

STATES OF JERSEY



DRAFT MEDIUM TERM FINANCIAL PLAN ADDITION FOR 2017 – 2019 (P.68/2016) – ELEVENTH AMENDMENT (P.68/2016 Amd.(11)) – COMMENTS

**Presented to the States on 26th September 2016
by the Council of Ministers**

STATES GREFFE

COMMENTS

Deputy K.C. Lewis of St. Saviour proposes that –

- The States should continue to pay recurring water rates or the cost of supplying drinking water to the properties previously affected by pollution from the Airport Fire Training Ground (except for those where a legally-binding agreement is entered into with the States of Jersey or the Ports of Jersey in relation to water supply following such pollution) shall continue for each of them until such time as water from the boreholes and wells supplying each such property has been declared safe for drinking purposes in respect of such pollution. Estimated cost is identified as between £75,000 and £100,000 per annum.
- Ports of Jersey advise that a sum of £76,425 was spent in 2015 which included both direct provision of bottled water, water rates and ongoing water testing. The water testing regime proposed in the Amendment could significantly increase this cost possibly over the £100,000 indicated.
- The proposal is that these costs be met by increasing the net revenue expenditure budget of the Department for Infrastructure initially through a reduction in Contingency to remain within Total States Expenditure limits for 2017 – 2019, but thereafter by seeking to increase the dividend received from Ports of Jersey to compensate.
- The Amendment links the proposed ongoing payments to a point when water is declared safe on an individual basis by the Minister for Health and Social Services. It also appears to change the current basis for determining such safety standard. These are issues that will require the view of that Minister, in terms of appropriateness and deliverability.

The Council of Ministers opposes this Amendment and urges States Members to reject it.

Summary of Council of Ministers' Comments

- The Amendment undermines the positive steps being taken by Ports of Jersey to bring an equitable solution to this long-running issue.
- The interim arrangement of paying full water rates was intended to show goodwill while long-term agreements were put in place. The long-term draft Settlement Agreements never intended to compensate the cost of full water rates, only that element that related to “Prohibited” uses such as for drinking. Perversely, this interim arrangement may have worked against finalising long-term settlement agreements, as it is over-compensating property owners. By seeking to extend this interim arrangement, the Amendment would compound this problem.
- The Amendment seeks to change the previously proposed period of payment of water rates from 25 years (through the draft Settlement Agreement) or until contamination levels fall below the deemed threshold, to a potentially open-ended period. It also seeks to change the safety standard, introducing a USA standard to the British Standard. Environmental Health have stated that having 2 standards is neither sensible nor practicable.

- The Amendment does not appear to recognise that, given the sensitivity of the pollution issue, the States initially took a very conservative view and put in place a wide regime of interim measures, covering any property that could possibly be affected whether it was actually affected or not. As time has moved on and the impact is better understood, it is clear that, for example, water rates are being paid for properties that have never been and are never likely to be affected.
- In developing a way forward Ports of Jersey have recognised that any settlement with property owners must be balanced against public interest considerations. Ports of Jersey should not overcompensate those affected or compensate those who have not been affected. This Amendment goes against these public interest considerations.
- Ports of Jersey should be allowed to continue to seek equitable settlements with affected owners.
- The proposed method of ongoing funding cannot be guaranteed as a regular source.

Detailed Comments

Deputy Lewis's Amendment undermines the positive steps being taken by Ports of Jersey to resolve this issue.

To be clear, there is no dispute that Settlement Agreements and appropriate payments for affected owners should be agreed, signed and paid. No agreements are being reneged upon. However, many attempts have been made over a long period to reach a conclusion, and these efforts have failed to produce a satisfactory outcome.

The conservative interim arrangements put in place, to include any property that could be affected, and to pay full water rates for all of those properties, domestic or commercial, were considered appropriate at the time. The interim payment of full water rates was intended as a positive measure while long-term Settlement Agreements were negotiated. It was never intended that the full cost of water rates would be paid in perpetuity. Payments only related to water consumption for things like drinking and cooking. Other uses, such as watering gardens and flushing toilets, were not prohibited and would not be compensated.

Ports of Jersey have set a clear target to bring this issue to a conclusion, which is to be welcomed.

In most cases of affected domestic properties, this means the cost of connecting the property to the water mains and paying the water rates in respect of 'prohibited uses' e.g. drinking and cooking for a period of up to 25 years (which is likely to be offered as a lump sum payment).

Any settlement with property owners must be balanced against public interest considerations, which means Ports of Jersey should not overcompensate those affected or compensate those who have not been affected.

This is relevant to interim measures, such as payment of water rates and supply of drinking water, for properties –

- which have not been affected and probably never will be affected,
- which are in new ownership since the date of connection to the water mains.

Ministers understand that legal advice received by Ports of Jersey is that in these instances, the interim arrangements should cease.

The approach with commercial property owners is the same, but the issues are more complex. Ports of Jersey will continue to offer to pay to connect any unconnected commercial property to the mains. It will, however, work individually with commercial property owners and consider the claims from owners. Depending on the merits of the claim and the sum required to reach a settlement, Ports of Jersey may agree to pay a lump sum.

With commercial properties water usage and the sums involved are greater. The interim arrangement of paying full water rates is therefore more attractive for owners of these commercial properties.

A number of commercial properties in the affected area may have benefited more from being connected to the water mains than they were adversely affected by the contamination, as being connected to the mains has enabled them to expand and develop. If solely reliant on borehole supply, they would have been challenged with contamination from e coli, hydrocarbons and nitrates, which are not attributable to the PFOS contamination.

Similarly, as with domestic property, there are commercial properties that have never been affected by PFOS contamination, and where present owners have acquired the premises/businesses after connection to the water mains and in the full knowledge of restrictions on borehole use. Furthermore, in some cases, premises are not owner-occupied and therefore the beneficiary is a tenant. These commercial businesses can also continue to use their borehole supplies for non-prohibited uses.

Conclusion

The Council of Ministers is satisfied that the positive steps being taken by the Ports of Jersey and their legal advisers is the right way forward. It recognises that previous attempts to conclude the issue with all parties in a “one size” fits all arrangement did not work. They will ensure that the public interest is fully addressed by –

- not overcompensating those affected
- not compensating those who are not affected.

The Amendment does nothing to help bring this long-running issue to an equitable solution. Indeed, it compounds the problems of the interim solution by paying full water rates to a wide range of individuals whether they be property owners, tenants, entitled or unaffected. This makes it harder to reach fair, long-term Settlement Agreements and runs counter to public interest considerations.

By changing the duration for paying water rates and the assessment criteria, achieving any settlement is made much more difficult for Ports of Jersey.

The Deputy has referred to a change of approach. This is not the case. There has never been any intention to reach a settlement with those that, for example, have acquired property after the incidence/connection to mains water, nor with tenants of the relevant property owner. The Deputy has also referred to one resident feeling “bullied” into signing an agreement. This is clearly not something that the States or Ports of Jersey would wish affected residents to feel, and the Ports of Jersey have assured Ministers that this is not the case. Where occupiers have received free services for an extended period and are now having to consider whether their circumstances justify this, they are likely to have concerns. These are clearly exacerbated when it is evident that there is no justification for such payments to continue. Every effort is being made to treat each owner as sensitively as possible, while recognising the need to address the underlying issues. It is hoped that Members will see this as sufficient safeguard for property owners.

Proposed use of Contingency

Whilst Deputy Lewis is proposing that Dividend should be sought from Ports of Jersey to fund the ongoing costs, the adjustment of £100,000 in proposed expenditure limits for 2017 – 2019 would be to reduce Contingency allocations to offset the increase in Department of Infrastructure. The same arguments must be considered as for other proposals to reduce Contingency:

Contingency Provisions

- Although the provision for Contingency spending may appear significant, it is very clear from the MTFP Addition Report (Section 8) that this includes a number of specific allocations.
- The provision for the actual annual contingency is only £7 million, made up of –
 - £5 million or 1% for total States general department expenditure, and
 - £2 million or 2% for Social Security benefits.
- The rest of the money set aside for Contingency expenditure includes provision for –
 - pay, workforce modernisation, and pensions proposals
 - restructuring projects and redundancy funding to support Public Sector reform and deliver the planned savings in this MTFP period and beyond
 - economic and productivity growth initiatives
 - important initiatives to support vulnerable children.
- Any amounts above the £7 million annual contingency are actually earmarked for restructuring and redundancy, economic and productivity growth and supporting vulnerable children. These amounts are only included in the Contingency Expenditure Allocation to provide appropriate governance over their allocation.

Principles of Contingencies

- The £7 million annual Contingencies provide an important part of the flexibility within the MTFP.
- They are to enable departments to respond to unforeseen and unexpected one-off events.

- A fundamental principle of Contingencies is that they should not be used to fund recurring spending, but only to provide temporary funding until a permanent re-allocation of funding is agreed.
- The annual Contingencies also provide an important buffer for more volatile areas of spending, such as social security benefits. These areas, termed annually managed expenditure (“AME”), are extremely difficult for departments to forecast, so central contingencies are provided in addition to those held in departments.
- Allocation of all contingency funding is closely managed through approval by the Council of Ministers and Minister for Treasury and Resources. All allocations follow tight governance processes.
- Adequate annual contingency provisions are an important part of the overall flexibility in the MTFP to –
 - help deal with the scale of change and reform that is needed, and
 - react to the uncertainties and changes in economic and financial outlook and associated expenditure pressures.
- The Fiscal Policy Panel has emphasized in its Annual Report the importance of flexibility in the MTFP Addition to deal with uncertainties in the economic and financial outlook. These expert economists have encouraged the States to maintain that flexibility.
- The Amendments that propose to take funds from Contingencies are not all large reductions individually, but taken together could remove a significant and recurring sum from Contingencies over the period of the MTFP Addition.

Financial implications

If approved, the Amendment would increase the Net Revenue Expenditure of the Department for Infrastructure by £100,000 in each of the years 2017, 2018 and 2019, and have the effect of reducing Contingency expenditure allocations by an equivalent amount in those years to remain within the States’ Total Net Expenditure limits, irrespective of any dividend secured from Ports of Jersey.

The long-term funding solution proposed by the Deputy, which could only be incorporated in the next MTFP, is to increase dividend payments from Ports of Jersey to cover the water supply payments.

It is relevant to consider the following –

- A key element of the Ports’ incorporation was to enable the business to fund the cost of maintaining and renewing essential infrastructure at the Airport and Harbours. Ongoing financial sustainability was the target. A regular or substantive dividend payment may not be achievable in the first year of the new company’s life.
- Dividends are determined by the financial circumstances of the company and have to be recommended by the Directors of the company. To commit the Directors and company to paying the costs of this Amendment for an open-ended period is not appropriate, and could not be guaranteed as a source of funding to meet the costs without harming potential consequences for ongoing investment at the Airport.

Any Department taking on the responsibility for making any payments as a result of this Amendment would therefore have no guarantee of receiving the funding to meet that cost, on a regular basis from the funding source proposed in the Amendment.

In the MTFP period the financial implications of this Amendment are primarily a reduction in the contingency allocation and a requirement for hardwiring into future MTFPs. This reduces flexibility to react to any future uncertainties, changes in economic and financial outlook and associated expenditure pressures, and importantly the scale of change and reform that is needed.

There are no manpower implications.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were received by the States Greffe after the deadline set out in Standing Order 37A because the Council of Ministers wanted to ascertain the views of members and to ensure proper consideration was given to the Amendments and the later Amendments to Amendments, to provide the latest information ahead of the debate.