

31 May 2024

Sent by email only to: M.Magalhaes@gov.je for delivery to Deputy Helen Miles

Deputy Helen Miles
Chair - Corporate Services Scrutiny Panel
Scrutiny Office, States Greffe
Morier House, St. Helier
Jersey JE1 1DD

Dear Deputy Helen Miles,

Re: Statistics Users Group – Response to your letter dated 17 May 2024

We are pleased to share our views on Proposition [P.29/2024] - Draft Statistics and Census (Jersey) Amendment Law 202 (the “Draft Law”) which proposes to amend the Statistics and Census (Jersey) Law 2018 (the “Current Law”).

At the outset, please note that the Statistics Users Group (SUG) is strongly supportive of the intended aims and most of the proposed amendments in the Draft Law. In particular, we are strongly supportive of the following changes:

- Alignment of the definition of “official statistics” with the UN definition
- Establishing a core group of official statistics, to be known as Tier 1 statistics, that are protected and required to be produced by Statistics Jersey/government departments/other public authorities on a regular schedule with sufficient funding
- Establishing the stand-alone independent role of a Chief Statistician and removing the current accountability to a government department by dropping “Director of Statistics and Analytics” from the formal title
- Establishing the Chief Statistician as the professional head of all statistics producers across all public authorities, supported by the Office of the Chief Statistician (currently known as Statistics Jersey)
- Acknowledgment at the policy level of the role of the Statistics Council (currently known as the SUG) as the independent “watchdog” [see paragraph 82 of the Policy Report] to ensure independent oversight and scrutiny of a decentralised operating model for Jersey’s statistical system, comprising the Chief Statistician, Statistics Jersey and all public authorities that produce Tier 1 statistics

A tremendous amount of good thinking and work has gone into the Draft Law. We therefore urge the Panel to receive our following observations with the ultimate aim of establishing a statistical system that will be respected on the global stage and meet the critical need for impartial, timely and comprehensive statistics to support public policy decision-making for Jersey. We have focussed on identifying a few specific areas where the Draft Law might benefit from some minor adjustments to continue to build public trust and confidence in the independence, governance and functionality of Jersey’s statistical system as a whole. We have not attempted to propose specific amendments to the language in the Draft Law and have, instead, adhered to the principle of drawing your attention to key areas as detailed below where we also address the specific points noted in your letter. We are open to further discussion and/or reviewing any proposed amendments the Panel might wish to propose if that would be deemed helpful.

1. Government's engagement with the SUG while developing the draft Law

- The Steering Group discussions and supporting research, largely provided by the Chief Statistician, to set the vision and scope of the Draft Law were helpful though very time and resource intensive for SUG members who all serve on a voluntary basis
- More engagement and consultation with SUG on the preparation of law drafting instructions would have been helpful and might have shortened the overall timeline as SUG was only presented with an advanced draft and did not have sight of nor involvement in the creation of the initial instructions

2. The proposals to replace the SUG with the Statistics Council

- Changing the name of SUG to the Statistics Council is helpful to convey the fact that this independent statutory body has oversight, advisory, consultation and reporting responsibilities that extend beyond the usual mandate of a user group
- The requirement for the Chief Minister to provide sufficient resources for the new Statistics Council to fulfil its responsibilities is critical to its functioning
- A move towards engaging a full-time supporting officer is likely required for the Statistics Council to fulfil its responsibilities and expanded reporting and engagement requirements under the Draft Law
- The requirement for the Minister in Article 7D(1) to prepare specific Rules of Conduct for members of the Statistics Council to present to the States sets an unusual precedent for a single entity and is not necessary in our view – a more unified approach for all ministerial appointees to conduct themselves in accordance with a more general code of conduct as is already in place in the UK and other jurisdictions would serve the same purpose, reduce administrative burdens and be preferable

3. The role of the Statistics Council

- Overall, the Draft Law reduces the oversight function and scrutiny authority of the SUG in the Current Law while adding formal engagement and representation responsibilities for statistics users
- Under Article 5 of the Current Law, the SUG is “independent of government and has **the primary function of overseeing the quality, relevance and integrity of statistics compiled by or on behalf of a public authority**” as well as “review and comment upon” public authority statistics, “make such recommendations to the Minister” as SUG considers appropriate, and publish a Code of Practice for official statistics
- Under Article 6 of the Current Law, SUG must also monitor compliance with the Code of Practice
- The Current Law thus reflects a quasi-regulatory role for SUG where it is the independent standard setter (Code of Practice) and also the entity that monitors the producers of statistics (Chief Statistician and Statistics Jersey) for compliance – a good governance structure without the costs needed for formal regulation
- The Draft Law transfers SUG's current independent standard setting and monitoring responsibilities to the Chief Statistician who is not required to consult with the Statistics Council except in specific limited circumstances
- This weakens the overall governance of the statistical system by limiting the independent oversight function, leaving the Statistics Council with primarily nuclear options (annual report, Chief Minister, States Assembly) to raise concerns
- One suggestion to address this governance weakness is to restore, or include broader consultation requirements, in the Draft Law for certain key standard setting and oversight activities

4. Whether the Draft Law will deliver on its intended aims to bring Jersey's statistical system in line with international best practice, with consideration for functionality, governance and the independence of Jersey's statistical system

- The Draft Law largely delivers on the intended aims, noting the following areas where further improvements may be desired to fully deliver on the intended aims:
 - In the UK, the oversight and regulatory elements are included within the statistical system – in Jersey's case, the Draft Law should accordingly ensure that the Statistics Council is considered to be a key element of Jersey's statistical system and not excluded from it [see paragraph 82 of the Policy Report]
 - To further strengthen independence in the production of core Tier 1 statistics, the Draft Law should ensure that the Chief Statistician, following consultation with the Statistics Council, has the authority to compel the minister responsible for the relevant public authority to collect data and produce a Tier 1 statistic – the current Draft Law allows the minister to refuse the Chief Statistician's direction without publishing written justification for the decision [see Article 7J(3) of the Draft Law]
 - Address the additional governance and regulatory points as described in Sections 2, 3, 5 and 6

5. The chosen model to establish the Chief Statistician as a corporation sole, including its effectiveness or otherwise

- We understand that the choice of the corporation sole is a policy decision that lies solely within government's discretion
- While this model may reduce complexity, all strategic and executive authority is concentrated in a single individual which may give rise to concerns about accountability, transparency and oversight that, in a more standard body corporate model, would be provided by an independent board of directors
- An independent board of directors would also provide more transparent checks and balances on the organisational strategy, priorities and performance of the office holder without interfering with the professional independence and judgment of the office holder
- In summary, the body corporate model is more robust from a governance perspective but does require more resource to implement effectively – if the additional resource is not deemed to be justifiable, a number of the key limitations of the corporation sole model can be effectively addressed by addressing the observations noted in Sections 2, 3, 4 and 6

6. The regulative elements, including the decision to not regulate statistics through the adoption of a regulatory authority

- We understand that the creation of a regulatory authority as the UK has done requires a significant additional and ongoing commitment of resources that may prove burdensome
- As also noted in Section 3, a key consideration for the robustness of any regulatory framework is to ensure that there is independence between the standard setter, the monitoring entity and those who are required to comply
- Article 7I of the Draft Law might be strengthened in this respect by requiring:
 - the Chief Statistician to seek approval from the Statistics Council for the Code of Practice and any proposed changes to it so that the standard setter is not appearing to “mark their own homework”

7. Whether any gaps are evident in the proposals

- A key gap is the requirement for all government departments and public authorities to cooperate and prioritise the collection of appropriate data for the production of core Tier 1 statistics – too much time is currently spent on the negotiation of priorities and drafting of data sharing agreements, putting Jersey as a whole at risk of not being able to have access to key data sets and statistics to make more timely and well-informed public policy decisions

8. Transition Arrangements

We added this section to bring your attention to two points:

- 1) Under Paragraph 1(3) of Schedule 1 to the Draft Law, the maximum term length for an individual to serve as Chief Statistician is 9 years. We note that the specific wording of the transition arrangements in Article 17 of the Draft Law will result in a tenure exceeding 9 years for the incumbent Chief Statistician. If the intention is to ensure that the incumbent continues on a permanent basis and is not limited to a specific term, we believe it is important to be transparent about this intention. For the avoidance of any doubt, SUG is supportive of the incumbent's continuation in the role.
- 2) The Draft Law is currently expected to be effective immediately upon its approval. Although work has already been started to define a list of qualifying Tier 1 statistics produced by Statistics Jersey, this work would also need to be done by other public authorities and will require significant engagement and resource to achieve. Consideration of a defined transition period to allow public authorities to plan for this work and be able to demonstrate compliance by a certain point may be helpful.

In closing, we wish to reiterate our strong support for the intended aims and most of the proposed amendments in the Draft Law. We would not support any delay to the current timeline and will be available for any further discussion prior to the June 25th debate if helpful.

We understand that our submission will be published on the States Assembly website to inform the work of your Panel and are content with this process.

Thank you for providing us with the opportunity to share our views.

Kind regards,

Gailina Liew
Chair, Statistics Users Group