 We noted that the independence of the Fiscal Policy Panel was not best served by the changes in the mode of their appointment. Their position is more akin to that of the Comptroller and Auditor General rather than other States organisations in that they report to the States rather than to the Minister.
- 1.6 As a result of our review we have brought forward an amendment to ensure that the FPP retain their independence. This amends Articles 18 – 19 Fiscal Policy Panel.
- 1.7 Members will notice, as they read through the recommendations, that the Panel has recommended clarifications or minor adjustments to some amendments. These are recommendations to improve the thrust of the amendments and the Panel would hope that these can be effected before the debate. It would be particularly helpful for the Assembly to receive a report outlining the details of the Insurance Fund arrangements.

- 1.8 The Panel is, however, concerned about the amendments which will undermine the rigour introduced to financial management through the MTFP. As a result, it will not support those particular amendments which relate to variations of Heads of Expenditure and to variations of the MTFP, Articles 10 and 12.
- 1.9 I must thank the team, both members and officers, for their hard work in the preparation of this report, particularly as it has overlapped into the recess. I would especially note the contribution of the Connétable of Grouville, Dan Murphy. His common sense and understanding of the subject, together with a leavening of humour, has contributed greatly both to this report and to the work of the Panel in general over the past few years. He will be sorely missed.

A handwritten signature in black ink, appearing to read 'Sarah Ferguson', with a stylized flourish at the end.

Senator Sarah Ferguson

Chairman – Corporate Services Scrutiny Panel

2. EXECUTIVE SUMMARY

- 2.1 The Minister for Treasury and Resources has brought forward draft amendments to the *Public Finances (Jersey) Law 2005* with the intention of improving financial management and controls within the States. The draft amendments are due to be debated by the Assembly on 10th September 2013.
- 2.2 The Panel support a number of the draft amendments that have been proposed by the Minister and subsequently agree to their adoption. For example, the proposal to extend the Treasurer's current role to report directly to the States if public money has been dealt with unlawfully will further strengthen compliance requirements and reporting options available to the Treasurer. Furthermore, the draft amendment which provides that the accounts must be prepared in accordance with accounting standards issued by the Treasurer, with the Minister's approval, imports the appropriate flexibility to adopt proper or best practice instantaneously. We also agree with the approach taken to extend the classification of Accounting Officer, together with the responsibilities attached to such an appointment.
- 2.3 Whilst we feel that the consolidation of Insurance arrangements and the establishment of the Insurance Fund within primary Legislation is a positive step forward, further clarity is required on overall risk profiles arising from the proposal before the States can consider the adoption of this amendment. We therefore recommend that the Minister for Treasury and Resources presents a Report to the Assembly, before the debate, which outlines the full details of the Insurance Fund arrangements.
- 2.4 With the exception of the proposals discussed above, the Panel has great difficulty in supporting a number of amendments contained within the draft Law. The proposal to introduce a new responsibility for the Treasurer to advise the Council of Ministers upon the finances of Jersey was found to be neither justifiable nor necessary. Operationally, the draft amendment will have no impact on the Treasurer's current functions, as the Treasurer already carries out a continuous advisory role with the Council of Ministers. Including such a provision so explicitly within the Law, however, could compromise the perception of independence and impartiality. For instance, 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. For these reasons the Minister should not propose this draft amendment to the Assembly.

- 2.5 In Amendment No.3 to the Public Finances (Jersey) Law 2005, changes were made which resulted in a general tightening of the provisions that allowed variations to heads to expenditure. Notwithstanding this States decision, the Minister is now proposing to amend the Law to allow for the approval of transfer of funds between heads of expenditure for any reason. We found that the unlimited ability to transfer funds within a Department, which already exists, coupled with the impact of the draft amendment would allow levels of in year flexibility that has never before been encountered by the Chartered Institute of Public Finance and Accountancy (CIPFA).
- 2.6 Furthermore, the inherent flexibility which would be available to Chief Officers and Ministers could potentially undermine the rigour of the Medium Term Financial Plan (MTFP) if budgetary resources can be moved about with impunity and/or transferred to contingency “for any reason”. 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. We would therefore recommend that the Minister does not propose draft Article 12 to the States Assembly. Instead the Minister should give due consideration to proposing an alternative approach similar to that of Standing Order 168, which would allow Members the opportunity to assess transfers some time before they are enacted.
- 2.7 Despite the introduction of a Contingency Fund in 2011 and the previous States decision to remove the ability to make 11(8) requests, the Minister has brought an amendment to permanently re-instate this provision. The proposal not only contradicts the new disciplined approach adopted by the Assembly with the MTFP, but also opposes the views that have been expressed in the past by the Minister regarding the use of additional funding requests. Furthermore, due to inconsistencies in the evidence that was provided, we are still unclear as to the exact purpose of this amendment. As a result, the States Assembly should not be asked to approve the draft proposal to permanently re-instate the provision which would enable the use of 11(8) requests.
- 2.8 Finally, we can not endorse the proposal which would make the Minister for Treasury and Resources responsible for appointing Fiscal Policy Panel Members. Under the current arrangements, Members of the Fiscal Policy Panel (FPP) are appointed by the States on the recommendation of the Minister for Treasury and Resources and following advice from the States Economic Advisor. Whilst the Panel have some concerns regarding the current procedures, the issues that arise from the new proposals are considered much greater. The Panel’s independence could be compromised if the States Assembly is removed from the

appointment process. FPP is an independent advisory body to the States and this position should be reflected in every aspect of the primary Legislation. It is for this reason that we recommend that the draft proposal is amended to allow for Panel Members to be appointed by the States on a Proposition signed jointly by the Minister for Treasury and Resources and the Chief Minister.

3. KEY FINDINGS

Draft Article 13 – Financial Management Standards

- 3.1 Without reference to a baseline of recognised professional Financial Management Standards the proposed amendment relies too heavily on the professionalism of individuals. (6.9)
- 3.2 Clarity on what constitutes appropriate Financial Management Standards and appropriate Accounting Standards is required. (6.10)

Draft Article 13 – Advising the Council of Ministers

- 3.3 The Treasurer already carries out a continuous advisory role with the Council of Ministers. (6.16)
- 3.4 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. (6.22)
- 3.5 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. (6.25)
- 3.6 The primary Legislation already specifies that the Treasurer is responsible for advising on the preparation of the Medium Term Financial Plan. (6.26)
- 3.7 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. (6.27)

Draft Article 14 – Reporting of unlawful financial management

- 3.8 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. (6.32)

Draft Article 15 – Accounting Standards

- 3.9 The Panel agrees with the principles contained within draft Article 15 and the rationale behind its proposal. (6.37)
- 3.10 The term 'proper practices' would be more appropriate than the term 'Accounting Standards', which has been proposed in draft Article 15. (6.38)

Draft Article 12 - Variations to Heads of Expenditure

- 3.11 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 for any reason. (7.7)
- 3.12 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. (7.14)
- 3.13 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. (7.17)
- 3.14 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". (7.18)
- 3.15 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 two years later. (7.20)
- 3.16 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. (7.23)
- 3.17 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. (7.25)

Draft Article 10 – Variations of Medium Term Financial Plan

- 3.18 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. (7.31)

- 3.19 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. (7.34)
- 3.20 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. (7.37)
- 3.21 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. (7.40)
- 3.22 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. (7.44)
- 3.23 There were inconsistencies in the evidence we received from the Minister for Treasury and Resources in regards to the intended use of this provision. (7.50)

Draft Article 6 - Accounting Officer Role

- 3.24 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. (8.5)

Draft Articles 18 - 19 – Fiscal Policy Panel

- 3.25 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. (9.11)
- 3.26 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. (9.14)
- 3.27 Extra safeguards should be established for the appointment process to ensure that the Fiscal Policy Panel's independence is not compromised in any way. (9.15)
- 3.28 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. (9.19)

3.29 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. (9.23)

Draft Articles 2 - 8 – Insurance Fund

3.30 The consolidation of Insurance arrangements and the establishment of the Insurance Fund within Primary Legislation would be a welcomed, positive step forward. (10.13)

3.31 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 Consolidated Fund or Contingency. (10.14)

Draft Articles 20-21 – Law to be amended by Regulation

3.32 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. (11.5)

4. RECOMMENDATIONS

Role of the Treasurer

Draft Article 13 – Financial Management Standards

- 4.1 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. (6.11)

Draft Article 13 – Advising the Council of Ministers

- 4.2 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. (6.28)

Draft Article 15 – Accounting Standards

- 4.3 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. (6.39)

Draft Article 12 - Variations to Heads of Expenditure

- 4.4 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. (7.26)
- 4.5 The Minister for Treasury and Resources should not propose draft Article 12 to the States Assembly. (7.27)

Draft Article 10 – Variations of Medium Term Financial Plan

- 4.6 The States Assembly should not be asked to approve the draft proposal to permanently reinstate the provision which will enable 11(8) Requests. (7.51)

Draft Articles 18 - 19 – Fiscal Policy Panel

- 4.7 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. (9.20)

Draft Articles 2 - 8 – Insurance Fund

- 4.8 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. (10.15)

5. INTRODUCTION

- 5.1 In 2011 the States considered and approved changes to the Public Finances (Jersey) Law 2005 which established a Medium Term Financial Planning Framework, whereby the overall States income targets and spending limits are set for a period of years, equivalent to the term of the Council of Ministers. At the time that these changes were considered by the States, the Minister for Treasury and Resources indicated that additional amendments to the Law would be brought forward in 2012 which would further improve financial management and controls within the States.
- 5.2 In January 2013, the Public Accounts Committee (PAC) and the Corporate Services Scrutiny Panel were invited by the Treasury Department to consider the second tranche of draft amendments prior to lodging. Whilst it was agreed by PAC that this particular matter fell outside of its remit, the Corporate Services Panel believed it necessary to undertake a review on this subject. The Draft Amendments (p.73/2013) were subsequently lodged by the Minister for Treasury and Resources on 6th June 2013.
- 5.3 The proposed changes are based on recommendations by the former Comptroller and Auditor General (C&AG) in his report “Public Finances (Jersey) Law 2005 – A review in the light of experience”. However, there are other changes as well. For example, the amendments contained within *Draft Public Finances (Amendment No.4) (Jersey) Law 201-* cover the following areas of the *Public Finances (Jersey) Law 2005*:-
- Formal establishment of the States Insurance Fund;
 - Variations to Heads of Expenditure (this amendment would also re-instate the possibility of ‘11(8) Requests’ to the States Assembly);
 - Role and Remit of the Treasurer;
 - Strengthening the Accounting Officer role;
 - Formal Establishment of the Fiscal Policy Panel; and
 - Amendments to enable Parts 3 and 4 of the Law to be amended by Regulation.
- (Please see appendix 1 for comments provided by the Treasury and Resources Department on the issues raised by the former Comptroller and Auditor General in his report)
- 5.4 According to the Minister for Treasury and Resources, it is envisaged that the proposed changes “will assist in improving financial management within the States whilst also strengthening the position of Treasurer and the States and extending the Accounting Officer

concept to all areas of States income and expenditure”¹.

- 5.5 The focus of this review was solely on the draft amendments to the primary Legislation. In this regard there were two important, underlying questions to be considered. Firstly, what is the rationale behind the proposed changes? And, secondly, what impact will the amendments have on the financial management of the States? A copy of the Terms of Reference has been appended to this report.
- 5.6 In undertaking this work, we appointed Mr Stuart Fair of the Chartered Institute of Public Finance and Accountancy (CIPFA) to review the material we had received and to advise us on the proposals and their implications. A copy of the Institute’s report has also been appended.
- 5.7 This report investigates each draft amendment in turn and follows a similar structure throughout. Each Chapter begins with a consideration of the draft amendment that is being reviewed and the background to its proposal. It then moves on to examine the underlying rationale behind the suggested change and its desired outcome. Finally, consideration is given to the potential impact of the draft proposal and the implications of amending the primary Legislation.

¹ Ministerial Decision, MD-TR-2013-0005, 17th January 2013

6. ROLE AND REMIT OF THE TREASURER

PART 4: ARTICLES 13-15 OF THE DRAFT LAW

The Proposed amendments

- 6.1 In regards to the role and remit of the Treasurer, the following amendments to the primary legislation have been proposed by the Minister for Treasury and Resources:
- Article 13 - To extend the current functions of the Treasurer to include responsibility for ensuring that financial systems are provided for the administration of public finances of Jersey and for monitoring compliance with the financial management standard set by the Treasurer.
 - Article 13 - To introduce a new responsibility for the Treasurer – “to advise the Council of Ministers upon the Public Finances of Jersey”. This amendment builds upon the post’s current reporting relationship to the Minister for Treasury and Resources.
 - Article 14 - To expand upon the Treasurer’s current role to report directly to the States if public money has been dealt with unlawfully and, if deemed necessary, to provide a written report on the matter. The amendment extends the kind of impropriety that the Treasurer may report to the States from a failure to comply with the Law to a failure to comply with a financial direction.
 - Article 15 - To change the basis on which the Treasurer prepares the financial accounts of the States in line with appropriate and approved Accounting Standards. The amendment requires the Minister to lay details of the accounting standards that are being followed before the States.²

The Rationale

- 6.2 In response to a lack of positioning within the organisation, a key aspect of the former Comptroller and Auditor General’s recommendations contained within his report “Public Finances (Jersey) Law 2005 – A review in the light of experience” was the strengthening of the role of the Treasurer. It is envisaged by the Minister for Treasury and Resources that the proposed amendments, set out above, will achieve just that. In order to consider the changes that are being proposed to the primary legislation, in regards to the role of the Treasurer, we will review each amendment in turn.

² Ministerial Decision, MD-TR-2013-0005, 17th January 2013

Article 13 – Duties of Treasurer

Financial Management Standards

- 6.3 Article 28 of the principal law establishes the office of Treasurer of the States and details the roles and responsibilities attributed to that post. Currently, under the Public Finances (Jersey) Law 2005 the Treasurer of the States is responsible:
- a) to the Minister , for the supervision and administration of the Law and of the public finances of Jersey; and
 - b) for ensuring the proper stewardship and administration of the public finances of Jersey.
- 6.4 This proposed amendment expands the detailed list of functions that fall mainly within the second of these duties, adding that “*the Treasurer must ensure that financial systems are provided for administration of the public finances of Jersey and for monitoring compliance with the Financial Management Standards that the Treasurer is required to set for the administration of the public finances of Jersey*”³.

Comments

- 6.5 In the view of CIPFA, the setting out of Financial Management Standards within an organisation should be the responsibility of the Chief Financial Officer. It is for this reason they fully support the objective, in which it is believed, this amendment has been designed to achieve.
- 6.6 However, CIPFA is also of the opinion that, in order to reduce the risk of individual interpretation of what these standards should be, it is important that there is some reference to a baseline alongside the draft amendment. There is a concern, for example, that without a baseline of recognised Financial Management Standards the proposed amendment “*allows the Treasurer to specify what the financial management standards should be and relies upon the professional ability of the individual*”. It has therefore been recommended that the words “prevailing best practice regarded as proper practice” be inserted after “financial management standards’ in 28(3)(a)”⁴.
- 6.7 The former Comptroller and Auditor General stated his position on Article 28 within his report on the Public Finances Law 2005. For example, a concern was expressed that, although Article 28 places a responsibility on the Treasurer for setting financial management

³ P.73/2013, page 6

⁴ CIPFA Report, page 21

standards, it does not specify how this should be done or how these standards and any related guidance should be distributed within the States.⁵

6.8 According to the Treasury and Resources Department, however, the purpose of the legislation is purely to place an obligation on the Treasurer to set the relevant standards not to specify how this must be done. Furthermore, we were advised that although the Minister was extremely keen to progress appropriate law changes in line with proposals suggested by the former C&AG, the Minister was not prepared to propose amendments where it was felt that the Law already reflected the views of the C&AG or where he believed that there was a misinterpretation of the existing provisions of the Law.

KEY FINDING

6.9 Without reference to a baseline of recognised professional Financial Management Standards the proposed amendment relies too heavily on the professionalism of individuals.

KEY FINDING

6.10 Clarity on what constitutes appropriate Financial Management Standards and appropriate Accounting Standards is required.

RECOMMENDATION

6.11 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.

Advising the Council of Ministers

6.12 During the Public Hearing with the Minister for Treasury and Resources we were informed that, as a means of strengthening the position of the Treasurer, it was being proposed that the Treasurer's duties be extended to include advising the Council of Ministers upon the public finances of Jersey.

6.13 When questioned regarding the rationale behind this proposal, the Treasurer provided the following explanation:

⁵ Public Finances (Jersey) Law 2005 – A review in light of the experience, February 2010

*“...this advice is required in support of the Council of Ministers because the Council of Ministers bring forward the Medium Term Financial Plan. So that is...why that change has been proposed”.*⁶

Under the new arrangements, the Council of Ministers (COM) is responsible for the preparation of the Medium Term Financial Plan (MTFP). It is therefore considered necessary that the Council receives financial advice and input directly from the Treasurer to ensure that the Plan’s recommendations achieve the proper stewardship and administration of public finances⁷.

Comments

6.14 This proposed amendment raised many questions for the Panel during its review. Firstly, despite the assurance we received from both the Minister and Treasurer of the States, we found it difficult to comprehend the necessity to include such a provision within the law. Currently, as a matter of course, the Treasurer is invited to attend all Council of Ministers’ meetings and to provide advice into those meetings on matters that have financial implications of significance. As well as being present for the aforesaid items, the Treasurer currently attends COM meetings to present, discuss and offer advice on Monthly, Quarterly and yearend Financial Reports. In particular, the Treasurer, as well as the Minister, provides financial advice and input on the following items of agenda:

- Medium Term Financial Plan;
- Annual States Budget (which includes taxation issues);
- Additional requests from the Central Contingency;
- Financial Update Reports; and
- Any matter that has a financial implication of any significance.

6.15 The Treasurer is already responsible, therefore, for providing impartial advice to the COM on the Public Finances of Jersey, including the MTFP. Furthermore, the Primary Legislation is already very explicit that the role of the Treasurer of the States is independent. Article 30 is specific in that it states *“The Treasurer may not be directed on how a function of the office of Treasurer is to be carried out”*⁸. In this regard, the proposed amendment will have no effect and the Treasurer will continue to offer advice in whatever form and to whom ever she wishes.

⁶ Minister for Treasury and Resources, Transcript, page 15

⁷ Ministerial Decision, MD-TR-2013-0005, 17th January 2013

⁸ Public Finances (Jersey) Law 2005, Revised Edition, page 31

KEY FINDING

6.16 The Treasurer already carries out a continuous advisory role with the Council of Ministers.

6.17 Although the amendment would have little impact on the Treasurer's role itself, including such a provision so explicitly within the Law has caused some concern for the Chief Minister, as well as the Panel. For instance, as defined in the Employment of States of Jersey Employees (Jersey) Law 2005, "*the Chief Executive Officer shall be the person under this Law as the Chief Executive to the Council of Ministers and Head of the Public Service*"⁹. As such, the Chief Executive is ultimately accountable to the Council of Ministers to ensure that timely and accurate advice is provided at all times. The Treasurer, on the other hand, is responsible to the Minister for Treasury and Resources for the supervision of the administration of the public finances (Article 28 (2)). In this regard, the Chief Minister is of the strong opinion that these present arrangements should continue. In his written submission to the Panel, the Chief Minister stated:

"I believe that this single line of accountability to the Council of Ministers should remain in place. The Treasurer is always welcome to attend the Council of Ministers to provide advice on all financial matters. Any amendment to the Public Finances Law must not remove this single line of accountability".¹⁰

6.18 Our expert advisor from CIPFA also identified some concerns on the matter of accountability in regard to the proposed amendment:

"Whilst statute currently provides for the independence of the Treasurer and, if the amendment is adopted, a special advisory requirement to the Council of Ministers is created in statute, questions on accountability for the provision of the quality of such an advisory role may arise particularly if such advice conflicts with established organisation priorities or management direction set by the Chief Executive".¹¹

6.19 We understand that, as well as offering advice and assistance to the COM on issues which affect the public finances of Jersey, the Treasury currently provides advice to Ministers, Assistant Ministers and Officers throughout the States on a frequent basis. As we recognised earlier on, if approved the Law amendment would not prevent the Treasurer from continuing to offer advice in this manner. However in the report provided to the Panel, CIPFA expressed

⁹ Employment of States of Jersey Employees (Jersey) Law 2005

¹⁰ Chief Minister, Written Submission, 10th July 2013

¹¹ CIPFA Report, page 25

some reservations about setting out such a duty in primary legislation that exclusively references the Council of Ministers. For example, we were advised that:

*“an obligation forged in primary legislation to provide advice to a specific group such as the Council of Ministers may well create some conflict through how this line of reporting is perceived. Independence and being free from impairment in providing optimal advice is considered to be paramount and the opportunity to provide advice to all relevant stakeholders may not be seen to be available in this context”.*¹²

6.20 When we put this matter to the Chief Minister as a written question his response was as follows:

*“The advice provided by the Treasurer to the Council of Ministers must always be seen as independent advice and any changes to the Public Finance Law should not be specific to the Council of Ministers”.*¹³

6.21 The Chief Executive’s statement held a similar sentiment:

*“The advice provided by the Treasurer to the Council of Ministers must be in the same context that the Treasurer provides independent and impartial advice to other Ministers, Departments and relevant bodies”.*¹⁴

KEY FINDING

6.22 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.

6.23 During a Council of Ministers meeting on 22nd May 2013, it was agreed that the Minister for Treasury and Resources should seek legal advice from H.M. Attorney General regarding the implications for the relationship between the Chief Minister’s and Treasury and Resources Departments at Chief Officer level, as well as for the reporting line to the Council of Ministers. We therefore requested this information from the Treasury and Resources Department and were provided with the following comments from the Attorney General:

“I do not consider the proposed change to the Public Finances Law to be prejudicial. It underlines the role of the Treasurer in relation to the public finances of Jersey (which is

¹² CIPFA Report , page 24

¹³ Chief Minister, Written Submission, 10th July 2013

¹⁴ Chief Executive, Written Submission, 10th July 2013

already firmly in place) and provides an explicit statutory nexus between the Treasurer of the States and the Council of Ministers”.

He also added:

“Insofar as it is a legal matter, I do not think the proposed change is detrimental to the relationship between the Chief Minister’s Department and the Treasury Resources Department at either Ministerial or Chief Officer level. At a policy/operational level, others may be in a better position to comment.”¹⁵

6.24 The rationale provided by the Treasurer and the Minister for Treasury and Resources for proposing this draft amendment does not seem to justify the need to include such a provision within primary legislation. The fact that the Council of Ministers is now responsible for the preparation of the MTFP has no impact on the Treasurer’s role that is already enshrined within Legislation. For example, in 2011 the States agreed to amend Article 28 (3) of the Public Finances Law to reflect the new financial planning process. For instance, the Law currently states that it is the responsibility of the Treasurer *“to advise on the preparation of a medium term financial plan and on the appropriation and budget process for each financial year”*.¹⁶ Furthermore, as we have highlighted above, the Treasurer already performs the duty which the amendment is suggesting.

KEY FINDING

6.25 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.

KEY FINDING

6.26 The primary Legislation already specifies that the Treasurer is responsible for advising on the preparation of the Medium Term Financial Plan.

KEY FINDING

6.27 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.

¹⁵ Letter received from the Treasurer of the States, 19th July 2013

¹⁶ Public Finances (Jersey) Law 2005, Revised Edition, page 30

RECOMMENDATION

6.28 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.

Article 14 – Reporting of unlawful financial management

6.29 Article 30 of the principal Law already establishes the independence of the Treasurer – that is, that the Treasurer may not be directed on how a function of the office of Treasurer is to be carried out. Article 14 proposes an extension to the Treasurer’s role which empowers the Treasurer to report directly to the States if public money has been dealt with unlawfully and it has not been possible to correct the situation. The amendment further details the circumstances in which the Treasurer may report to the States.

Comments

6.30 At a Corporate Management Board meeting on 7th May 2013, concerns were raised by some Members that this amendment might cause the conditions in which a Treasurer could abuse the provision to report all trivial incidents to the States. However, the Treasurer assured the Board that such a situation was unlikely, particularly as the Comptroller and Auditor General would “act as counterweight to prevent this from occurring”. For example, the draft amendment states that the Treasurer may report to the States but only after consultation with the C&AG¹⁷.

6.31 CIPFA raised no concerns or issues about this proposal within its analysis of the draft amendments but rather acknowledged its potential benefits:

“Having considered each aspect of the proposed amendment we would be of the view that the proposed change further strengthens compliance requirements and reporting options available to the Treasurer. The requirements to involve the Comptroller and Auditor General prior to written reporting on malpractice/unlawful management of finances would also be considered to be good practice.”¹⁸

KEY FINDING

6.32 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

¹⁷ Corporate Management Board, Record of Meeting, 7th May 2013

¹⁸ CIPFA Report , page 27

that the proposed change will further strengthen compliance requirements and reporting options available to the Treasurer.

Article 15 – Accounting Standards

- 6.33 Draft Article 15 amends Article 32 of the principal Law. Currently the Law requires the Treasurer to prepare an annual financial statement of the accounts of the States, and to do so in accordance with GAAP and prescribed accounting standards. The draft amendment, however, proposes that the accounts are prepared in accordance with accounting standards issued by the Treasurer, with the Minister’s approval.
- 6.34 The Minister for Treasury and Resources provided two reasons as to why this amendment has been proposed. Firstly, it was recognised that the requirement to prepare accounts in accordance with both GAAP and prescribed accounting standards was incorrect. According to the Minister, *“these should be alternatives, not cumulative”*. Secondly, it was agreed that accounting standards are specialist standards and therefore unsuited for inclusion in legislation. Nevertheless, they must remain readily accessible to States Members and the public and for this reason the draft amendment also requires the Minister to lay the accounting standards before the States.

Comments

- 6.35 Similar to the last draft amendment we reviewed, CIPFA fully agrees with the principles contained within this amendment and the rationale behind its proposal. The report from CIPFA provided the following summary:

“This amendment imports the appropriate flexibility to adopt proper or best practice as standards can change relatively quickly over time – flexibility is needed and this amendment provides it. Indeed the correction by way of transfer before Capital and Revenue headings to ensure compliance is, in our view, necessary.”¹⁹

- 6.36 As part of the evidence gathering stage of our review, the Comptroller and Auditor General was invited to submit comments to the Panel in regards to the draft amendments. Within the written submission that was presented to the Panel, the Comptroller and Auditor General made some observations on the proposed amendments. For example, she commented:

“Standards setters promulgate ‘Accounting Standards’. The ‘accounting standard’ issued by the Treasurer will provide for application of such standards with modifications and

¹⁹ CIPFA Report, page 28

adaptations appropriate to the public sector in Jersey. The term ‘proper practices’ (used in the legislation for local government in England) would be more appropriate²⁰.

KEY FINDING

6.37 The Panel agrees with the principles contained within draft Article 15 and the rationale behind its proposal.

KEY FINDING

6.38 The term ‘proper practices’ would be more appropriate than the term ‘Accounting Standards’, which has been proposed in draft Article 15.

RECOMMENDATION

6.39 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.

²⁰ Comptroller and Auditor General, Written Submission

7. MTFP AND HEADS OF EXPENDITURE

PART 3: ARTICLES 9-12 OF THE DRAFT LAW

The Proposed amendments

7.1 The Minister for Treasury and Resources has proposed significant changes to two main Parts of the primary Legislation, that will be discussed within this chapter:

- Permitted Variations of Heads of Expenditure; and
- Variations of Medium Term Financial Plan

7.2 Firstly, 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 (capital and revenue) *for any reason*. All such transfers would need to be approved by the Minister or by any other person responsible for the States Fund Body that is both relinquishing and receiving the funds. A reference back to the States is not obligatory for the reallocation of such funds. Furthermore, the amendment would also allow transfer between capital and revenue expenditure in order to comply with accounting practices.

7.3 Secondly, in regards to the restriction of amendment to the Medium Term Financial Plan (MTFP), the Treasury are proposing to permanently reinstate the facility which enables an additional funding request to be bought to the States (previously referred to as 11(8) funding requests). This amendment includes provision for the Council of Ministers, on the recommendation of the Minister for Treasury and Resources, to take a proposition to the States. In order to do this however, the Council has to be able to justify that there is an “urgent need” for expenditure and that the expenditure cannot reasonably be funded out of existing heads of expenditure or contingency expenditure.

7.4 As with all propositions that are bought to the States, the final decision as to whether the request should be approved lies with the Assembly itself.

Article 12 - Permitted Variations of Heads of Expenditure

The Rationale

7.5 In June 2011, Draft Public Finances (Amendment No.3) (Jersey) Law 201- (P.97/2011) was brought to States which, among other things, proposed a general tightening of the provisions that allow variations in heads of expenditure, from those allocations agreed in the Medium

Term Financial Plan and Annual Budgets. These particular proposals were subsequently approved by the States.

- 7.6 However, according to the Minister for Treasury and Resources, “*experience has shown that it is necessary for more flexibility within the rules*”²¹ and it has therefore been suggested that the Law is amended to allow the Minister greater flexibility to approve the movement of existing funds between heads of expenditure, without States approval.

KEY FINDING

- 7.7 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 for any reason.**

Comments

- 7.8 The former Comptroller and Auditor General, in his report “Public Finances (Jersey) Law 2005 – A review in the light of experience”, generally supported the concept of being able to vary expenditure approvals. At the same time, however, he strongly objected to the provision being used to deal with overspends after the end of a financial year²².
- 7.9 This particular issue, raised by the former C&AG, is similar to the concerns held by the Panel in regards to the draft amendment. For example, without the requirement to gain States approval for a transfer of funds between heads of expenditure there is a possibility that unutilised money could be used to cover overspends within Departments. Furthermore, there is also a worry that the unlimited ability of Accounting Officers to transfer existing funds between Departmental Expenditure and Income Headings will significantly weaken the benefits or the rigour and structure of the Medium Term Financial Plan²³. The question must therefore be asked of whether there should be sensible limits on both the Ministers and Treasury Ministers’ abilities to relocate funds or spend contingencies without reference back to the States for approval.
- 7.10 In response, the Minister acknowledged the concerns raised but felt that with a ‘tough’ Treasury and Resources Minister in place no such issues should arise²⁴:

²¹ P.73/2013, page 5

²² Public Finances (Jersey) Law 2005 – A review in light of the experience, February 2010, page 30

²³ CIPFA Report, page 17

²⁴ Minister for Treasury and Resources, Transcript, page 37

*“They have to get passed the Minister. You have to get passed the Minister for Treasury and Resources. A transfer ahead of expenditure is only possible on the signature of the Minister who is advised by the Treasurer. I do not sign any ministerial decision without formal advice from the Treasurer. So you have to get ... so an overspending department, if one exists, first of all the default is ... this is not envisaged to deal with reckless overspends”.*²⁵

7.11 In addition, the Treasurer advised the Panel that the Financial monitoring and reporting to the Council of Ministers had been improved and now happens on a regular quarterly basis. This has apparently resulted in the earlier identification of potential overspends and ensured that mechanisms are in place to deal with them during the course of the year. All transfers between heads of expenditure and contingency will continue to be reported to the States in the 6 monthly Budget Management Report.²⁶

7.12 As part of the States approval of Departmental Net Expenditure Limits in the MTFP for 2012-2015, all States Members received a Departmental Annex which provided greater detail of individual States Departments allocations at objective level and incorporated CSR savings for the years 2013-2015. In this regard we were advised that, although Accounting Officers are able to move around funds at an objective/subjective level, at the end of 2013 they will be required to report against the original detailed allocations produced in the MTFP Annex in the 2013 Annual Accounts document. According to the Minister, this obligation will remove any uncertainty among States Members as to how Department’s annual allocations are distributed.

7.13 Although these added controls are welcomed, it is CIPFA’s considered view that *“reporting on Budget Transfers do not occur within a sufficient proximity of time to the actual decision to transfer Budget to afford adequate scrutiny to take place”*²⁷. The advice we have received from our advisor in regards to this particular draft amendment raises considerable doubt as to its purpose and necessity. The comments provided strongly indicate a lack of support regarding this proposed change. We would therefore like to draw your attention to some of those issues raised, within our own report.

KEY FINDING

7.14 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.

²⁵ Minister for Treasury and Resources, Transcript, page 39

²⁶ Minister for Treasury and Resources, Written Submission, page 7

²⁷ CIPFA Report, page 18

7.15 The added flexibility that this draft amendment would award to Departments is an obvious concern. In this regard CIPFA made the following comments:

*“We understand that Chief Officers have significant virement capability with authority to move budgetary resources between subjective service headings without approval of the States. This potentially unlimited operational service virement capability which already exists coupled with the impact of the draft proposal will allow a level of in year flexibility which we have not seen amongst organisations we have worked with”.*²⁸

7.16 It was further added:

“Notwithstanding the component which allows accounting practice compliance between heads of capital and revenue expenditure we do not fully grasp the underlying rationale for this amendment. Indeed we believe that 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”.

KEY FINDING

7.17 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.

KEY FINDING

7.18 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”.

7.19 When the States approved the amended Article 18 during its debate of P.97/2011 it was on the premise that there needed to be greater control of States spending. The Minister for Treasury and Resources recognised the benefits of a stricter approach when he told Members *“new Article 18 permits variations of heads of expenditure and this in order to ensure improved financial discipline and accountability; there will be fairly limited ability to move funds around. This Article highlights where transfers can be made”*²⁹. Again, it is

²⁸ CIPFA Report, page 17

²⁹ Hansard Transcript, 19th July 2011, page 75

difficult to grasp the rationale for bringing this draft amendment to the States when in 2011 the Minister was proposing a tightening of the provisions that allowed variations of heads of expenditure.

KEY FINDING

7.20 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 two years later.

7.21 In October 2012 the Corporate Services Scrutiny Panel, with assistance from CIPFA, reviewed the Medium Term Financial Plan. In the reports presented to the States, both the Panel and the expert advisor were critical of the management of Contingency Expenditure within the MTFP framework and the related Budget Setting process within this operation (please see appendix 2). Indeed, one of the recommendations arising from the Panel's report SR.18/2012 was that *"The Minister for Treasury and Resources should review the use of carry forwards to ensure that, in future, they are used consistently and to reduce their use on new and potentially ongoing expenditure"*³⁰. This recommendation was made as a result of the evidence received from CIPFA and was consistent with its own recommendation that *"a more rigorous process be initiated that would prevent departmental/service underspends being carried forward between financial years to fund unrelated/different activities or fund future departmental/operational budget savings."*³¹

7.22 In our advisor's opinion, the concerns raised by CIPFA and the Panel during the MTFP Review have not been adequately addressed and could potentially be exacerbated if the States agree this draft amendment. For example, we were advised:

*"the proposed change arising from the proposed Article 12 (2)(1A) appears to allow a formalisation and perpetuation of this existing position without any improvement to the potential sub-optimal outcomes outlined within our earlier report on the MTFP"*³².

KEY FINDING

7.23 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.

³⁰ MTFP Report 2012, page 27

³¹ MTFP Report 2012, page 26

³² CIPFA Report, page 17

7.24 In light of the evidence we have received, it is plausible to suggest that a system of checks and balances must be in place to ensure that funds are being appropriately transferred between heads of expenditure. In this regard, non-executive Members should be provided with the opportunity to assess transfers some time before they are enacted. An approach such as this has been adopted for the transaction of land owned by the States. For example, under Standing Order 168 the Minister for Treasury and Resources must, at least 15 working days before any binding agreement is made, present a document to the States setting out the recommendation that he or she has accepted.³³

KEY FINDING

7.25 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.

RECOMMENDATION

7.26 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.

RECOMMENDATION

7.27 The Minister for Treasury and Resources should not propose draft Article 12 to the States Assembly.

Article 10 - Variations of Medium Term Financial Plan

The Rationale

7.28 Within Amendment No. 3, the States also agreed changes to the primary Law which introduced the Medium Term financial planning process and incorporated the concept of an annual contingency. Given that the amended law now included the provision for contingency funding, the previous provision that enabled the Minister for Treasury and Resources to take forward additional funding requests (11(8) Requests) to the States was removed.

7.29 Although it was originally agreed through Transitional Arrangements to retain this additional funding route for 2012 only, the Minister for Treasury and Resources made the decision to extend the use of 11(8) requests until the end of June 2013. The Panel was advised that this

³³ Standing Orders of the States of Jersey, 3rd July 2013

extension was made primarily to assist with “issues surrounding the use of funds for the Innovation Fund” – a point that was clearly stated within the Ministerial Decision. Furthermore, on 2nd July 2013 the Minister presented an Order to the States which further extended the Transitional Period “*until the draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) is withdrawn or rejected by the States or until the replacement rule in that Law is either not proposed in debate or rejected in debate or, if that draft Law is adopted by the States, until the replacement rule comes into force*”.³⁴

7.30 Despite the introduction of a contingency fund and the original decision to remove the ability to request further funding, the Minister has brought an amendment to permanently re-introduce this facility into the primary Law. During the Public Hearing, when asked the reason behind this significant proposal, the Minister for Treasury and Resources provided the following response:

*“the second wave amendments...[will] effectively strengthen and in some cases give appropriate flexibility to the Public Finances (Jersey) Law. The big move to a 3-year budgeting process and the view is – and again it is an exceptional requirement – that there should in extremis, in an urgent situation, be the possibility for the States to approve effectively a further allocation to a department’s budget”.*³⁵

KEY FINDING

7.31 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.

7.32 Subsequent to the Public Hearing we were also told that:

*“...the current level of contingency is not huge and it is always extremely difficult to provide for every urgent eventuality and even more now that the States have agreed spending limits for three years. It is with this in mind that the Minister considers that it is appropriate for the States to have the ability to increase States expenditure limits where a fully justified urgent need has been identified”.*³⁶

7.33 This statement conflicts with the rationale that was provided to the States by the Council of Ministers for the proposed change from an annual business plan to the MTFP. For example,

³⁴ Ministerial Decision , MD-TR-2013-0047, Public Finances (Transitional Arrangements) (Amendment No.2)(Jersey) Order 2013

³⁵ Minister for Treasury and Resources, Transcript, page 27

³⁶ Minister for Treasury and Resources, Written Submission, page 6

P.97/2011 stated that one of the objectives of moving to a new business planning process was “to provide greater control of States spending, certainty for departments over a period of time, but to retain sufficient flexibility to manage emerging pressures and changes in priorities within overall spending limits”.

KEY FINDING

7.34 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.

Comments

7.35 In 2011, when the Minister for Treasury and Resources brought forward draft amendments to introduce a Medium Term Financial planning process, the States was advised that one of the main purposes for these proposed changes was to assist in a more disciplined approach by the Assembly to growth in expenditure. However, it was also recognised that it was necessary to provide some flexibility within the spending limits for ‘one-off pressures’ that could not generally be forecast as part of the initial department spending limits in the MTFP or part of the growth allocations in the annual Budgets. For example, the Report that was presented to the States alongside the Proposition stated:

“The purpose of the Contingency is to provide essential flexibility to allow the Minister for Treasury and Resources, following consultation where appropriate, and the States, to manage unforeseen and unexpected items within overall spending limits as part of the Medium Term Financial Plan”³⁷.

7.36 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) funding requests was no longer warranted. Furthermore, the repeal of Article 11(8) was seen as a positive step forward as there was a view among some Members, including the Minister for Treasury and Resources that the provision was being misused³⁸.

KEY FINDING

7.37 The States was satisfied that central allocations for contingencies, growth expenditure and the ability for departments to vary heads of expenditure provided

³⁷ Draft Public Finances (Amendment No.3) (Jersey) Law 201- (P.97/2011), page 7

³⁸ Minister for Treasury and Resources, Transcript, page 33

enough flexibility that the need for, and the use of, 11(8) requests was no longer warranted.

7.38 Consequently, when the second tranche of draft amendments were presented to the Panel, there were obvious concerns regarding the proposal to reinstate this provision. Firstly, the suggested amendment conflicts with previous decisions agreed by the States Assembly. Secondly, a move back to 11(8) requests contradicts the views that have been expressed by the Minister for Treasury and Resources in the recent past regarding the use of additional funding requests. For example on 29th February 2012, during a Quarterly Hearing, the Minister explained:

“...the contingency is the contingency. The contingency is the amount of money set aside in budgets so that we do not have to repeat 118 requests. We did not have any calls with the exception of the States decision on the Tourism Investment Fund and I think there was one or 2 uses of the contingency last year so we have rolled that forward. You would not expect, unless you had something unexpected, to spend the contingency.”³⁹

7.39 Moreover, at a Quarterly Hearing on 18th April 2013 (subsequent to the Ministerial Decision being presented in January 2013) the Minister advised the Panel:

“I do not want to be in the position of having to go back to increase budgets in the way that we previously did under Article 11(8); that is wrong”.⁴⁰

KEY FINDING

7.40 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.

7.41 Understandably, we were confused regarding the motive for bringing forward such an amendment having recalled these previous discussions. When the Minister was questioned at the latest Public Hearing, however, he assured the Panel that the new facility would be different to the old 11(8) Article. For example, we were told that the provision would be treated as an ‘ultimate safeguard’ to make an allocation from the consolidated fund if there was an *urgent need* but only if the expenditure could not reasonably be funded out of existing heads of expenditure or contingency. When asked to provide an example of when such a provision would be used, the Minister for Treasury and Resources commented:

³⁹ Quarterly Hearing with the Minister for Treasury and Resources, 29th February 2012

⁴⁰ Quarterly Hearing with the Minister for Treasury and Resources, 18th April 2013, page 9

“This is not just one of my well used phrases as a self-service buffet. This is not a help yourself serve buffet article. This is in extremis and to be used extraordinarily rarely. I could not envisage [when the provision would be used], apart from a natural disaster, a hurricane, a massive additional catastrophe that happened in the harbour...”⁴¹

7.42 It is our understanding, however, that a provision of this kind already exists within the primary Law. For example, Article 9(2) enables the Council of Ministers to lodge a proposition to vary the approved Medium Term Financial Plan –

- a) If a state of emergency has been declared under the Emergency Powers and Planning (Jersey) Law 1990;
- b) If the Council is satisfied that there exists an immediate threat to the health and safety of all or any of the inhabitants of Jersey;
- c) If the Council of Ministers is satisfied that there is a serious threat to the economic, environmental or social well being of Jersey which requires an immediate response;
- d) Following the appointment of a Council of Ministers otherwise than following an ordinary election for Deputies.⁴²

7.43 Furthermore, under the terms of Article 20 of the Public Finances Law the Treasury Minister is able to authorise a Department to spend funds where a states of emergency has been declared under the Emergency Powers and Planning Law or there is an immediate threat to the health or safety of all of any inhabitants of Jersey. The Article is included within the Law to cover situations where an emergency is so immediate that expenditure has to happen in less than 6 weeks and therefore cannot be funded out of existing authorisations.

KEY FINDING

7.44 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.

7.45 This raises the question of why this proposed amendment is deemed necessary if it is going to be used to deal with emergencies such as those cited by the Minister. Our advisor from CIPFA was also confused about the purpose of this amendment given the provisions that already exist within the primary legislation. For example, he advised:

“Currently Article 9 provides a number of circumstances in which the MTFP can be amended with the cycle of approvals and these include obvious conditions such as a state of

⁴¹ Minister for Treasury and Resources, Transcript, page 29

⁴² Public Finances (Jersey) Law 2005, Revised Edition, page 15

emergency and other serious threats to “wellbeing” as outlined in the above explanatory note extract. Looking at the requirement for such a proposed amendment we find it difficult to understand the exact purpose of this amendment given that Article 20 of the Public Finances (Jersey) law 2005 already provides for the approval of expenditure in such serious situations albeit qualified by subsection 1 of that provision. Sub Section (3) of Article 20 specifically deals with the approval of funding viz:

“(3) If the expenditure is not subsequently authorized by an amendment to the medium term financial plan or budget, the expenditure must be met from existing heads of expenditure, as determined by the Council of ministers.”⁴³

7.46 When this matter was raised with the Minister after the Public Hearing we received a response that conflicted with the evidence that had been provided previously. For example, he advised that this amendment would deal with urgent funding requests which do not fall under the remit of the existing Articles 9 and 20 such as – additional funding for court and case costs, the new Innovation Fund, instances where a major Court arbitration has gone against the States or a sudden increase in the number of unemployed.⁴⁴ This statement was also supported by the Chief Minister in his written submission to the Panel.

7.47 Nonetheless, it has to be questioned whether instances such as these can reasonably be defined as “urgent” or, as quoted by the Minister, “extremis”. It would be our understanding that the main reason for introducing the Contingency Fund in the first place was to deal with unprecedented, one-off pressures such as those mentioned above. During the debate of P.97/2011, the Minister for Treasury and Resources told the Assembly:

“Currently there is no provision for unforeseen expenditure and this has resulted in the Assembly having to consider a number of proposals under the current Article 11(8) funding requests. Departments in future will be set challenging spending limits and will be expected to work effectively within them. The Treasury will expect departments to deal with the vast majority of their unforeseen expenditure. But of course we know that there are occasions when this is not possible and therefore we are proposing to introduce for the first time statutory contingency provisions in the proposed law.”⁴⁵

7.48 Based on the evidence we received, there appears to be confusion regarding the purpose of this amendment. A lack of clarity within the law as to the definition of ‘urgent need’ increases the risk of misinterpretation. Furthermore, although the Minister elucidated that an additional

⁴³ CIPFA Report, page 13

⁴⁴ Minister for Treasury and Resources, Written Submission

⁴⁵ Hansard, 19th July 2013, page 58

funding route would only be used as a last resort and not as a way of circumventing expenditure limits set by the States in the MTFP, without a clear understanding of what is meant by “urgent need” there is a possibility that the provision, will again, be misused.

7.49 CIPFA provided a similar opinion on this matter:

“The lack of clarity on the definition of “Urgent Need” would suggest that what is wanted is an extremely flexible way to determine approval of unfunded expenditure which is beyond a range of “qualifying” emergency scenarios to, perhaps, less serious in nature yet providing the ability to absorb such additional costs where “the expenditure cannot be reasonably funded from existing heads of expenditure or contingency expenditure.”⁴⁶

KEY FINDING

7.50 There were inconsistencies in the evidence we received from the Minister for Treasury and Resources in regards to the intended use of this provision.

7.51 We understand that the final decision as to whether additional funding will be provided for an urgent request will rest with the States Assembly. However, given that one of the objectives of moving to a new business planning process was “to provide greater control of States spending” and “certainty for departments over a period of time”, should the Council of Ministers be proposing such requests in the first place? It seems reasonable to suggest that, with the flexibility already provided within the primary Legislation, Departments should be capable of managing their budgets in a more disciplined manner – the same argument that was put forward by the Minister for Treasury and Resources in 2011.

RECOMMENDATION

7.52 The States Assembly should not be asked to approve the draft proposal to permanently re-instate the provision which will enable 11(8) Requests.

⁴⁶ CIPFA Report, page 14

8. STRENGTHENING OF THE ACCOUNTING OFFICER ROLE

PART 4: ARTICLE 6 OF THE DRAFT LAW

The Proposed amendment

- 8.1 Under the current Public Finances (Jersey) Law 2005 (Articles 37 and 38), Chief Officers are establishment as the Accounting Officers for States funded bodies. The amendment that is being proposed builds on this role by empowering the Minister for Treasury and Resources to appoint an accounting officer who will be personally responsible for the proper financial management for all non-departmental States Income and Special and Trust Funds.

The Rationale

- 8.2 Currently, the Accounting Officer has personal accountability for the proper financial management of the resources of their department. For example, departmental Accounting Officers are required to ensure that the expenditure limits for their Department are not exceeded, which includes; ensuring that expenditure is controlled, all income due to the department is collected and that capital projects are managed within the capital allocations they receive. The Panel was advised that this concept has worked “exceptionally well” within the financial structure of the States of Jersey and, for this reason, should be applied to all areas of States expenditure and income. It was further stated that:

“Experience has shown that it is eminently sensible that a similar approach should be applied to responsibility and accountability for States Income which does not fall under the responsibility of a Department i.e. Income Tax, Imports, Paris rates etc.”

- 8.3 The proposed change therefore formalises the current approach and seeks to put responsibility for the accountability for all States expenditure and income on the same footing regardless of its source.⁴⁷

Comments

- 8.4 In the report presented to the Panel, our expert advisor is very supportive of the proposal to create a new category of Accounting Officer. For example, he concluded:

“We understand and fully agree with the approach taken to extend the classification of Accounting Officer together with the responsibilities that are attached to such an appointment.”⁴⁸

⁴⁷ Minister for Treasury and Resources, Written Submission

⁴⁸ CIPFA Report, page 30

KEY FINDING

8.5 The Panel supports the proposal to extent 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.

9. FORMAL ESTABLISHMENT OF THE FISCAL POLICY PANEL

PART 5: ARTICLES 18-19 OF THE DRAFT LAW

The Proposed amendments

- 9.1 The Fiscal Policy Panel was formally established by the States in the Report and Proposition 133/2006 – “Establishment of Stabilisation Fund and Policy for Strategic Reserve”. The Panel already exists and operates within the parameters set in the report.
- 9.2 The draft amendment proposes that the Fiscal Policy Panel (FPP) forms an integral part in the States medium term financial planning process and places an obligation on the Council of Ministers and the Minister for Treasury and Resources to have due regard to any report published by the Panel. Furthermore the amendment proposes that the FPP must provide reports to the Minister –
- for the completion of the Draft Medium Term Financial Plan (and any amendment thereto);
 - at any time that the Minister requests;
 - whenever a significant change in the States expenditure or new States expenditure is proposed or there is a proposal to dispose of a significant States asset.
- 9.3 During the Public Hearing with the Minister for Treasury and Resources, the Panel was advised that the FPP was consulted about the suggested amendments during the drafting stages of the Legislation. While the FPP was positive about the proposal to put the Panel on a statutory footing, a number of concerns were expressed about the draft Legislation and how it was, then, currently worded.
- 9.4 One of the Panel’s concerns was that the draft Legislation made no mention of its independence and therefore diluted the practice of independence and transparency that had been established. In order to be consistent with the existing framework and practice, the FPP believed that it was imperative that the legislation made it absolutely clear that it was an independent Panel. We were advised by the Treasury Department that, in order to address this concern, the draft Legislation was amended to include Article 56B which reads:

“The Panel may not be directed on the advice given by it, and the comments and recommendations made by it, in any report prepared by it in the discharge of its functions

*under Articles 56C, 56D and 56E.*⁴⁹

- 9.5 Although we welcome the introduction of Article 56B and its inclusion in the final Draft Law, we are uncertain as to whether this change alone is sufficient or whether subsequent changes are needed in order to strengthen the perception of independence. This matter will be addressed later on in this section.

The Rationale

- 9.6 When questioned why this draft amendment had been proposed, the Minister for Treasury and Resources provided the following explanation:

*"I feel very strongly about this and I take full and personal responsibility for putting the F.P.P. on to a statutory basis. I believe this is one of the most powerful controls that are going to be put in place that are going to ensure that States Members take proper account of proper economic advice in decisions on spending".*⁵⁰

- 9.7 He further commented:

*"I want to put in place, a statutory provision to guard against short term political decision making. This is one control that I am suggesting that is an important one to put in place. Politicians faced before the daily conveyor belt of public opinion and short-termism makes poor decisions and they have to be given proper advice".*⁵¹

Comments

Independence of Appointment

- 9.8 It has been recognised that currently, as stated in P.133/2006, Members of the Fiscal Policy Panel are appointed by the States on the recommendation of the Minister for Treasury and Resources and following advice from the States Economic Advisor. This position itself has caused some concern for the Comptroller and Auditor General who expressed the view that *"the independence of the Panel is crucial and is potentially weakened by appointments being made on the sole recommendation of the Minister (with no indication of what happens if the States does not agree)"*⁵².

- 9.9 In addition to these comments, the Comptroller and Auditor General also believed that the independence of the Panel could potentially be undermined by an indeterminate but

⁴⁹ P.73/2013, page 28

⁵⁰ Minister for Treasury and Resources, Transcript, page 42

⁵¹ Minister for Treasury and Resources, Transcript, page 43

⁵² P.133/2006

renewable term of appointment, rather than a fixed non-renewable term, and the existence of wide grounds for removal by the Minister.⁵³ For example, draft Article 56A states that:

- (7) The Minister shall appoint a member of the Panel for a period not exceeding 5 years;
- (8) The Minister may appoint a person as a member of the Panel more than once;
- (9) The appointment of a Member of the Panel may be terminated by the Minister on any of the following grounds:
 - a) that the person is incapable, by reason of illness, of discharging his or her duties as a member;
 - b) that the person has been made bankrupt;
 - c) that the person has not, through absence, discharged his or her duties as a member; or
 - d) that the person is otherwise unable or unfit to discharge his or her duties as a member.⁵⁴

9.10 Since the Comptroller and Auditor General provided these comments to the Panel, additional changes have been made by the Treasury Department to the appointment process within the draft Legislation. It is now being proposed that the Minister for Treasury and Resources, rather than the States, is responsible for appointing FPP Members. In undertaking this role however, the Minister must seek the views of the Appointments Commission before appointing a Member and must present a notice to the States of his intention to make an appointment at least two weeks before appointing a member of the Panel. In regards to the latter, we were told by the Treasury Department that this two week 'breathing space' would give Members the opportunity to approach the Minister about any issues they may have concerning the potential new Members.

KEY FINDING

9.11 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.

9.12 When we questioned the Department as to the rationale behind this change, we were advised that it was a consequence of a Proposition adopted by the States in 2009. P.205/2009 proposed a revised procedure in relation to certain appointments made by the States. For example, the States agreed that, rather than making appointments through the

⁵³ Comptroller and Auditor General, Written Submission, page 3, June 2013

⁵⁴ P.73/2013, page 27

debate of a Proposition, it would be beneficial to introduce a new system whereby the Minister, body or person responsible for making the appointment concerned would present a report to the States setting out details of the proposed nomination. This report would be presented to the States at least two weeks before the appointment could be confirmed. This Proposition was brought to the States by the Privileges and Procedures Committee (PPC) after some Members raised concerns about the appropriateness of discussing nominations and potential issues in a States debate in public. Furthermore, because nominations for appointment to various positions are made following the rigorous process set out by the Appointments Commission, some Members were unclear as to the exact role of the States in approving an appointment.

- 9.13 Although we recognise the Minister's rationale for bringing this draft amendment to the States, we do not believe that the proposed change will eliminate issues concerning independence. If accepted, the Minister for Treasury and Resources would not only be solely responsible for recommending Panel Members, but also for appointing new Members. The involvement of the Appointments Commission and the two week 'breathing space' for Members will make the process more robust. However, we have to question whether it is indeed appropriate for such appointments to be undertaken by the executive and whether there is a potential for conflict. At the very least, we would argue that extra safeguards should be established to ensure that the Panel's independence is not compromised in any way.

KEY FINDING

- 9.14 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.**

KEY FINDING

- 9.15 Extra safeguards should be established for the appointment process to ensure that the Fiscal Policy Panel's independence is not compromised in any way.**

- 9.16 Within its Proposition, the Privileges and Procedures Committee made it clear to the States that it would be inappropriate for certain positions to be appointed using the new procedure. In such cases, States approval through a Proposition would continue. In this regard, PPC felt that the States Assembly's responsibility for appointing the C&AG and Greffier of the States should remain:

*“The Committee believes that the post of Comptroller and Auditor General and that of Greffier to the States are two key posts for States members where it is only right that the Assembly as a whole should ratify the proposed appointments. Both post holders report directly to the Assembly and it is appropriate that members should collectively have the opportunity to express their approval of the nominations proposed”.*⁵⁵

9.17 In order for the Fiscal Policy Panel to maintain its independence, the Panel believes that appointments must continue to be referred to the States Assembly and in a similar manner to the post of the C&AG. For example, the Comptroller and Auditor General position is appointed by the States on a Proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee. In regards to the appointment process for FPP Members, we would propose that the Proposition is signed by the Chief Minister and the Minister for Treasury and Resources.

9.18 We sought the views of CIPFA regarding this particular approach and were advised:

“we would recommend a suggested approach outlined by the Chair of the Public Accounts Committee. The suggested approach follows the same process of the States of Jersey Comptroller and Auditor General which is broadly similar to the UK C&AG process.”

KEY FINDING

9.19 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

RECOMMENDATION

9.20 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.

Reporting Accountability

9.21 Linked to independence, but not necessarily appointment, is accountability for reporting. As we mentioned at the beginning of this chapter, during the developing stage of the amendments FPP Members felt that the draft Legislation diluted the practice of transparency and independence. Furthermore, the Panel suggested that in order to be consistent with the

⁵⁵ P.205/2009, page 4

existing framework, the Law needed to be absolutely clear that the FPP are an advisory body to the States as a whole and not just an advisory body to the Minister for Treasury and Resources. In response to these concerns the Department inserted Article 56B – Independence of Panel - into the draft Legislation.

9.22 Notwithstanding the above CIPFA would argue that, given the Minister is a key driver behind the appointment of Members and has the capability to request a report in circumstances of “significant change” in states activity or economic conditions, *“it is clear that there is a strong level of FPP accountability to the Minister”*.

KEY FINDING

9.23 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.

Reporting issues

9.24 It is understood that the FPP already exists and operates within the parameters set in P.133/2006. However, we are concerned that by including such a large of amount of detail within primary legislation, as the draft amendment proposes, could potentially restrict the Panel and the work that is undertaken. Our advisor referenced similar issues within his own report by advising that *“the requirements impacting the Fiscal Policy Panel are quite prescriptive – particularly timescales that may give rise to re-engineering of critical MTFP modelling”*. CIPFA is concerned that *“such prescription, as now imposed in Stature, may negatively inhibit the Panels’ professional ability to provide optimal advice un-hindered by practical issues of accountability that temper independence”*.

9.25 This point was put to the Minister for Treasury and Resources, who disagreed with the views expressed:

“[FPP] are given the power to be very clear and to be very clear with their advice. If they think the Medium Term Financial Plan is not economically justified and not economically rational, they are going to say so”.⁵⁶

⁵⁶Minister for Treasury and Resources, Transcript, page 44

10. FORMAL ESTABLISHMENT OF THE STATES INSURANCE FUND

PART 2: ARTICLES 2-8 OF THE DRAFT LAW

The Proposed amendments

- 10.1 The draft amendment proposed formally establishes the States current insurance arrangements as a “Special Fund” to be known as the States “Insurance Fund”. The current rules and arrangements through which the States currently manages its Insurance arrangements will remain unchanged but will be controlled through the Public Finances Law and a Financial Direction. This part of the amendment simply establishes the existing fund within the law, with more detailed arrangements being included in an attached Schedule.
- 10.2 All States Departments will participate in the Insurance Fund. However, the Minister for Treasury and Resources may also enter into agreements with other persons and bodies that are connected with the States. The Panel was advised that any such involvement with external bodies would be subject to agreed terms and conditions and would be dependent on the associated risks as well as the level of insurance cover required.
- 10.3 The States of Jersey currently manages the cost of insurance by operating a level of self-insurance which will continue under the new arrangements. Under the present terms a Reserve of approximately £7.5 million has been built up in the Consolidated Fund to provide a safeguard against potential future insurance claims. The draft law details the process required to transfer this money from the Consolidated Fund to the Insurance Fund.
- 10.4 Furthermore, the draft amendment would also enable money to be directly allocated to the Insurance Fund from the consolidated Fund in a Budget or at any time a proposition is brought to the States by the Minister for Treasury and Resources. Equally, money may be withdrawn from the Fund and paid into the Consolidated Fund or Contingency if a surplus accrues in the Fund.

The Rationale

- 10.5 Under the terms of the Public Finances Law, all money due to the States has to be paid into the consolidated fund. However, the Law enables ‘Special Funds’ to be created for specific purposes and, as the Law currently stands; if a Fund is created under legislation the Fund can receive income related to the fund directly and make related payments.

10.6 Currently, the States of Jersey manages the cost of insurance for the whole organisation by operating a level of self-insurance (whereby the States pays excesses up to agreed limits in order to bring down the cost of premiums, sums over these levels are paid by the States' Insurers). The process for doing this at present, whilst robust, is not formalised (it is not formally recognised as a special fund under the Law) even though it has long been recognised that a separate Insurance Fund should exist under the auspices of the Public Finances Law to manage these claims and allow for receipts and payments for insurance matters on a longer term, planned basis. It was agreed by the Council of Ministers that this amendment "would put the existing arrangements on a sound legal footing".⁵⁷

The Fund

10.7 Although it is understood that this amendment would simply establish the existing Insurance Fund within the Primary Legislation, we believed that it was important to seek clarification on certain aspects of the current insurance arrangements.

10.8 Under Schedule 2, Article 2 – 'Participation by other persons or bodies' – the law states that "the Minister may permit persons or bodies that appear to the Minister to be connected with the States to participate in the mutual insurance arrangements on such terms and conditions as the Minister specifies". The Panel was unclear as to exactly what bodies could be admitted to the insurance arrangements as "permitted persons or bodies" and what criteria would be used to determine admittance to the scheme. In response, we were advised that the Fund would continue to cover all bodies already included within the existing States insurance arrangements (see appendix 3). Furthermore, it was explained by the Minister that:

*"The criteria for defining whether a person or body can be included in the insurance arrangements will be included in a Financial Direction on Insurance. The approval process will involve consultation with the States Insurance advisors."*⁵⁸

10.9 We also queried what procedures would be in place to ensure that all risks associated with each admitted body were identified and provided for. The Minister advised the Panel that the current associated risk management procedures, which are in place to regulate the insurable performance of admitted persons, would continue as follows;

- All such entities must make annual declarations to the States insurance advisors, on matters relating to insurable asset valuations.

⁵⁷ COM Minutes, 22nd May 2013

⁵⁸ Minister for Treasury and Resources, Written Submission

- All entities must make annual declarations, to the States insurance advisors, on matters relating to potential claims outstanding as yet bit reported.
- The States Insurance advisors regularly provide expert risk management and general insurance advice to all such entities on a 'needs must' basis, as follows;
 - Large entities (e.g. Jersey Post, Jersey Telecoms, etc.) – on a frequent basis via a dedicated contact.
 - Smaller entities (e.g. Jersey Gambling Commission etc.) on an ad hoc basis.

We were further advised that the existing procedures were currently under review.

10.10 The Panel also believed that it was important to establish whether the Airport and Harbours were currently included within the States insurance arrangements and, if so, whether all risks associated with these entities/activities would be underwritten by the States. When questioned regarding this matter, the Minister provided the following written response:

“Harbours and Airport are currently included within the States insurance arrangements for the following classes of Insurance:

- *Property....(incl. third party property damage & third party personal injury)*
- *Motor Fleet...(incl. third party property damage & third party personal injury)*
- *Liability...(incl. third party property damage & third party personal injury)*
- *Employers Liability...(incl. injury/illness to employees)*
- *Engineering...(incl. machinery breakdown and increased costs of working)*

*...and will continue to remain so unless otherwise directed. The majority of required cover however falls outside the States existing insurance arrangements and as such both Harbours and the Airport procure private bespoke insurance to meet their specialist needs”.*⁵⁹

Comments

10.11 Whilst both the Panel and our expert advisor agree that the consolidation of Insurance arrangements and the establishment of the Insurance Fund within Primary legislation would be a positive step forward, there appears to be lack of precision on:

1. Overall Risk Profiles
2. Participation by Other Persons and Bodies; and
3. Withdrawals/Additional Funding required from/to Insurance Fund

⁵⁹ Minister for Treasury and Resources, Written Submission

10.12 Our expert advisor provided the following comments regarding these three areas:

Overall Risk Profiles

“Whilst we see the benefits of pooling and self-funding insurance arrangements we would assume that the current and expected risk profiling is expected to be within pre-set industry standard tolerance levels. We are unsighted on this work but we would class this as being a fundamental requirement to migrating to these consolidated arrangements.”

Participation by Other Persons and Bodies

“It would be our considered view that the proposals would benefit from clarity on admission to these arrangements. There is a distinct lack of clarity on important issues of due diligence and assessment of risk prior to admission to these arrangements together with an assessment of Insurance related costs that will be required to be paid into the fund. It may well be the case that risks associated with “arms-length” bodies are currently underwritten within the commercial insurance market in a way that minimises significant risk that would have to be borne by the consolidation of insurance arrangements by the States”.

Withdrawals/Additional Funding required from/to Insurance Fund

“Currently there is no profile of expected movement in the Insurance Fund, Insurance Costs and Premiums required and the potential additionality of externalisation of risk that is deemed to be too high. Furthermore it is not certain what level the fund should be before additional premiums or a re-distribution of any excess to the Consolidated Fund or Contingency would be necessary.”

“As we are currently unsighted on this detail we can only conclude that more work is required to establish the detail behind the revised arrangements in terms of set up and on-going running costs is still a “work in progress” – particularly on the quantification of Departmental and Admitted Body Premiums relative to likely Risk Profiles and known liabilities.”⁶⁰

Concluding Comments

“We would recommend that the critical elements of detail outlined above be highlighted in a way that would allow the States to take an informed decision on creating a statutory basis for this change in the management of Insurance arrangements based on the full implications of moving to an internally based risk funded model”.

⁶⁰ CIPFA Report, page 11

KEY FINDING

10.13 The consolidation of Insurance arrangements and the establishment of the Insurance Fund within Primary Legislation would be a welcomed, positive step forward.

KEY FINDING

10.14 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 Consolidated Fund or Contingency.

RECOMMENDATION

10.15 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.

11. FUTURE AMENDMENTS TO BE MADE BY REGULATION

PART 6: ARTICLES 20-21 OF THE DRAFT LAW

The Proposed amendments

11.1 If adopted, this amendment will enable the States to make Regulations to amend Parts 3 and 4 of the principal Law which deals respectively with the process for Medium Term Financial Plan and Budgeting and States Trading Operations. The power to amend Parts 3 and 4, however, does not extend to Article 15 of the Law which is the power to give immediate effect to a Law that is a taxation draft. Nor does it extend to any power to make Regulations that supplement, rather than amend, the Law.⁶¹

The Rationale

11.2 We have been advised that, due to the amount of time it takes for legislative changes to be processed through Her Majesty's Privy Council, it is necessary for the States to possess the power to amend particular Parts of the primary Law in order to react to immediate situations, hence why this draft amendment is being proposed. Like with all amending Regulations, however, States approval will still be required.

Comments

11.3 There could be potential implications in regards to draft Article 21 and, in particular, the ability to amend the MTFP by Regulation. For instance, we were informed by our advisor that adoption of this draft amendment could increase the risk of political interference with the Financial Management of the States:

"Having established key parameters for the management of the MTFP through primary legislation, the wide power conferred by Article 21 enabling unlimited Ministerial intervention is inconsistent at best. Whilst the balancing check is the required approval of the States it is difficult to see some consistency in approach and the concern would be that the positive attributes of the MTFP as an effective Medium Term modelling platform for managing the finances of the States may have to yield to the vagaries of political expediency".⁶²

11.4 Despite these concerns, the Department assured the Panel that, due to the safeguard of required States approval, they could not foresee any issues arising from the proposed amendment, if adopted. Furthermore, because the draft amendment excludes changes to

⁶¹ P.73/2013, page 8

⁶² CIPFA Report, page 39

other regulations making provisions and Article 15, the Law Officers were satisfied that the proposal *“should not alarm the Privy Council and lead to delays in the granting of consent”*⁶³

KEY FINDING

11.5 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.

⁶³ Extract from the Law Officers Human Rights Review in respect of Article 21

12. CONCLUSION

- 12.1 Our review of the draft amendments to the Public Finances (Jersey) Law 2005 identified both positive and negative aspects of the Minister's proposals. Some of the proposed changes, for example, represent a further progression towards best practice and provide an opportunity to improve financial management within the States. Furthermore, whilst the Panel recognised instances where the draft amendments lacked precision, in the wording or detail, the concept behind the proposal was often endorsed.
- 12.2 The Panel, however, found great difficulty in supporting a number of the draft amendments that had been brought forward by the Minister for Treasury and Resources. The proposal to introduce a new responsibility for the Treasurer to advise the Council of Ministers upon the finances of Jersey was found to be neither justifiable nor necessary. Firstly, the Treasurer already performs the duties which are being proposed. Secondly, including such a provision so explicitly within Primary Legislation could compromise the perception of independence and impartiality.
- 12.3 The draft proposal which would allow a permitted variation of heads of expenditure and transfer of heads of expenditure to contingency expenditure for "any for reason" was also met with great caution. We found that the inherent flexibility which will be available to Chief Officers and Ministers, if this draft amendment is adopted, may have the potential to undermine the rigour of the Medium Term Financial Plan.
- 12.4 Despite the introduction of a Contingency Fund in 2011 and the previous States decision to remove the ability to make 11(8) requests, the Minister has brought an amendment to permanently re-instate this provision. The proposal not only contradicts the new disciplined approach adopted by the States in the MTFP, but also opposes the views that have been expressed in the past by the Minister regarding the use of additional funding requests. Furthermore, the evidence we received from the Minister during this review, in regards to the intended use and necessity of the 11(8) provision, was inconsistent.
- 12.5 Under the current arrangements, Members of the Fiscal Policy Panel are appointed by the States on the recommendation of the Minister for Treasury and Resources and following advice from the States Economic Advisor. Whilst the Panel have some concerns regarding the current procedures, the issues that arise from the new proposals are considered much greater. The Panel's independence could be compromised if the States Assembly is removed from the appointment process. We therefore recommend that the draft proposal is amended to allow for Panel Members to be appointed by the States on a Proposition signed jointly by the Minister for Treasury and Resources and the Chief Minister.

13. APPENDIX 1 - COMMENTS ON ISSUES RAISED IN THE FORMER COMPTROLLER AND AUDITOR GENERAL'S REPORT – PUBLIC FINANCES (JERSEY) LAW 2005 – A REVIEW IN LIGHT OF EXPERIENCE

13.1 The following information was provided to the Panel by the Treasury and Resources Department on 24th May 2013.

Areas requiring consideration	Comments of the Comptroller and Auditor General (C and AG)	Comments from the Treasury
The position of Treasurer of the States		
Treasurer's responsibilities	<p>The C and AG questions how the role of Treasurer of the States can be responsible for <i>“the proper administration of the public finances of Jersey without also being responsible for ensuring that “the key strategic controls necessary to secure sound financial management are implemented.”</i></p> <p>The Comptroller and Auditor General goes on to comment that he believes that the <i>“Treasurer is only responsible for advising on such controls”</i>.</p>	<p>It is proposed that the Treasurer of the States' role is strengthened in the Public Finances Law.</p> <p>Article 28 of the current Law establishes the office of Treasurer of the States and imposes duties on that post-holder. Specifically, the Treasurer is responsible –</p> <ul style="list-style-type: none"> (a) to the Minister, for the supervision and administration of the principal Law and of the public finances of Jersey; and (b) for ensuring the proper stewardship and administration of the public finances of Jersey. <p>The Treasurer is already responsible to the Minister as described in (a) above and, under Article 26(6) of the States of Jersey Law 2005, is accountable to the Minister in respect of policy direction.</p> <p>As stated above the Treasurer is currently accountable to the Minister for policy implementation and therefore already has responsibility for ensuring that the key strategic controls to secure sound financial management are implemented throughout the States.</p>

		<p>To further strengthen the position of the Treasurer the Amendment proposes that it be a duty of the Treasurer of the States to advise the Council of Ministers upon the public finances of Jersey. The preparation of the Medium Term Financial Plan is the responsibility of the Council of Ministers and it is imperative that the Council receives sound financial advice and input on all areas associated with this and all other financial matters.</p>
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	<p>The C and AG questioned whether the Treasurer has responsibility for monitoring expenditure</p>	<p>The Treasurer's role already has responsibility for monitoring expenditure and therefore no change to the Law is proposed to strengthen this area. The Public Finances Law already specifies in Article 28(3):</p> <p><i>“It is the responsibility of the Treasurer to ensure the proper stewardship and administration of the public finances of Jersey and, in particular –</i></p> <ul style="list-style-type: none"> <i>(a) to set financial management standards for their administration and for monitoring compliance with those standards;</i> <i>(b) to ensure that professional practices are adhered to in their administration;</i> <i>(c) to advise on the key strategic controls that are necessary to secure their sound financial management; and</i> <i>(d) to ensure that financial information is available to enable accurate and timely monitoring of their administration.</i> <p>The Council of Ministers receives quarterly monitoring updates on all Departments expenditure (capital and revenue) and income. As well as providing information on actual spend to date these updates also detail anticipated year end figures.</p>
	<p>The C and AG believed that the Treasurer should have similar responsibilities to a Section 151 Officer in a UK local authority. The C and AG proposed that two specific duties of a 151 Officer had no parallel within the 2005 Law:-</p>	<p>There are aspects of the role of the Section 151 Officer in a UK local authority that we can learn from and use as a basis for refinement of the Public Finances Law in Jersey. However it is not an exact parallel as the political and managerial structure of the States of Jersey is not in line with that of a</p>

	<p>(1) A duty to report unlawful expenditure, a loss or deficiency or an unlawful item of account as a result of the exercise of executive functions; and</p> <p>(2) A duty to report a failure to set or keep a balanced budget.</p>	<p>UK local authority it is more akin to that of UK central government.</p> <p>Article 30 of the Law, as currently drafted, establishes the independence of the role of Treasurer and also enables the Treasurer to report to the States, after consulting the Comptroller and Auditor General, if public money has been dealt with unlawfully and it has not been possible to correct the situation.</p> <p>This Amendment further expands on the circumstances in which the Treasurer may report directly to the States. The Treasurer may report a case where any public money controlled or managed on behalf of the States or by a Minister has been dealt with by a person acting either unlawfully or in a way that is contrary to financial directions and the consequences of the person's actions are material or would have been material if the situation had not been corrected.</p>
<p>Financial Management</p>		
<p>Accounting Officers</p>	<p>The C and AG recommended that the smaller States Departments (e.g. those departments with an annual allocation of less than £1million) should, with the approval of the relevant Department's Chief Officer appoint the Treasurer as that Department's Accounting Officer.</p>	<p>No Law amendment is proposed to accommodate the Comptroller and Auditor General's comments. The Law as currently stands enables the Minister for Treasury and Resources to appoint either:</p> <ul style="list-style-type: none"> a) A person other than its chief officer to be the accounting officer of a States funded body; or b) an additional Departmental Accounting Officer where appropriate. <p>As an illustration that this approach works the</p>

		<p>Treasurer has taken on Accounting Officer role for the Jersey Overseas Aid Commission.</p> <p>Although, as a generality the Treasurer has no political or administrative responsibility for the smaller Departments the Treasury does offer assistance via a Bureau service to assist with financial tasks for the smaller Departments.</p>
	The C and AG recommended that the Chief Officer of Police should be appointed as Accounting Officer for the Police Budget.	The current Chief Officer of Police has been appointed as Accounting Officer for the Police Budget.
Financial management standards for the States	The C and AG stated that the 2005 Public Finances Law does not assist the Treasurer in providing guidance on the accounting and financial management procedures to be applied throughout the States.	<p>The Law as currently drafted <u>does</u> assist the Treasurer in providing all the necessary guidance on the accounting and financial management procedures to be applied throughout the States.</p> <p>This is evidenced in Article 34 of the Law where the Treasurer is empowered (with the approval of the Minister) to issue Financial Directions. These Financial Directions can cover:</p> <ul style="list-style-type: none"> (a) matters which are required by the Law to be addressed in Financial Directions; and (b) issues which the Treasurer determines are necessary or expedient for the proper administration of this Law.
	The C and AG stated that there is little need for the internal financial management guidance of the States to be approved by a Minister	<p>The approval of the Minister gives further weight to the importance and validity of the Financial Directions.</p> <p>In practice the Minister has delegated authority to the Treasurer of the States, or in</p>

		their absence another person as nominated by the Treasurer, to issue Financial Directions that the Treasurer deems to be required. (This authority does not extend to those Financial Directions which propose the delegation of responsibility from the Minister to an officer without the Minister having already agreed those delegations).
Compliance with financial management standards	The C and AG stated that the 2005 Finance Law empowers the Treasurer to issue Financial Directions, it does not require Accounting Officers to comply with those Financial Directions.	The Treasury disagrees with this statement - It is implicit throughout the Law that an Accounting Officer is personally accountable for the proper financial management of the resources (which includes capital and revenue budgets and balance sheet items) of their Department. On appointment each Departmental Chief Officer is issued with a letter appointing them as Accounting Officer – the letter requires that the appointee will comply with Financial Directions or clearly state where this is not possible. An Accounting Officer is required to sign and confirm his/her acceptance of their Accounting Officer duties and responsibilities.
	The C and AG believed that the Law does not deal with the procedures to be followed when an Accounting Officer considers that a Minister wishes a course of action to be pursued that the Accounting Officer regards as unwise.	Financial Direction 2.2 - Accounting Officers issued under Article 38 of the Law details the procedures to be followed when an Accounting Officer does not approve of the course of action undertaken by a Minister.
Expenditure control		
Preparation of estimates	<p>Estimates should be prepared and submitted to the States on the basis of:</p> <ul style="list-style-type: none"> • Each Department’s current spending; • As affected by expected rates of inflation • Modifications for expected changes in 	The Public Finances Law is Primary legislation and has rightly been drafted such that departmental estimates have to be submitted to the Minister who will “specify the detail and form in which estimates and other information are to be provided.” (See Article 24(A)(3)).

	<p>policy and service provision; and</p> <ul style="list-style-type: none"> • Reduced by targeted efficiency and other savings. 	<p>The Law, purposefully, does not define how departmental estimates should be prepared empowering the Minister for Treasury and Resources to make decisions on this.</p> <p>The Treasury used a similar format to that recommended by the C and AG when preparing the Medium Term Financial Plan 2013 – 2015 and are following a similar approach for Longer term revenue planning purposes.</p>
<p>Period covered by Estimates</p>	<p>The C and AG commented that the Annual Business Plan provides details of estimates for 3 or 4 years following the year of the Plan - this gives the impression that expenditure is being forecast by the States for a four or five year period.</p>	<p>This issue was addressed with the inclusion of the Medium Term Financial Planning process into the Public Finances Law in 2011. In 2012 the States <u>approved</u> expenditure limits for three years 2013 – 2015.</p>
<p>Amendment of expenditure approvals</p>	<p>The C and AG did not object to the principle of the old Article 11(8) which provided that “the States may, at any time, amend an expenditure approval on a proposition lodged by the Minister on the grounds that –</p> <p>(a) There is an urgent need for expenditure; and</p> <p>(b) No expenditure approval is available”.</p> <p>The C and AG linked this comment to his view that the States should hold a provision for “unforeseen expenditure”.</p>	<p>During the 2011 Amendments to the Finance Law the concept of a “central contingency” was introduced and the provisions set in the old Article 11(8) were removed. However, through Transitional Regulations the Minister for Treasury and Resources has retained the 11(8) provision up until end of June 2013.</p> <p>A central contingency was approved by the States for the each of the years of the MTFP 2013 – 2015.</p> <p>Experience has shown that the level of “central contingency” is limited and should the States need to secure additional funds for any <u>major</u> unfunded issue the amount of additional funding available is limited. The current Amendment proposes the reinstatement of a provision to enable the</p>

		<p><u>Council of Ministers</u> to request the States to consider an additional funding request where there is an urgent need for expenditure and that expenditure cannot reasonably be funded from existing heads of expenditure or contingency.</p>
Permitted variations to expenditure approvals	<p>The C and AG supported the concept of being able to vary expenditure approvals but objected to this provision being used to deal with overspends after the end of a financial year.</p>	<p>Financial monitoring and reporting to the Council of Ministers has been improved and now happens on a regular quarterly basis. This has resulted in the earlier identification of potential overspends and ensured that mechanisms can be put in place for dealing with these during the course of the year.</p> <p>The Treasury has also introduced regular quarterly financial update meetings with all Departmental Chief Officers and Finance Officers to discuss financial matters and potential in year funding pressures and to address how these can be best addressed.</p> <p>The Amendment does propose that the Minister has greater flexibility to approve the movement of existing funds between heads of expenditure.</p>
Variations to supplementary expenditure approvals	<p>The C and AG raised concerns that there were no restrictions on variations to money approved as part of a supplementary allocation.</p>	<p>As in the above comment the States financial monitoring and reporting process has been strengthened.</p> <p>The process for the approval of unspent carry forwards, whether these arise from unspent money in base allocations or from unspent allocations from contingency, has been strengthened and improved and contains far greater scrutiny from Treasury and Ministers</p>

		than was previously the case.
Special Funds	Expenditure met from Special Funds is not approved as part of the normal Budget approval process.	The C and AG's comments on this matter were largely related to the procedures for the spend from the Drug Trafficking Confiscation Fund (DTCF) and the Criminal Offences Confiscation Fund (COCF). Procedures surrounding expenditure from these Funds have been amended to ensure that expenditure is included in the normal approval processes for all States expenditure.
States trading operations	The C and AG commented that the Trading operations should be accounted for on a commercial basis in order to assess whether financial returns paid to the States were reasonable.	<p>No changes are proposed to the Trading Operation area of the Law. Since the previous C and AG produced his report the Accounting Standards under which the States Accounts are prepared have moved through UK GAAP to International Financial Reporting Standards.</p> <p>These are Standards used by a wide range of commercial companies, and have been adapted where necessary to ensure that they are relevant to the public sector in Jersey. Under these standards the States Trading Operations are required to account for fixed assets and associated charges, including depreciation and any impairments.</p> <p>The Law as currently stands empowers the Minister to agree financial returns from the Trading Operation based on a rate of return.</p>
Other areas addressed in the Public Finances Amendment (No 4) Law which were not raised by the Comptroller and Auditor General		

Insurance Fund	The Comptroller and Auditor General had no comments on this area.	The amendment proposes the formal establishment of the existing States insurance arrangements in a Special Fund.
Fiscal Policy Panel	The Comptroller and Auditor General had no comments on this area.	<p>The amendment proposes the formal establishment of the existing Fiscal Policy Panel in legislation. The Panel was established in Report and Proposition 133/2006. The amendment proposes that the Fiscal Policy Panel forms an integral part in the States medium term financial planning process and that the Council of Ministers and Minister for Treasury and Resources to have regard to the Panel's reports.</p> <p>The Panel will continue to comprise of at least 3 members who have the knowledge and experience to advise on economic matters and will continue to be appointed by the States on the recommendation of the Minister, and members stay in post for a term not exceeding 5 years, decided by the Minister. A member's term may be renewed. The Minister is required to seek the approval of the Appointments Commission to his or her recommendations.</p> <p>The Panel is required to produce an Annual Report as well as reports for the production of the Medium Term Financial Plan.</p>
Preparation of States of Jersey Accounts		Currently Article 32 of the Law requires the Treasurer to prepare an annual financial statement of the accounts of the States, and to do so in accordance with GAAP and prescribed accounting standards issued as an Order.

		<p>This Amendment provides that the States of Jersey's Accounts must be prepared, instead, in accordance with accounting standards issued by the Treasurer, with the Minister's approval. There are 3 reasons for making the amendment. Firstly, the requirement to prepare accounts in accordance with both GAAP and prescribed accounting standards is incorrect. These should be alternatives, not cumulative. Secondly accounting standards are technical standards, unsuited for inclusion in legislation. This Amendment requires the Minister to lay the accounting standards before the States, so that they remain readily accessible to States Members and the public.</p> <p>Thirdly the Accounting world continues to move forward and there is a need to produce Accounts in line with refined and improved International Standards.</p>
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14. APPENDIX 2 – ABSTRACT FROM SR.18/2012 (REVIEW OF THE MTFP)

Departmental Spending Limits

- 7.8 The largest proportion of net revenue expenditure proposed in the draft MTFP is described as departmental net revenue expenditure. The draft MTFP proposes that this will amount to £626.2 million in 2013; £643.5 million in 2014; and £654.7 million in 2015.⁶⁴
- 7.9 This expenditure essentially amounts to that which will be spent by the ten Executive Departments, the States Assembly and its services, the ten non-Ministerial States-funded bodies and the Jersey Overseas Aid Commission. Part (c)(i) of the proposition asks the States to approve individual limits for each of these bodies for each of the three years of the MTFP.
- 7.10 It was not our remit to consider the spending levels of each Department. The Scrutiny Panels have undertaken that work and their reports highlight how Departmental base budgets (i.e. spending limits) were put together. The starting point was the immediate precursor to the draft MTFP: the 2012 ABP. Differences between the figures agreed in the 2012 ABP for departmental spending and what have ended up as proposals in the draft MTFP are explained in the Annex to the draft MTFP. If one wishes to track how spending levels for each Department have been developed, one should take the figure agreed in the 2012 ABP and factor in the following:
- Price Inflation – Departmental Income
 - Price Inflation – Departmental Expenditure
 - Commitments from Existing Policies
 - Departmental Savings
 - Departmental User Pays charges
 - Departmental Transfers
 - Capital to Revenue Transfers
 - Growth proposed in the draft MTFP
 - Allocation of proposed Procurement savings
 - Other Budget Measures proposed in the draft MTFP

⁶⁴ Draft Medium Term Financial Plan, page 145

- 7.11 The above may explain how spending limits were identified and proposed in the draft MTFP but the explanation does not in itself show whether the Departmental spending limits are well-founded and justifiable. In that latter regard, we noted that the Financial Report and Accounts for 2011 showed that there had been an under-spend of some £41 million in net revenue expenditure in 2011, £28 million of which related to departmental net revenue expenditure (the remaining underspend related to unused contingencies).⁶⁵ The departmental underspends arose in respect of both Ministerial and non-Ministerial Departments.
- 7.12 At first glance, the level of underspending suggested that there might be scope to limit growth in spending in subsequent years (as it could seemingly be accommodated within current spending limits). In other words, it raised the question of whether departmental budgets are too generous. We questioned the Minister for Treasury and Resources on what impact, if any, the level of underspending in 2011 had had on setting base budgets for the draft MTFP. We were advised that it had had no impact.⁶⁶ In February 2012, the Minister for Treasury and Resources agreed that almost the entirety of the under-spent funds from 2011 could be carried forward to 2012.⁶⁷
- 7.13 Some carry forwards have in the past been used for new and potentially ongoing revenue expenditure. For example, in its work on the draft MTFP, the HSSH Scrutiny Panel was advised that the Department of Social Security had previously used carry forwards to provide funding for the provision of 66.5 employees that were required to address the priority of getting people back to work and for growth in Income Support staff.⁶⁸ Similarly, the Corporate Services Scrutiny Panel was advised that carry forward funding had been used to develop and enhance the capacity and services of the External Relation function of the Chief Minister's Department. The Economic Affairs Scrutiny Panel, meanwhile, has identified concern in relation to the definition and use of carry forwards. The Panel was advised that "*carry forwards are naturally occurring underspends because something has either cost [the Department] less or something that [the Department] planned to do is no longer required or indeed, in the case of income we receive from Ofcom, which is related to a rebate to us related to T.V. (television) licensing, greater levels of income that we have over and above what we had forecast.*" Following further questioning, it was confirmed that "*some of it is carried forward for the purpose that it was originally intended but a lot of it is carried*

⁶⁵ *Financial Report and Accounts 2011*, page 17

⁶⁶ Treasurer of the States, Transcript, page 18

⁶⁷ Ministerial Decision MD-TR-2011-0019

⁶⁸ Report of the Health, Social Security and Housing Scrutiny Panel on the Department of Social Security, page 6

forward as a numerical sum and then we justify to the Treasury and this has to be fully justified to the Treasury.”⁶⁹

- 7.14 Our expert advisor from CIPFA considered base-budgeting and the setting of Departmental spending limits and the results of his consideration may be found in his report (appended to this one). We would highlight the following piece of advice in particular:

“The existing Budget Setting processes are highly incremental and do not, in our view, fully challenge core budgets. Whilst we would not advocate [...] a full Zero Based approach we would be of the view that a lack of rigour produces an element of “padding” within departmental budgets with the prospectivity of unregulated activity/spend being created – this is particularly prevalent in sub optimal year end spending. The relevant question to consider would be are Carry Forwards the product of re-profiled activity that was truly scheduled to occur? If not it would be good practice for Departments to “surrender” unrequired budget at the earliest opportunity in order that the States can best utilise such resources on unforeseen cost pressures/building up reserves etc.”⁷⁰

- 7.15 As a consequence, CIPFA has made a number of recommendations in relation to carry forwards, suggesting that it would be preferable for Departments to identify and surrender “unrequired budget at the earliest opportunity in-year to enable a corporate strategic approach to be taken within the MTFP framework” and that “a more rigorous process [could] be initiated that would prevent departmental / service underspends being carried forward between financial years to fund unrelated / different activities or fund future departmental / operational budget savings.”⁷¹

- 7.16 In terms of the process followed by the Executive in respect of carry forwards, we were advised that “the processes in place seek to ensure that underspends and carry forwards are planned, can be evidenced by business cases or are carried forward to provide contingency against known or forecast pressures. The carry forward process is not intended to provide automatic carry forward for one-off or windfall savings for which a given or related purpose is not identified.” In such latter cases, the Council would consider where the savings or additional income might best be applied or whether a return to the Consolidated Fund would be preferable.⁷²

⁶⁹ Report from the Economic Affairs Scrutiny Panel on the Department of Economic Development, page 5

⁷⁰ Report from CIPFA, page 19

⁷¹ Ibid, page 8

⁷² Advice from the Department of Treasury and Resources, 18th September 2012

KEY FINDING

7.17 Carry forwards have previously been used to fund new and potentially ongoing revenue expenditure.

7.18 There is inconsistency in the application of policy on carry forwards and the reliance on carry forward funding suggests a lack of rigour in base budgeting for departmental expenditure.

RECOMMENDATION

7.19 The Minister for Treasury and Resources should review the use of carry forwards to ensure that, in future, they are used consistently and to reduce their use on new and potentially ongoing expenditure.

15. APPENDIX 3 – INSURANCE FUND ‘BODIES’

15.1 The bodies already covered within the existing States insurance arrangements include:

- Jersey Post International Limited and Subsidiary Companies
- J T Group Limited and Subsidiary Companies
- Jersey Competition Regulatory Authority
- Jersey Financial Services Commission
- Bureau de Jersey Limited
- The States of Jersey Development Company Limited
- Jersey Gambling Commission
- 99 year leaseholders
- Agricultural loans Fund
- Assisted House Purchase Scheme
- Assemblée Parlementaire de la Francophonie – Jersey Branch
- Channel Island Lottery (Jersey) Fund [and Public Lotteries Board]
- Trust Funds
- Bequest Funds
- Civil Asset Recovery und
- Commissioners of Appeal for Income Tax
- Commonwealth Parliamentary Association (Jersey Branch)
- Complaints Panel
- Comptroller & Auditor General
- Criminal Offences Confiscation Fund
- Data Protection Tribunal
- Dwelling House Loan Fund
- Drug Trafficking Confiscation Fund
- Health Insurance Fund
- Housing Development Fund
- ICT Fund
- Jersey Airport Trading Fund
- Jersey Appointments Commission
- Jersey Car Parking Trading Fund
- Jersey Child Protection Committee
- Jersey Coinage
- Jersey Currency Notes
- Jersey Fiscal Policy Panel
- Jersey Fleet Management Trading Fund
- Jersey Harbours Trading Fund
- Jersey Law Commission
- Jersey Legal Information Board
- Jersey Police Complaints Authority
- Jersey Post International Limited
- Jersey Skills Executive
- Overseas Aid Commission
- Prescribing Analysis and Cost (PACT) User Group
- Public Employees Contributory Retirement Scheme (PECRS)

- Pharmaceutical Benefit Advisory Committee
- Post Office Pension Fund
- Social Security Fund
- Social Security Reserve Fund
- Stabilisation Fund
- Statistics User Group
- Strategic Reserve
- Tourism Development Fund

16. APPENDIX 4 – PANEL MEMBERSHIP, TERMS OF REFERENCE AND EVIDENCE CONSIDERED

16.1 The Corporate Services Scrutiny Panel comprised the following members:

Senator S C Ferguson, Chairman

Deputy J G Reed, Vice-Chairman

Deputy S Power

Connétable D J Murphy

Deputy R J Rondel

Deputy T.A. Vallois (Co-opted onto the Panel for this review)

16.2 The following Terms of Reference were established for the review:

1. To examine the Draft Public Finances (Amendment No.4) (Jersey) Law 201-, with particular regard to the following:
 - a) The rationale behind the draft amendments and the need to include such measures within the law;
 - b) The implications of the proposed amendments for the financial management of the States;
2. To assess whether the issues raised by the former Comptroller and Auditor General in his report “Public Finances (Jersey) Law 2005 – A review in the light of experience” have been addressed within the draft amendments.
3. To consider whether the draft amendments will achieve the desired outcomes that have been proposed.

Evidence Gathered:

16.3 The following documents were considered by the Panel during its review:

- a) Draft Public Finances (Amendment No.4) (Jersey) Law 201- (P.73/2011), Lodged in the States on 6th June 2013
- b) Public Finances (Jersey) Law 2005, Law as amended, 22nd May 2013
- c) Draft Public Finances (Amendment No.3) (Jersey) Law 201- (P.97/2011), Adopted by the States on 19th July 2011
- d) Ministerial Decision MD-TR-2013-0005, 17th January 2013

- e) Public Finances (Transitional Arrangements) (Amendment) (Jersey) Order 201-
- f) Public Finances (Jersey) Law 2005
- g) Public Finances (Jersey) Law 2005: A review in light of the experience, February 2010

16.4 The Panel also wrote to a number of key stakeholders, to which the following written submissions were received:

1. Comptroller and Auditor General – 11th June 2013
2. Senator P.F.C. Ozouf, Minister for Treasury and Resources – 13th June 2013
3. Senator I.J. Gorst. Chief Minister – 10th July 2013
4. Mr. J. Richardson, Chief Executive – 10th July 2013

16.5 The Panel held a Public Hearing with the Minister for Treasury and Resources on 29th May 2013. The Minister was accompanied by the Treasurer, Assistant Minister for Treasury and Resources and Consultant of Corporate Financial Strategy. A Transcript of the Hearing was made and is available on the Scrutiny Website (www.scrutiny.gove.je).

17. APPENDIX 5 – CIPFA’S REPORT