

STATES OF JERSEY



DRAFT PUBLIC FINANCES (JERSEY) LAW 201- (P.28/2019): COMMENTS

Presented to the States on 3rd June 2019
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

1. The Draft Public Finances (Jersey) Law 201- ([P.28/2019](#)) debate was started by the States Assembly on 30th April 2019. At this time, the Corporate Services Scrutiny Panel called in the draft Law for further review under Standing Order 72.
2. This review was initially undertaken under the full Corporate Services Scrutiny Panel; however, it was decided that there was a need for a Sub-Panel to give the issue greater focus. As such, the Public Finances Law Sub-Panel was formed in April 2019. The members of the Sub-Panel were Senators K.L. Moore and S.C. Ferguson, Connétable R. Vibert of St. Peter and Deputy S.M. Wickenden of St. Helier. In accordance with Standing Orders and the Scrutiny Proceedings Code of Practice, these Comments are presented to the States Assembly by the main Panel, on behalf of its Sub-Panel.

Public Finances Law Sub-Panel

Introduction

3. Our work builds on that of the Corporate Services Scrutiny Panel, which issued a Comments paper on its work leading up to the 1st Reading of the draft Law ([P.28/2019 Com.](#)) on 29th April 2019¹. This Comments paper sums up the work of both the Corporate Services Scrutiny Panel and the Public Finances Law Sub-Panel.
4. We understand that the case for change and the recommended approach for the draft Law is based on the outcome of work undertaken by KPMG.²
5. The draft Law aims to be less prescriptive, working in tandem with a Public Finances Manual, which will be a public document and contain detailed guidance for civil servants on administering the States' finances. The draft Law sets the budget framework, shifting from a 4 year Medium Term Financial Plan to the Government Plan that provides an annual budget and a subsequent 3 year rolling budget estimate. This aims to provide more realistic budgeting by the States and not lock down expenditure too far in advance.³

The Review

6. We engaged the Chartered Institute of Public Finance and Accountancy ("CIPFA") as an expert adviser to provide a desktop review of the draft Law.⁴ We also wrote to a number of stakeholders to invite submissions, which

¹ <https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019com.pdf>

² <https://statesassembly.gov.je/scrutinyreviewtranscripts/2019/transcript%20-%20public%20finances%20law%20-%20minister%20for%20treasury%20and%20resources%20-%2028%20march%202019.pdf>

³ <https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019.pdf>

⁴ <https://statesassembly.gov.je/scrutinyreviewresearches/2019/research%20-%20cipfa%20report%20on%20public%20finances%20law%20-%2022%20march%202019.pdf>

included the Comptroller and Auditor General (“C&AG”)⁵, and received submissions from Jersey Overseas Aid, Jersey Post, Jersey Telecom, the Official Analyst and Andium Homes.

7. The main theme of these submissions was concern that the draft Law would give the Principal Accountable Officer greater powers over arm’s-length bodies, potentially impacting their efficiency, and the impact of the draft Law on non-ministerial bodies.
8. While we acknowledge the concerns relating to arm’s-length bodies, we did not feel that we were able to improve upon the current draft Law in this regard in the timeframe allowed. However, we have suggested amendments in the area of non-ministerial bodies (see below).

Amendments

9. Whilst broadly supportive of the draft Law, both CIPFA and the C&AG highlighted a number of concerns that we subsequently explored further, leading to us lodge 4 proposed amendments (which between them contained a total of 14 individual amendments) to the draft Law (see [P.28/2019 Amd.](#), [P.28/2019 Amd.\(2\)](#), [P.28/2019 Amd.\(3\)](#) and [P.28/2019 Amd.\(5\)](#)).
10. The Panel’s amendments are aimed at addressing the concerns raised by CIPFA and the C&AG, as well as other matters of concern that we identified through our own review of the draft Law.
11. Initially, the Panel was going to propose a total of 17 individual amendments. However, through discussions⁶ with the Minister for Treasury and Resources and her officials, it was decided that some of these amendments either were not needed, or would be more appropriate to be proposed by the Minister. For example, an agreement was reached on the language of Article 13(2), where the Minister agreed to remove the obligation to consult with her on amendments to the Government Plan.

Head of Financial Governance:

... having listened to the debate the first time around and the comments from Members at the briefing, I think the Minister and Treasurer have taken the view that there might be some practical difficulties that perhaps we had not envisaged. The intention was not to make it difficult to bring amendments. So this is listening to those practical difficulties. The amendment has yet to be agreed, potentially at the end of this week. But it is more likely to be along the lines of asking anyone bringing amendments to include or to have regard to that but not specifically to consult the Minister because that seems to be the only one that caused the practical difficulty.

⁵ <https://statesassembly.gov.je/scrutinyreviewresearches/2019/research%20-%20cag%20comments%20on%20public%20finances%20law%20-%204%20march%202019.pdf>

⁶ <https://statesassembly.gov.je/scrutinyreviewtranscripts/2019/transcript%20-%20public%20finances%20law%20-%2020minister%20for%20treasury%20and%20resources%20-%2014%20may%202019.pdf>

12. Therefore, the proposed amendments lodged by the Panel are grouped in 4 key areas of concern –
1. Government Plan
 2. Borrowing and Financing
 3. Administration
 4. Non-Ministerial Bodies.

Key Areas of Concern

*Government Plan*⁷

13. The Panel was not comfortable with the Minister being able to choose whether to take the sustainable well-being of Jersey inhabitants into account in a Government Plan, and have sought to amend the Law to make this compulsory.
14. We have also lodged an amendment that enables the States to approve a Government Plan that would authorise financing, or the transfer of money from one States fund to another, even if the Minister does not consent. The Minister noted that she agrees with this amendment at a Hearing with the Panel on 14th May 2019⁸.
15. Other, more minor, changes to the Government Plan process are also contained within this set of amendments.

*Borrowing and Financing*⁹

16. A major concern of ours in relation to this area is the removal of borrowing limits in the draft Law. As such, we are recommending re-inserting the provision from the current Law that financing must not exceed the States' estimated income from taxes and duties in the previous financial year.

The quote below explains the rationale for removing this limit –

The Connétable of St. Martin:

The current Law has a limit on the amount that the States could borrow, and this seems to be removed.

Treasurer of the States:

Yes. I think, as background, Rob has a good rationale here and I will follow up on that.

Partner, KPMG:

Previously there were limits and some of the territories do have limits. What seems to happen is that the limits become perceived as something that is sustainable for the jurisdiction and it becomes seen as a safe harbour.¹⁰

⁷ <https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd.pdf>

⁸ See footnote 6

⁹ [https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd\(5\).pdf](https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd(5).pdf)

¹⁰ See footnote 2

CIPFA raised a specific concern about the removal of this limit –

With the removal of the ceiling fixed to States total net annual income being removed, it may be appropriate to ensure that affordability testing and approval on overall borrowing is provided in a way that clearly acts as a control on overall borrowing. The explanatory notes covering the narrative on articles 26 to 29 do not adequately clarify how control could be achieved if the borrowing implications were not set out clearly within any proposed Government Plan.¹¹

17. Similar to the above, we have lodged an amendment that the current limit on borrowing from overdrafts is set at 25% of the States' income from taxes in the previous year, which is the limit set in Regulations under the current Public Finances Law.¹²
18. The Panel also believes that a requirement is needed in the Law for the Minister to publish a policy that will set the framework for the Council of Ministers' plans for financing. This was recommended by CIPFA –

On borrowing it is noted that the overall parameter of borrowing up to a level equal to States total annual income has been removed. Although it is asserted that affordability will be tested and highlighted within the formulation of the Government Plan, we would recommend that the States has an overall framework for borrowing that transparently shows that affordability is fully considered within a framework similar to CIPFA's Prudential Code – in that an indicator or a set of indicators be set to inform the decision making process on what level of debt is affordable.¹³

Administration¹⁴

19. The first proposed change in this areas is to reinstate the provision for the Minister to publish a policy on how monies in the “reserve” (i.e. contingency funds) will be allocated. The current policy sets out the terms of reference of the Investment Appraisal Board. The draft Law includes a restriction that allocations from the reserve can only be for the current year. We considered strengthening this further to prevent any allocations that would commit the States to future expenditure. However, having taken evidence from the Treasurer of the States, we decided that this would be too restrictive.
20. We have also proposed amending the Public Finances Manual, based on recommendations from CIPFA.
21. CIPFA emphasized the importance of the Manual –

The PFM will be a key referencing point for effective financial management. A well-constructed manual will be critical to the success of revised arrangements including effective financial performance

¹¹ See footnote 4

¹² https://www.jerseylaw.je/laws/revised/Pages/24.900.81.aspx#_Toc1404612

¹³ CIPFA report p.6

¹⁴ [https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd\(2\).pdf](https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd(2).pdf)

*management scrutiny and requirements around business case construction, scrutiny affordability testing, etc. More clarity on the contents is urgently required.*¹⁵

22. CIPFA also indicated the need for the Manual to be subject to greater scrutiny: *“Given the expectations around the central role of the PFM it would be our view that the PFM should be subject to wider member scrutiny and approval.”*¹⁶ The Panel’s amendment will provide oversight of the Manual by the Public Accounts Committee, thereby creating a link between the Manual and States Members, while still allowing flexibility to continually update and improve the Manual.
23. The C&AG welcomed the introduction of a Public Finances Manual, but highlighted a lack of detail in the Law about the scope of the Manual. We have brought an amendment to ensure that the Manual *“must include directions and information with respect to the proper administration of this Law and of the public finances in Jersey”*. The Panel has also proposed amendments in relation to accounting and internal audit standards, to address concerns raised by the C&AG.
24. We were also aware of both the CIPFA and C&AG recommendation for a reporting line for the internal audit function directly to the Principal Accountable Officer. We were told: *“It will be made very clear in the PFM that the Director of Risk and Audit will have lines of reporting into the Minister, PAO, Chair of the Risk & Audit Committee and the Treasurer”*.¹⁷
25. We would have preferred to see this provided for in statute, but designing a suitable system in the time available was outside the scope of our work. As an interim measure and to place a greater emphasis on the importance of internal audit in the Law, we have taken the view that the *status quo* should be maintained, with the statutory requirement for a Chief Internal Auditor to be appointed. We would recommend that the Minister give further consideration to statutory provision for an internal audit function with appropriate reporting lines, as recommended by CIPFA and the C&AG.
26. The draft Law widens the Treasurer’s powers to delegate his functions to any States employee. We were concerned that this could potentially include delegating to the Principal Accountable Officer (“PAO”). We were told that it was unlikely that this would ever happen in practice;¹⁸ however, we have brought an amendment to the draft Law to expressly prevent this.
27. The Machinery of Government changes approved in 2018 ([see P.1/2018](#)) have been continued in the current Law, and refined in some places. Article 41 deals with the accountability of the PAO and accountable officers. This language has been refined from the version approved last year. We preferred the wording of P.1/2018, which expressly provided for the PAO to be accountable to the Council of Ministers, and have lodged an amendment to that effect.

¹⁵ CIPFA report p.3

¹⁶ CIPFA report p.4

¹⁷ Treasury response to C&AG comments

¹⁸ Public Hearing with the Minister for Treasury and Resources, 14th May 2019

28. We received representations from a number of States-owned companies¹⁹ regarding the changes to Article 39, which make the PAO responsible for the “propriety and regularity” of these companies (referred to in the draft Law as “specified organisations”). Andium told us –

We note the comments of our colleagues at Jersey Telecom and Jersey Post and support the request that the Law should make unequivocally clear how conflicts between the requirements upon Directors under the Companies Law can be squared with the role of Accountable Officer.

29. We recommend that the Minister reviews this part of the Law and discusses with the States-owned companies how their concerns can be addressed, possibly through a future update to the Law.
30. On a wider level, we note the Comptroller and Auditor General’s recent report on the States as Shareholder ([R.25/2019](#)), which drew attention to the importance of establishing the reasons for ownership for each of the States-owned companies, and also the lack of progress in reviewing the Memorandum of Understanding with each company. As the States (and the taxpayer) ultimately carries the risk for these companies, it is important that the Minister for Treasury and Resources, and her ministerial colleagues, ensure that all of the C&AG’s recommendations are implemented in a timely manner.

*Non-Ministerial bodies*²⁰

31. The draft Law contains a list of non-ministerial States bodies. When we compared the new Law to the old, we noted that 3 non-ministerial bodies had been removed (the Office of the Dean, the Data Protection Authority, and the Official Analyst). We wrote to these 3 States bodies to invite them to comment on this.
32. We did not receive responses from the Office of the Dean or the Data Protection Authority, which we took to mean that they did not have concerns about the proposals. The Official Analyst, however, wrote to us to express concern about the planned move of his office to be part of the Justice and Home Affairs Department in the new ‘OneGov’ structure. The concern was that this would result in a loss of independence for the role of the Official Analyst. We took a view that the current status of this office as a non-ministerial States body should be maintained, until such time as a better alternative approach could be found and brought back to the States which would maintain the independence of the Official Analyst.

Consequential amendments

33. The C&AG raised concerns with us that some of the consequential amendments to the [Comptroller and Auditor General \(Jersey\) Law 2014](#) (set out in Schedule 6 to the draft Law) went beyond a consequential amendment and would have “significant consequences”²¹. We welcome the amendments lodged by the Minister for Treasury and Resources to address these concerns.

¹⁹ [Jersey Post](#), [JT](#) and Andium

²⁰ [https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd\(3\).pdf](https://statesassembly.gov.je/assemblypropositions/2019/p.28-2019amd(3).pdf)

²¹ C&AG comments on the draft Law

Conclusion

34. The draft Law represents a significant change to the way Jersey's public finances are organised and controlled. It has been a challenge to review such a complex piece of legislation and to identify areas where further work was required.
35. We reiterate the points made in the Panel's previous Comments paper that it would have been helpful to have been provided with a comparison document between the current Law and the new draft Law. We also asked to be provided with the legislative drafting instructions and, in the absence of these, minutes from the meetings held with the legislative drafters to develop the draft Law. We were informed that neither of these existed.
36. We note that the introduction section of the report accompanying the draft Law makes reference to the Machinery of Government changes approved by the States Assembly in 2018 ([P.1/2018](#)). It should be noted that P.1/2018 anticipated that changes to the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) "would need to be considered at the same time". We would draw Members' attention to the fact that these changes have not yet been brought forward.²²
37. We would like to acknowledge the co-operation we received from the Minister for Treasury and Resources during the process of identifying amendments to the draft Law. Following our second hearing with the Minister,²³ information-sharing and negotiation took place that reduced the number of amendments to be lodged by both the Minister and the Panel, leading to a more efficient process overall.
38. We believe the amendments we have proposed are sensible changes to ensure that the right balance of power is maintained between the Minister and the States Assembly.

²² The Panel does, however, note that plans have been put in place – see [R.35/2019 Res.](#) (Action Plan, R1) presented to the States on 28th May 2019 by the Public Accounts Committee

²³ See footnote 3