

STATES OF JERSEY

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DRAFT PUBLIC FINANCES (JERSEY) LAW 200- (P.180/2004): AMENDMENTS

**Lodged au Greffe on 14th December 2004
by the Privileges and Procedures Committee**

STATES GREFFE

PAGE 27, IMMEDIATELY AFTER ARTICLE 9 –

Insert the following Article –

“10 Estimates for the States Assembly and its services

- (1) In this Article –
 - “chairman” means the chairman of the Privileges and Procedures Committee established by standing orders in accordance with Article 47(2) of the States of Jersey Law 200;
 - “services”, in respect of the States Assembly, means –
 - (a) committees of the States established by standing orders;
 - (b) Scrutiny Panels established by standing orders;
 - (c) the States Greffe.
- (2) When called upon to do so by the Minister, the chairman must provide the Minister with the estimates specified in paragraph (3).
- (3) Those estimates are estimates in respect of the following financial year of –
 - (a) the revenue expenditure and any income of the States Assembly and its services in that year;
 - (b) the total cost of any capital project that the States Assembly and its services are scheduled to start or continue in that year for which there exists no head of expenditure that authorizes sufficient funding to complete the project; and
 - (c) any money that may arise from the disposal by the States Assembly and its services of assets in that year.
- (4) The Minister must, when calling for estimates in accordance with paragraph (2) specify –
 - (a) the detail and form in which the estimates are to be provided; and
 - (b) the date by which they must be provided.
- (5) The Minister may, in any particular case, call for estimates for such other period as the Minister may specify.
- (6) The chairman must, before submitting the estimates for a financial year to the Minister –
 - (a) consult the Minister on the proposed budgetary policy of the Council of Minister for that financial year; and
 - (b) refer the estimates to the Comptroller and Auditor General for any comment.
- (7) When submitting the estimates to the Minister they must be accompanied by any comments made in respect of them by the Comptroller and Auditor General.
- (8) The estimates and any comments of the Comptroller and Auditor General must be incorporated into the draft annual business plan to be lodged in accordance with Article 11(1)^[*]
- (9) Nothing in this Article is to be construed as prohibiting the Minister or any other member of the States from lodging an amendment in accordance with Article 11(4)^[*] to amend an annual business plan in so far as it relates to any estimates provided in accordance with this Article.”.

[* These references are to Article 10 of the draft Law before any amendment is made.]

Renumber subsequent Articles and correct cross-references.

PAGE 58, SCHEDULE –

Omit the following –

“Committees of the States
Scrutiny panels established by Standing Orders
States Greffe”.

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

The Privileges and Procedures Committee first notified the Finance and Economics Committee in August 2003 that it was concerned about the provisions in the draft Public Finances (Jersey) Law 200- concerning the method of allocation of the budget of the States Assembly including, in particular, the future Scrutiny Panels. The Finance and Economics Committee considered the comments of PPC on a number of issues relating to early drafts of the Law and, although there was agreement on many points, the two Committees could not come to any agreement on this point which is therefore submitted as an amendment to allow the States to consider this matter.

As presented by the Finance and Economics Committee, Article 8(1)(b) of the draft Law allows the future Minister for Finance and Resources to decide who should provide the estimates for the States Assembly and its Committees and Panels, which are included in the 'non-ministerial States funded bodies' listed in the Schedule to the Law. In the context of this amendment reference to the estimates of the States Assembly means the full running costs of the Assembly as the Island's legislature including costs of members' services and remuneration, future Scrutiny Panels and the Public Accounts Committee, the future Privileges and Procedures Committee itself, membership of inter-parliamentary bodies such as the CPA and the APF, the States Greffe, and any other direct costs of the Assembly.

Under the draft Law as proposed by the Finance and Economics Committee, once the estimates for the States Assembly have been provided in the format required by the Minister, the Council of Ministers is able, under the provisions of Article 9(1), to amend those estimates as it sees fit. In practice this allows the Council of Ministers (the Executive side of government) to decide how much expenditure should be recommended for the States Assembly budget in the Annual Business Plan. The only safeguard is found in Article 9(3) which provides that, if the amount submitted is varied, a note to that effect must be included in the Annual Business Plan.

The introduction of ministerial government will, for the first time in Jersey, lead to a clear separation between the Executive side of government and the Assembly as the Island's legislature, and the PPC believes that the legislation being put in place to introduce the new system of government must facilitate this separation. The Committee has examined the situation in other jurisdictions including small non-party legislatures with minority Executives, and some information on this point is included in the Appendix for information. Having regard to the importance of the independence and autonomy of Jersey's parliamentary assembly, the PPC believes that it is totally inappropriate that the Council of Ministers should be able to have the level of influence in the preparation of the estimates of the Assembly suggested by the draft Law as presented. The Committee would remind members that the concept of an independent budget process for the scrutiny function in particular was referred to during the main 'Clothier' debate in September 2001 when Senator Walker, then President of the Finance and Economics Committee stated –

“The system simply cannot function without scrutiny – it is, it provides the checks and balances – without scrutiny it is lopsided – there would be too much power with the Council of Ministers, but scrutiny is a vital part of the process. It is impossible to separate it from a ministerial system – one cannot go ahead without the other and I know this House, if anyone was fool enough to suggest it, I know this House would quickly reject any such stupid notion. And scrutiny, when this House decides how many scrutiny committees it wants, how they are going to be structured, the scrutiny process will then be resourced to the level it needs to function properly and effectively. And as I've said the system cannot operate without an effective scrutiny process – it's quite impossible and what I have in mind – and this is my own idea at the moment inspired by the Clerk from the House of Commons who was over here last week talking to us – is an independent budget for the scrutiny process administered by the scrutiny committees or the Chairman of the scrutiny committees themselves.”

The PPC accepts that the final decision on the amounts to be allocated to each ministerial department and non-ministerial body will always rest with States members who will be able to accept, amend, or reject any part of the estimates included in the Annual Business Plan when it is debated by the States. Nevertheless it is undoubtedly the case that it may be difficult to amend the final Plan once it has been finalised by the Council of Ministers. As often happens at present with the Resource Plan and the Budget, the future Plan will undoubtedly be portrayed by the Council of Ministers as a 'package', put together after lengthy discussion and prioritisation processes, which will be hard to challenge. For this reason the Committee believes that the estimates of the Assembly should be

included without amendment in the Annual Business Plan as submitted to the Minister so that there can be no possible interference from the Council of Ministers before the States debate. Although the estimates will be able to be adopted, amended or rejected by members irrespective of the original figure in the Annual Business Plan, the PPC believes that a proper separation between the Executive and the legislature requires that the Council of Ministers should not be able to change the figures in advance. The PPC believes that it would be particularly inappropriate for the Council of Ministers to be able to suggest a reduction in the budget of the scrutiny function which is being set up for the very purpose of scrutinising the work of the Executive. It is possible to envisage a situation where the Council could be concerned about the effectiveness of the Panels in criticising the activities of the Executive and seek to curtail the work of scrutiny by suggesting a budget reduction.

When considering how to put forward this amendment the PPC considered carefully what safeguards were needed if the Assembly budget was to be treated in the way proposed. It would clearly be quite inappropriate for the proposed provisions to be used as a way of trying to obtain excessive budgets for these areas to the detriment of other essential public services. If the amendment is adopted there will therefore be a number of significant safeguards as follows –

- the future Privileges and Procedures Committee will, because of the requirements of Article 47(2) of the draft States of Jersey Law 200- as approved by the States, be a mixture of Executive and non-Executive members. It is intended that it will be very much a Committee that can represent all shades of opinion in the Assembly and it will therefore be able to produce these estimates having taken account of the views of all members of the States. It is important to point out that this amendment is not intended to allow the Scrutiny Panels themselves to fix their own budgets although the future Privileges and Procedures Committee will undoubtedly discuss the matter with the Chairmen of those Panels before finalising the estimates;
- as can be seen from Article 10(6)(a) of the amendment, the future Privileges and Procedures Committee will be required to consult the Minister on the proposed budgetary policy of the Council of Ministers before finalising the estimates. Although the Committee will not be bound to follow the same budgetary policy it will, in practice, need to take careful account of this policy if it does not wish to be severely criticised by the Executive and by other members, and possibly face amendments during the Annual Business Plan debate;
- the estimates will have to be submitted to the Comptroller and Auditor General (CAG) before being forwarded to the Minister and the CAG will have the option of commenting on them. If the CAG does comment, this report will have to be included in the Annual Business Plan. No other estimates included in the Plan will be required to have this additional stage of scrutiny before being included. The remit of the CAG under Article 47(3) of this draft Law includes the requirement to comment on –
 - (a) the economy, efficiency and effectiveness of States funded bodies in the way they use their resources;
 - (b) the effectiveness of the internal financial controls of States funded bodies and the internal auditing of those controls; and
 - (c) the general corporate governance arrangements of the States and of States funded bodies,

and it is probably fair to say that the future Privileges and Procedures Committee would be extremely unwise to submit estimates to the Minister if the CAG had indicated that he or she intended to present an unfavourable report on the reasonableness of the estimates;

- the most important safeguard remains, of course, that all estimates in the Annual Business Plan must be approved by the States. Although the PPC believes that this amendment is important for the reasons given above, it does, of course, only relate to the manner in which the draft estimates are included in the Plan. The final decision remains with the Assembly and, although it may not

be strictly necessary to repeat the provisions of Article 10(4) of the Law as presented by the Finance and Economics Committee on the way in which the Plan can be amended, the PPC requested that new Article 10(9) be included in the amendment for the avoidance of doubt. This Article, as can be seen, makes it absolutely clear that the Minister, or any other member, will be able to lodge an amendment for debate in relation to these estimates. The PPC believes that this will be the proper way for the Council of Ministers to challenge the estimates if it wishes to do so. In practice it is almost certain that any amendment from the Council of Ministers would be to reduce the estimates and, as a result, it would be possible for the States to agree the Council's amendment without increasing the overall expenditure figure. If the draft Law remains in its present form it would, of course, still be possible for the future Privileges and Procedures Committee, or any other member, to lodge an amendment to increase the Assembly's estimates but, at that stage in the budget planning process, the inevitable result would be that the overall total would have to increase, or the amendment would have to propose a reduction in another area to make a compensatory saving. The PPC believes that it will lead to a far more orderly budget process if the Council of Ministers is required to include the estimates unamended in the Annual Business Plan and plan other expenditure around that figure. It will be noted that new Article 10(4)(b) of this amendment repeats the provisions of Article 8(3)(c) of the draft Law as presented by the Finance and Economics Committee in specifying that the Minister can still dictate when the estimates of the Assembly must be provided. The PPC would suggest that, in practice, the Minister may wish to request that these estimates be provided in advance of the estimates for the ministerial departments and other areas so that the expenditure prioritisation process can work around the figure submitted for the Assembly budget.

The PPC believes that the autonomy of the States Assembly from the future Executive side of government is an important principle and considers that this amendment will ensure that this autonomy is not compromised during the budgetary process.

There are no financial or manpower implications as a result of these amendments.

PROCEDURES IN OTHER JURISDICTIONS

House of Commons – Westminster

The budget for the House of Commons is established by the House of Commons Commission which is a parliamentary committee chaired by the Speaker. The Commission includes members from the main parties represented in the Commons and the estimates are laid before Parliament for approval without any interference from the U.K. Treasury. Although this system gives a degree of independence to the process it is only fair to point out that, in practice, the U.K. government could, if it wished, interfere in the process because of its party majority in the House. Enquiries made of the House of Commons have nevertheless revealed that it is unheard of in recent years for the Government to seek to interfere with the estimates proposed for the Commons.

Scottish Parliament

The Scottish Parliament budget is drawn up by the Scottish Parliament Corporate Body. The Body is chaired by the Speaker and currently has the following membership –

Mr. George Reid MSP – Speaker
 Mr. John Scott MSP (Conservative)
 Mr. Andrew Welsh MSP (Scottish Nationalist)
 Mr. Duncan McNeill MSP (Labour)
 Mr. Robert Brown MSP (Liberal Democrat)

The Body's rôle is described as follows on the Parliament's website –

“The Scottish Parliamentary Corporate Body (SPCB) was established in May 1999 under Section 21 of The Scotland Act 1998 (the Act). The SPCB is made up of the Presiding Officer, and four other members of the Scottish Parliament elected by the Parliament. The SPCB is independent of the Scottish Executive.

PRINCIPAL ACTIVITIES

The SPCB has a duty to provide the Scottish Parliament, or ensure the Parliament is provided with the property, staff and services required for the Parliament's purposes. This allows the Parliament to fulfill its constitutional role of scrutiny over the Scottish Executive.

The SPCB provides the infrastructure which enables MSPs to undertake their duties both at the Parliament and in their constituencies. It provides the facilities and staff to allow the Parliament and its Committees to meet and encourage public participation in the process”.

Canada – Northwest Territories

Although practice in large Parliaments such as Westminster and Scotland is of interest, the PPC considered that it should also seek information from a legislature that was not dominated by a large party majority so that more appropriate comparisons could be made with the future situation in Jersey.

The Legislative Assembly of the Canadian Northwest Territories has a membership of 18 and there is no formal party structure. The Executive is made up of 7 of the members and is therefore in the minority.

The budget for the Legislative Assembly is established by the Assembly's Board of Management. The Board is chaired by the Speaker and has 4 other members, only one of whom is a Minister. The Board's functions are described in the following way on the Assembly's website –

“The Legislative Assembly's Board of Management is established under the Legislative Assembly and Executive Council Act.

The establishment of the Board emphasizes the responsibility that Members have for the general administration of the Legislative Assembly and confirms the independence of the Legislature from the Executive branch of government.

The Speaker has the primary responsibility for the services and programs required by the Assembly and its Members. Its responsibilities include, but are not limited to:

- *compiling and approving the annual budgetary estimates for the operation of the Legislative Assembly;*
- *reviewing Legislative Assembly expenditures;*
- *arranging for adequate space for the Assembly operation;*
- *establishing the organization and staff of the Legislative Assembly;*
- *administering the indemnities, allowances, expenses and benefits to Members; and*
- *setting the regulations and policies for all services to be provided to Members.*

Legislative Assembly and Executive Council Act – Northwest Territories

Financial matters

58. *(1) The Speaker shall present to the Board of Management the estimates of the sums of money that will be required each fiscal year for the Legislative Assembly for the purposes of this Act.*

(2) The Board of Management shall consider the estimates and make such alterations to them as it considers necessary.

(3) The Speaker shall cause the estimates to be laid annually before the Legislative Assembly.

59. *Payments made under this Act shall be made out of money appropriated for the purpose in the Consolidated Revenue Fund.”*

Enquiries made with the Assembly have revealed that the Board of Management makes every effort to comply with the financial policy of the Territory’s government by, for example, following austerity measures. It recently applied a 2% cutback on the Assembly’s budget in common with government departments. The proposed Assembly budget is, in practice, accepted and the Treasury Board does not seek to interfere with the proposals.