

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Corporate Services Scrutiny Panel

Review of Proposed Amendment to the Public Finances (Amendment of Law No.2) (Jersey) Regulations 201-



Presented to the States on 22nd May 2015

S.R.2/2015

Contents

1. Summary	1
2. Recommendations	3
3. CIPFA Report.....	4

1. Summary

P.42/2015 Public Finances (Amendment of Law No.2) (Jersey) Regulations 201- (“the Amendment”) was lodged by the Minister for Treasury and Resources on 22nd April 2015 with a debate date of 2nd June 2015. The Amendment sets out to introduce flexibility in the way that expenditure is fixed in the Medium Term Financial Plan (“MTFP”).

The key element of the proposed change is that for the second and any subsequent year to which the MTFP relates, the Amendment gives the option of either including the breakdown of expenditure in the MTFP or coming back at a later date to add it into the Plan. The Panel is of the opinion that although this provides a far greater level of flexibility to the MTFP, it could potentially shorten initial planning horizons and has major significant and negative consequences.

The Corporate Services Scrutiny Panel appointed the Chartered Institute of Public Finance and Accountancy (“CIPFA”) to undertake a full desktop review into the Amendment.

The Panel was advised that from the context of good practice, the Amendment is seen as a retrograde step and has the potential for the MTFP to be totally inadequate in terms of being Jersey’s effective platform for robust medium term financial planning and strategy formulation. The Panel was further advised that although CIPFA recognised the argument of expediency which has been rendered to underpin the amendment, reflecting the gravity of the situation now faced by the States, they recommended that such an amendment is strictly time limited.

CIPFA advised the Panel that 6 months was not unreasonable for multi-tier functions to estimate planning terms. Acting on this advice, the Panel has brought its Amendment and believes it is generous in allowing the Department a deadline of 30th April 2016 to lodge any draft addition in respect of 2017. The Panel is aware of the usual work that needs to be performed during the first few months of the year in respect of the production of the financial accounts however, based on its advice, considers this deadline reasonable.

The Panel’s Amendment will enforce a time limit and ensures the proposed Amendment is valid only for financial years 2016 – 2019. In addition, the Panel’s final proposed Amendment is that should the Minister for Treasury and Resources lodge a draft addition and a draft budget as one proposition (as per the Department’s proposed Amendment), the lodging period that applies to the MTFP of 12 weeks is followed rather than the shorter 8 week period afforded to the Budget.

In lodging this Amendment, the Panel will be seeking the undertaking from the Council of Ministers and the Minister for Treasury and Resources that this Amendment will be accepted.

CIPFA met with various Stakeholders within the Treasury and Resources Department to understand the rationale for the proposed Amendment and at the request of the Panel, produced a Report on their findings which is appended to this summary.

2. Recommendations

An Amendment to the Proposition P.42/2015 Public Finances (Amendment of Law No.2) (Jersey) Regulations 201- is required to ensure a time limit or “sunset clause” is incorporated. This will ensure the initial proposed change to the law is valid only for financial years 2016 – 2019

- The Panel has lodged an Amendment (P.42 Amd) to reflect this
Should the Minister for Treasury and Resources lodge a draft addition and a draft budget as one proposition (as per the Department’s proposal), the lodging period that applies to the MTFP of 12 weeks should be applicable rather than the shorter 8 week period afforded to the Budget
- The Panel has lodged an Amendment (P.42 Amd) to reflect this
In order to improve visibility on the construction and on-going development of the MTFP, the Department of Treasury and Resources has agreed to the following:-
Rolling MTFP – running in parallel to the fixed term “legal” MTFP will be a rolling MTFP model which will be subject to continuous recalibration. This will better meet with good practice and also positively contribute towards the stability of the Budget setting process
- The Panel would like a timetable of the frequency of the continuous recalibration
Transparency – outwith the formal annual fiscal updates, Treasury and Resources are committed to updating members on the MTFP on a regular in-year basis through briefings including Council of Ministers briefings.
- The Panel would like a timetable of the frequency of these briefings

3. CIPFA Report

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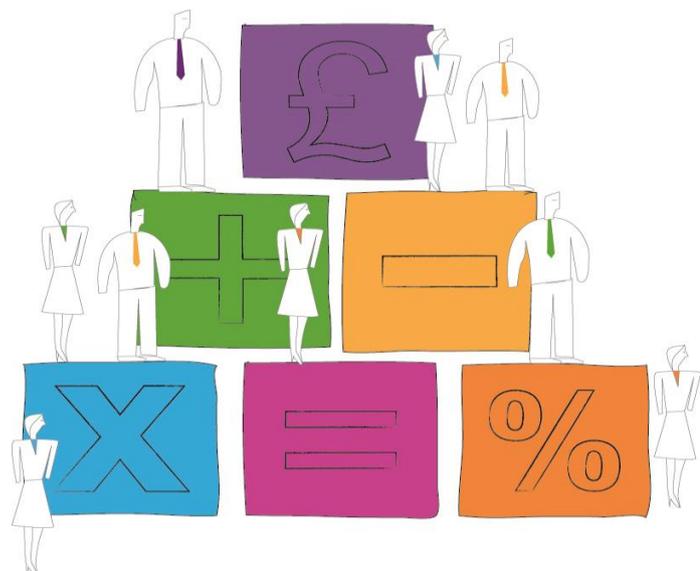


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States of Jersey – Corporate Services Scrutiny Panel

Review of proposed amendment to Public Finances (Amendment of Law No.2) (Jersey) Regulations 201

May 2015



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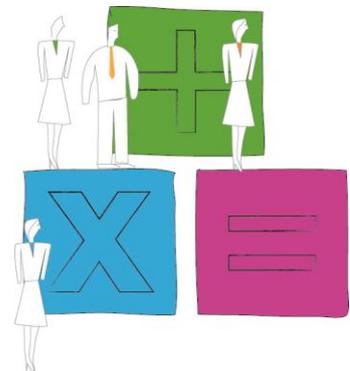
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Contents

Section	Title	Page
1	Commentary	6



1. **Commentary**

- 1.1 In May 2015, the States of Jersey commissioned CIPFA Business - Finance Advisory (the commercial arm of the Chartered Institute of Public Finance and Accountancy) to support the work of the Corporate Services Scrutiny Panel in the Review of the draft proposed amendment to the Public Finances (Amendment No 3) (Jersey) Law as outlined in its Terms of Reference.
- 1.2 It should be noted that this report represents CIPFA Advisory's independent view, taking into account a range of evidence gathered throughout the review. The review was carried out to support the work of the Corporate Services Scrutiny Panel as part of the States of Jersey's internal scrutiny processes as co-ordinated by the Greffe.
- 1.3 The Review took place between April and May 2015. We based our assessment on a mix of evidence obtained through direct meetings with the Treasurer of the States, members of the Strategic Finance Team at the Department of Treasury and Resources, consultation with the Comptroller and Auditor General, members of the Corporate Services Scrutiny Panel and Document Review. This Report outlines our position to 15 May 2015.

Context of proposed amendment

- 1.4 The focus of the proposed amendment centres on Article 8A – Medium term financial plan (MTFP) and subsequent approval of certain net States expenditure. The proposed amendment allows for the introduction of the breakdown of expenditure beyond year 1 of the medium term financial plan (which is already required for annual budget setting) to be delivered through the option of the Minister "*coming back at a later date to add it to the plan.*"¹
- 1.5 'It' being the detail relating to the breakdown of expenditure.
- 1.6 The amendment also incorporated the obvious control that should the detail be added at a later date "*it must be lodged in sufficient time for it to be debated and approved by the States before the year starts.*"²

Medium Term Visibility/Transparency

- 1.7 The potential for running a four year MTFP based on only one year of detail and three years of control totals with no reasonable detail for these three subsequent years would negate the benefits of the MTFP and significantly reduce its utility. A key strength of an MTFP is the provision of enhanced stability and medium term visibility/transparency within the financial planning process cycle.

Review of Financial management – Comptroller & Auditor General

- 1.8 The Comptroller and Auditor General (C&AG) published her Review on Financial Management on 2 April 2015. The Report examines the MTFP. The C&AG observes that "*The MTFP is detailed. But the structure and content of the MTFP does not promote dynamic corporate management of finances*"³ Indeed, the context within which this observation has been made relates to the detailed MTFP which existed before the concept of potentially reducing the content of the MTFP to control

¹ Explanatory Note – Page 1 – Public Finances (Amendment of Law No.3) (Jersey) Regulations 201 -

² Explanatory Note – Page 1 – Public Finances (Amendment of Law No.3) (Jersey) Regulations 201

³ Review of Financial Management April 2015 - Comptroller & Auditor General – Page 23

totals for years 2 to 4 as introduced by the proposed amendment. Specifically in relation to the MTFP the C&AG acknowledges that :-

- *the compilation of the MTFP is not part of 'business as usual'. A more usual practice is that the MTFP is compiled, on a rolling basis, alongside an annual budget, setting out a projection (or range of projections) for future financial periods;*
- *there is a force for rigidity in resource allocation for the duration of the MTFP. As the MTFP establishes not only an overall resource envelope but also allocations to departments, it impedes adaptability and responsiveness, a significant disadvantage in a period of both retrenchment and reform...⁴*

- 1.9 A key recommendation from the C&AG's report on the MTFP is "Consider amending legislation to provide for a rolling MTFP."⁵ This recommendation is consistent with our approach as contained within our initial assessment of the MTFP – September 2012 where we recommend that:-

In accordance with good practice the MTFP should be fully "rolling" across a minimum of 3 years and subject to continuous revision.⁶

- 1.10 In our previous MTFP scrutiny work we also recommended that a "*..Medium Term approach of three years should be extended within an acknowledged Medium Term of 4 to 5 years in respect of the formulation of financial strategy.*"⁷ As well as providing some 10 recommendations for further improvement, we concluded that in "*terms of the primary objective, scope and detailed workings of the MTFP, the States of Jersey would certainly be regarded as a good example to follow.*"⁸ Of course, it was not within contemplation that the positive attributes of the MTFP could be reduced to the potential of only containing one year of detail and the remaining years as indicative control totals as introduced by the potential amendment.

Medium Term Financial Plan – 2016-2019

- 1.11 It is understood that the Council of Ministers and the Corporate Management Board recently met to hold a joint workshop on the latest income forecasts and likely impact upon the 2016-19 MTFP. A headline shortfall in income estimated to pitch within a range of £120-£150m was highlighted and it was agreed that "*..looking across the organisation – can achieve the level of savings required.*"⁹ Success in delivering the savings equivalent to the expected shortfall will require transformational change of a considerable magnitude.
- 1.12 Transformational change and radical cross cutting re-engineering of services will require to be achieved in the medium term and it is understood that the workshop attendees acknowledged that both take up of a mix of voluntary and compulsory redundancies will be needed to secure some £60m savings on people costs. The resulting Public Sector Reform Programme has been given priority and we understand that service change re-engineering proposals including associated costing on re-provisioning is currently underway.

Rationale for Proposed Amendment

⁴ Review of Financial Management April 2015 - Comptroller & Auditor General – Page 23

⁵ Review of Financial Management April 2015 - Comptroller & Auditor General – Page 23

⁶ Review of Medium Term Financial Plan September 2012 – CIPFA – Page 8

⁷ Review of Medium Term Financial Plan September 2012 – CIPFA – Page 15

⁸ Review of Medium Term Financial Plan September 2012 – CIPFA – Page 7

⁹ Council of Ministers – Outcomes & Actions from MTFP Workshop – 19 March 2015 – Appendix A

- 1.13 From interview evidence we are led to believe that the level of transformation change is so significant that at the point in time that the MTFP is expected to be lodged, that the planning work to restructure services will be insufficiently advanced to enable meaningful workings on revised departmental estimates reflecting service re-design and revised departmental structures to be introduced to a recalibrated MTFP.
- 1.14 This need to reflect the immediate estimate construction challenges is contained within the Council of Minister's Outcomes and Actions from the MTFP 2016-19 Workshop. Point 15 on Action Points acknowledges the need to:-
- "...urgently consider changes to the Public Finances Law to accommodate requirements of MTFP2."¹⁰*
- 1.15 It has been suggested to us that the amendment will provide vital "breathing space" to allow the construction of robust departmental estimates reconfigured for both service delivery change structures and critical consequential cost reductions.
- 1.16 Whilst such an approach appears to be expedient we would be concerned that the unintended consequences of the amendment may prevent adequate scrutiny of financial strategy.

Proposed Improvements

- 1.17 In order to improve visibility on the construction and on-going development of the MTFP, Treasury and Resources have agreed to the following:-
- Rolling MTFP – running in parallel to the fixed term 'legal' MTFP will be a rolling MTFP model which will be subject to continuous recalibration. This will better meet with good practice and also positively contribute towards the stability of the Budget setting process; and
 - Transparency – outwith the formal annual fiscal updates Treasury and Resources are committed to updating members on the MTFP on a regular in-year basis through briefings including the Council of Ministers briefings.

Retrograde Step

- 1.18 From the context of good practice the amendment is seen as a retrograde step and has the potential for the MTFP to be totally inadequate in terms of being Jersey's effective platform for robust medium term financial planning and strategy formulation.
- We do recognise the argument of expediency which has been rendered to underpin the amendment. However, particularly reflecting the gravity of the situation now faced by the States, we would recommend that such an amendment is strictly time limited.
- 1.19 Given the immediacy/extent of the deteriorating financial position and regardless of the complexity associated with a reshaping of services, it would not be unreasonable to expect indicative revised structures and service costs (subject to acceptable levels of stress testing and confidence levels) to be available within a realistic timescale and be applied to a recalibrated MTFP for 2016-19. Given the significance of the situation a period of 6 months for the production of detailed

¹⁰ Council of Ministers – Outcomes & Actions from MTFP Workshop – 19 March 2015 – Appendix A Point 15

estimates should be considered to be achievable subject to dedicated resources being made available.

Codification

- 1.20 We are aware that time limitations or 'sunset clauses' pose particular difficulties for legal draftsmen in interposing such requirements within statute or regulations. Indeed, we would question the rationale for the level of detail on expenditure to be prescribed within Section 8A (1) and (2) of the Public Finances (Amendment of Law No 2) (Jersey) Regulation 201- Medium Term Financial plan – subsequent approval of certain net States expenditure.
- 1.21 The 'vagueness' and lack of precision inherent within the current proposed amendment does not make 'good law' as it is:-
- Imprecise – the definition of 'Detailed' can be subjective;
 - Lacks legal certainty; and
 - Impossible to enforce.
- 1.22 It would be our considered view that the level of detail incorporated within the MTFP should be a matter of professional practice and judgment and should not be codified. The Treasurer and his CCAB/CIMA qualified staff are required to abide by codes of professional competency as prescribed by their respective Chartered Accountancy bodies. This includes for the application of prevailing good practice. CIPFA's Statement on the Role of the Chief Finance Officer which incorporates compliance with the IFAC¹¹ Code of Ethics for Professional Accountants. The fundamental principles set out in the Code are integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.
- 1.23 We believe that the aims of Article 8A (1) and (2) can equally be achieved without the rigidity and inflexibility inherent with codification. In essence it would be our position that the Treasurer could not adequately discharge his professional competency obligations without ensuring the required detail that is foundational to financial planning is made available to members in a way and at a time that allows adequate scrutiny and informed decision making.

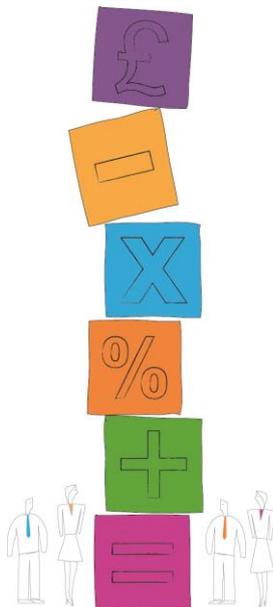
Time limited further amendment

- 1.24 We would fully endorse a further change to the amendment to incorporate a time limit. However, this would not preclude full detail being incorporated and available within subsequent years covering the entire MTFP period. The endorsement of the amendment albeit with a strict time limit would be a logical step to dealing with a 'one off' situation arising out of practical expediency. However this endorsement would be conditional upon whether:-
- There was material uncertainty over the finalisation of revised detailed service redesign estimates within the next 6 months; and
 - Prevailing legal advice may preclude a time limit being imposed on the amendment.

¹¹ International Federation of Accountants

Conclusion

- 1.25 In conclusion, we would be of the view that the statutory intention or ambit of Article 8A (1) and (2) could be better applied through professional practice obligations rather than prescribed within Public Finance Law. The proposed amendment highlights the inherent inflexibility and potential problems where a short term solution is needed.
- 1.26 From the context of good practice the amendment is seen as a retrograde step and has the potential for the MTFP to be totally inadequate in terms of being Jersey's effective platform for robust medium term financial planning and strategy formulation. We do, however, recognise the argument of expediency which has been the foundational driver for the amendment.
- 1.27 Reflecting the 'one off' situation acceptance of the amendment should be conditional upon a strict time limit being incorporated as an amendment to the amendment. Given the challenges posed by the income shortfall/service pressures and gravity of the situation now faced, a period of six months would not be considered unreasonable for 'workable' estimates to be constructed on the required transformational change.
- 1.28 In the context of good practice and in terms of scrutiny and transparency we welcome the proposals from Treasury and Resources to run, in parallel with the fixed MTFP, a rolling MTFP consistent with the C&AG's recent recommendation and our previous MTFP recommendations.



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