



## Corporate Services Scrutiny Panel

### Public Finances Law

## Witness: The Minister for Treasury and Resources

Thursday, 28th March 2019

**Panel:**

Senator K.L. Moore (Chairman)

Connétable K. Shenton-Stone of St. Martin

Senator S.C. Ferguson

**Witnesses:**

Deputy S.J. Pinel of St. Clement, The Minister for Treasury and Resources

Deputy L.B.E. Ash of St. Clement, Assistant Minister for Treasury and Resources

Mr. R. Bell, Treasurer of the States

Mr. R. Kirkby, Partner, KPMG

Mr. K. Hemmings, Head of Decision Support

Ms. M. Washington, Consultant

[14:01]

**Senator K.L. Moore (Chairman):**

Good afternoon and welcome to this Corporate Services plus P.A.C. (Public Accounts Committee) hearing in relation to the Public Finances Law. I am grateful for your attendance. We are a little sparse on the ground ourselves, so I send apologies from Deputy Doublet, Deputy Ahier and also the Constable of St. Peter, who cannot make it. We will start with the introductions, as usual. I am Senator Moore. I am the Chairman of the panel.

**Senator S.C. Ferguson:**

I am Senator Sarah Ferguson, a co-opted member of the panel.

**Scrutiny Officer:**

Caro Tomlinson, Scrutiny Officer.

**Connétable K. Shenton-Stone of St. Martin:**

I am Karen Shenton-Stone, a member of the Corporate Services Scrutiny Panel.

**Head of Decision Support:**

I am Kevin Hemmings, Head of Decision Support, Treasury and Exchequer.

**Consultant:**

Maria Washington from Treasury and Exchequer as well.

**Partner, KPMG:**

Robert Kirkby, KPMG.

**Assistant Minister for Treasury and Resources:**

Lindsay Ash, Assistant Minister for Treasury and Resources.

**The Minister for Treasury and Resources:**

Deputy Susie Pinel, Minister for Treasury and Resources.

**Treasurer of the States:**

Richard Bell, Treasurer.

**Senator K.L. Moore:**

Thank you all. We will kick off with some general questions and with the broadest of questions first. If you could just, for the benefit of the public, Minister, describe briefly what the Government Plan is and why replacing the Medium Term Financial Plan via this law is a good thing.

**The Minister for Treasury and Resources:**

Briefly - as you have requested, Chair - the Government Plan, which will be lodged in July and debated in November, is the future rendition of the Medium Term Financial Plan, which covered 2016 to 2019, which was a very rigidly-set plan from the point of view of expenditure mainly. Now with finance transformation, we have brought in a new idea of Government planning financially so that there will be a 4-year plan, but financially there will be a rollover every year so that the finances can be looked at every year and adjusted as necessary so that we are not as restricted in our expenditure as we have been in the last plan. This Public Finances Law moves into that, bearing in

mind there has not been a new rendition of this law since 2005, so taking advantage of revitalising and revamping this whole law to fit in with the expectations of the Government Plan.

**Senator K.L. Moore:**

One of the reasons for introducing medium-term financial planning was to ensure that there was greater discipline, particularly in public expenditure. How will that discipline be performed in the rollover years, as you have described them?

**The Minister for Treasury and Resources:**

I think that is all explained within the law. There are different accountancy lines, of which you will obviously be very well aware, with a new P.A.O. (Principal Accounting Officer), being the Chief Executive Officer, which there was not beforehand.

**Senator K.L. Moore:**

Sorry, I think there just appears to be a slight sound issue. We might just pause for a second just to ensure ... they are not functioning properly. If we could just pick up, sorry, and I will just ask for everybody to speak as clearly and loudly as they can for the assistance of those in the public gallery, who have taken the time to come and listen to us this afternoon. You were talking about discipline and the discipline of how that will operate in the new Public Finances Law over the medium term.

**The Minister for Treasury and Resources:**

The medium term, but yes, also addressing the very long-term sustainability, sort of 20, 30 years down the road, which we have to look at. One would not have thought that way looking at the situation in the U.K. (United Kingdom) at the moment, but as an Island Government, we have to address where we are going to be in 20 or 30 years' time. The Government Plan will also address all of those issues, as far as we can, but to have a longer vision than we have had before.

**Senator K.L. Moore:**

As you have described, part of this Public Finances Law is the change to the Government Plan, which you intend to lodge in July. In our discussions, we have requested that obviously because it is a large and quite involved law, it would be helpful for Scrutiny to have a longer period of time and we suggested initially that perhaps there could be an accommodation so that you are able to lodge the Government Plan and we could have additional time to look at the rest of the law, which has been declined so far. With that in mind, obviously it is still within our ability to call the law in after the principles are debated. If that were to happen, what would be the plan B?

**The Minister for Treasury and Resources:**

Plan B, of course we have one, because you have to in a situation like this, but this law has been in redrafting, for want of a better word - it is almost a new law - since 2017. I appreciate it is a different Government, different Scrutiny Panels, but it has been a long time in the process of producing it. As far as the manual accompanying it goes, which Kevin can talk to you later if you have questions, but that is a work in progress, that is not a finalised production. The law is, as you rightly say, to be in tune with producing the Government Plan. From the point of view of a plan B, there is one, but it would be difficult from the point of view of being such an expansive law that it has to go to Privy Council. One does not know how long Privy Council is going to take and the idea is that the law was produced in time, agreed then, if you like, by the Assembly so it could go forward with the lodging of the Government Plan in July, which would then - if the Government Plan is accepted - come into effect in November, so the whole package would work together.

**Senator K.L. Moore:**

As you say though, it is somewhat of a rewrite of existing legislation. Would it be within the realms of possibility that certain elements that would enable the Government Plan to be lodged could be set aside from this draft law as it is? Are you able to separate the 2 items?

**The Minister for Treasury and Resources:**

Would you like to expand on that, Richard?

**Treasurer of the States:**

I think the first thing to point out here, as the Minister said, we have - as the panel is aware - spent quite a bit of time in advance of lodging the law with the panel to try and resolve some of the issues at the back end of the process, if you like. I think we came to talk to you in July on the findings of the KPMG work, so it would be a shame if we are unable to deliver the other parts of the law and the law then went into some much longer-term process, having articulated what we are trying to achieve with the law for quite some time.

**Senator K.L. Moore:**

But it is a core piece of legislation that was lodged on 12th March. For example, the manual, the Public Finances Manual, was only made available to us ... we received hard copies today and I think we have had it perhaps 5 days.

**Treasurer of the States:**

Can I clarify, the manual is not being debated, neither were financial directions prior to that. In the current law we have financial directions. Firstly, financial directions are not published. The Public Finances Manual will be published. Secondly, financial directions, with the agreement of the Minister, are signed off by the Treasurer. The Public Finances Manual will be entirely the decision

of the Minister and will be published. It is subject to ministerial decisions. We have a good working draft of the manual, but the manual is outside of the law. The manual can only come into shape once we have agreed the law. We expect to make continual adjustments and we are open to understand what they might be. The change in focus of the law, part of the reason for redrafting the law is that the current law is necessarily complicated. It duplicates, it is often inconsistent internally. We have had instances in the last Government whereby it leads to confusion. You have 2 different definitions in 2 different parts of the law as to what constitutes a borrowing limit, for example, and it has been amended that many times that every time we want to do something that is novel, we have to sit down, including lawyers, to understand ourselves - and we use the law day-to-day - whether the law allows us to do what we are envisaging. We have sought to achieve a much more straightforward law. As well as a long list of meetings both internally with the panel and with stakeholders over what has been 18 months, if not longer, if we start with when we started a project group in 2017, it has not been a short period to have presented. We have actively pursued that, discussing with the panel and others, what we were thinking of doing. I acknowledge that the Scrutiny period itself, it is as long as any other Scrutiny period, but what we have been trying to do to address that is liaise and have dialogue with panel. If we were to find ourselves in a situation where the law was delayed, we would have to find a different way to do things, but I think the other thing to be said is that therefore we have just had the Government Plan. I am told that it is quite tricky to achieve under the law. Because the law has been amended so many times, we have to go through the law and make a lot of changes. The other changes that are within the new law would therefore have to wait until they were delivered, for example, protection of non-ministerial budgets, which is a new thing within the law. That is the new law, not really relevant necessarily to the Government Plan. Would we also bring in the new way, which I think was recommended in your panel's predecessor form, for the changes to how we budget for major projects and capital? There are a whole raft of other changes that it would be a shame to spend much greater time delivering because it would then obviously go down everyone's list to deliver.

**Senator S.C. Ferguson:**

However, given that this is a really fundamental and important law and given that the Government Plan part of it is probably the most important part, because it relieves us of the straitjacket of the M.T.F.P. (Medium Term Financial Plan), and given the current confusion in the U.K., with the strong possibility of a general election, would it not be prudent to look at the possible delays that obviously the Minister has said will get in the way? Would it not be better to say: "Right, we will do what is most important and the rest can be done and can be done within a reasonable period of time, but we will do the most important part so we can get the Government Plan on a proper basis and running"?

**Treasurer of the States:**

If Scrutiny are unable to meet the deadline, having engaged in advance, then we would have to find an alternative way of doing this.

**Senator S.C. Ferguson:**

No, that is not fair. It is a very complicated ...

**Treasurer of the States:**

I am not being unfair. I am just saying that if that were the case, we would have to find another way, and because of the uncertainty in the U.K., we have to imagine how we would do that in any case.

[14:15]

But that is not that the ... I cannot speak, I am not a politician full stop. The preferred approach is to deliver a law and you can understand our position, having laboured at least 2 Christmases over this time to put the law together, that we would like to deliver that legislation. We always will have fall-back arrangements, as we have to have, if you remember, in the last M.T.F.P. because of the rigidity of the last M.T.F.P. When we came with one year plus 3, we had to have a change in the law to achieve that, which unfortunately from this perspective was a sunset clause, so it is no longer there, but we would come up with a way of achieving that and we know how we go about doing that in terms of amending the current law. The shame would be that all you achieve ...

**Senator S.C. Ferguson:**

That is fine, super. You have got a plan B. What is your plan B?

**Treasurer of the States:**

Plan B would have to be changing the existing law. You would have to have a plan C in case the States did not agree with changing the existing law for the Government Plan, which would be to somehow amend the provisions in the respect of the M.T.F.P.

**The Minister for Treasury and Resources:**

The existing law is not fit for purpose any longer, because it has been amended so many times. It is a very similar situation to the tax law, that a fundamental law can only take so many amendments before it becomes incomprehensible. I think any more amendments to this one would put us in that situation, hence the reason for producing a new one.

**Senator S.C. Ferguson:**

Yes, but we need to have a satisfactory one, surely.

**Assistant Minister for Treasury and Resources:**

In fairness, it was one of the questions I asked. I said: "How much work has already gone into this?" and I was given a list of all the meetings, 46 meetings there have been between the various groups already, but there is also the steering group that have met on numerous occasions. They have made comparisons with England, Scotland, Bermuda, British Columbia, Australia, and there have been over 25 people interviewed, from Alan Maclean, who was the Minister for Treasury, Dame Kate Barker, the Chairman of Jersey's Fiscal Policy, Tracey Vallois - or Senator Vallois - Mark Temple, the Solicitor General. It has not been just hurriedly put together, it has been a very carefully-prepared piece of work.

**Senator K.L. Moore:**

But you will appreciate that the department might have been working on this since December 2017 with its partners and conducting these meetings. However, it is our duty to ensure that we have a full understanding of that process. It simply takes time to read and be across all of these points. You just raised there, Assistant Minister, some meetings. We do not have minutes of those meetings and perhaps we ought to. It just raises more questions and it is our duty to ensure that we do a thorough job, particularly with such a major piece of legislation.

**The Minister for Treasury and Resources:**

I think a lot of these were, as the Assistant Minister mentioned, people - for instance, Senator Vallois - who have come forward with various questions, so it was not a minuted meeting, it was to answer her questions and with the Solicitor General it was just various points of law. A lot of these meetings were not minuted around the table.

**Senator K.L. Moore:**

But it is perhaps important for us to track or have some understanding of how these points have been put to you and whether they have been accepted or rejected. Do you have, for example, a grid of points that have been raised or requests that have been made to you? For example, I think I am aware that Senator Vallois was very keen on the wellbeing aspect and had looked at the New Zealand model and that appears to have been incorporated into the law as it was lodged. That is one interesting point.

**Partner, KPMG:**

I think it is worth bearing in mind the process we have gone through in terms of all the engagement has been relatively extensive. Our involvement as KPMG started in the beginning of 2017, where there was discussions with finance officers and then we moved on to the various amendments listed on this, plus the comparisons and benchmarks. I think an overriding premise here is that most jurisdictions update their finance law on a periodic basis of 10 to 15 years. The reason for that is

the economic climate shifts considerably. You think back to our current law of 2005. At that time we had not had the economic crash and public-private partnerships were not in existence, we did not really recognise the ageing demographic challenges, the obesity crisis, climate change challenges and all these things. The reason these laws ...

**Senator S.C. Ferguson:**

Oh, rubbish. Come on.

**Partner, KPMG:**

No, sorry, please bear with me. These changes mean that people have to update their laws accordingly and the reason we need to move forward with this law - and I think one of you just mentioned it - Brexit creates potential uncertainty, which we will have to be nimble and react to. The benefit of moving towards the Government Plan methodology is where you can see the whole picture of the States finances. Moving away, as the Minister for Treasury said, from looking at just pure expenditure to looking at income, expenditure and balance sheet items means that the Assembly has a much better view of the financial position, if you will, of the States and allows it to nimbly react to issues. If we have to do economic stimulus or we have to change direction of travel, then that will allow for that to happen. Having that law enables that law. If this law is passed and comes into force, this law can again be amended, like the 2005 law, where you have the ability to amend it over time. I am sure it is absolutely not perfect, I am sure there are lots of amendments to make. Now, just addressing some of the other points, in terms of our work, a lot of the meetings and comments we got are reflected in our report and bound into our report as we looked at the comparison jurisdictions and the findings people made. In terms of our recommendations, we made a list of those and I understand that Kevin Hemmings has provided you a list of our recommendations against what have been adopted or not adopted and the reasons why. In the main, most of the recommendations have been inserted within the law. I think the final point to make is really the one plus 3 in terms of moving away from a fixed 4-year window to a detailed one year and a sort of envelope rolling 3 year thereafter. That is in the context of longer-term plans. We like to visualise it as it is effectively a corridor, that we see a relatively wide corridor, the finances of the Island. This is all around looking forward, how we are going to deal with the next generation, how are we going to repay debt we currently have et cetera. That one plus 3, we will move within those parameters of that and that provides you with future visibility, but also the ability to budget within those constraints and make sure that we have a sustainable financial system in the Island.

**Senator S.C. Ferguson:**

Yes, but the Auditor General has expressed some comments on the law and so on and I cannot find any alterations in the law as lodged as a draft that takes her comments into account. I would have thought that was quite an important thing to do, so that basically surely it is better to use your plan



B and the Government Plan and take proper consideration of the rest of the comments and so on that have been made.

**Partner, KPMG:**

I think with regard to the Comptroller and Auditor General comments, we have absolutely looked at all the comments. I think it is fair to say that as a group, we looked at every single recommendation over, I believe, around a 10-year period and you will see a combination of those addressed in the Public Finances Manual because some are very detailed.

**Senator S.C. Ferguson:**

Yes, but that is not legal.

**Partner, KPMG:**

In the Public Finances Manual, some of them are so detailed you would not need them in law and are recommendations from the Auditor General, which was not about putting them in the law, but putting them somewhere in terms of amending the financial directions or equivalent. In terms of some of the specific comments, for instance, there is a comment around: "Is there sufficient resources for internal audit?" Internal audit, as you are aware, is a check and balance to make sure that the control frameworks that the Treasury is reliant on are enforced and effective. Now, the concern from the Auditor General is will there be sufficient resources, and should the law specifically state that. There are a number of checks and balances to make sure within the finances of the States of Jersey, so you have the ...

**Senator S.C. Ferguson:**

Excuse me, but with the greatest respect, the whole point about an internal auditor, a chief internal auditor, is their independence and the duty of the Treasurer to resource them and the fact that the Chief Internal Auditor is independent and does not depend on being managed by the Treasurer. It was not very clear in the law, the way it has been written now, that that independence is underlined.

**Partner, KPMG:**

The Internal Auditor still has a reporting line to the Audit Committee as well as the Treasurer. They have access to raise concerns if they were concerned that the Treasury was not looking after the best interests of the finance, that they can raise that to the Audit Committee.

**Senator S.C. Ferguson:**

Yes, but it is much stronger if it is written in the law, like the previous law.

**Partner, KPMG:**

I think that is a matter of opinion which perhaps you are entitled to.

**Senator S.C. Ferguson:**

Absolutely.

**Treasurer of the States:**

The C. & A.G. (Comptroller and Auditor General), if I recall, as well talked about the audit function reporting to the P.A.O., or the Chief Executive at the time. The P.A.O. was not part of the law and she also mentioned that in her comments, yet I do not see how that fits in with the independence argument either. It is not always the case that we agree necessarily with what needs to be done through the C. & A.G. There is also a point to be made, that that recommendation was made before the P.A.O. was enshrined in legislation. The Treasurer has responsibility to reach beyond what is now called the Government of Jersey into the departments that form the States of Jersey and the P.A.O. does not. Putting an audit function in the P.A.O. would not cover an audit function for non-ministerial departments. We have been taking the C. & A.G. recommendations and putting them into the manual, which the Minister agrees the reporting lines for internal auditors to be able to go to the Minister, to the Audit Committee, to the P.A.O., to the Treasurer and obviously to the C. & A.G.

**Senator S.C. Ferguson:**

Yes, but obviously putting it in the manual does not have quite the same status.

**Treasurer of the States:**

It was agreed by a Minister. I would also say that I am not sure it is in the gift of the Treasurer to decide how to agree money for an internal audit function. Budgets are not agreed by the Treasurer, budgets are agreed by the States Assembly, so there is, even in that clause ... or that clause, it is not really in the gift of a Treasurer to ensure those are in place, unless he was to take resources from controls around banking or controls around investments or elsewhere in the Treasury to do so.

**Senator K.L. Moore:**

We are going to move on, and I think we do need to. You have raised a couple of good points there though, Treasurer, and items that we would like to do some further questioning on. Firstly, you mentioned internal audit and the function there. What has changed about the role of internal audit in this law as opposed to how that process happens in the existing law?

**Treasurer of the States:**

I do not see much will change in terms of the process. We were looking at simplifying the position. The Chief Internal Auditor is now enshrined within a department that is headed by a Director of Risk

and Audit. We were looking just to make it more straightforward. The previous law I think was written before the current C. & A.G. legislation. Though we did not have that legislation in place, there is a route for that independence through the C. & A.G. We felt it better that these things be enshrined in the manual to allow the law to be empowering rather than the law to be restrictive. It is fully intended for the routes to be there. Basically, it is almost a stronger requirement of the Treasurer to make sure, because it puts the emphasis on making sure that the Treasurer is responsible for delivering any internal audit service rather than the Chief Internal Auditor. The Chief Internal Auditor still sits within the Treasury, as they did previously under the existing law. We have just made it a more straightforward arrangement for the law, but in the manual we will be enshrining reporting lines for the Chief Internal Auditor, for example, if we discover something that in Treasury is not right, the routes through which the Chief Internal Auditor would go. We are also strengthening the terms of reference for the Risk and Audit Committee, internal and external, internal as opposed to the P.A.C., which is external, which will supervise audit arrangements and will also look at internal audits as well as P.A.C.

[14:30]

**Senator K.L. Moore:**

You are saying that in terms of line of accountability, there is little change?

**Treasurer of the States:**

Basically for day-to-day, it is through the Treasury, as it is now.

**Senator S.C. Ferguson:**

I think we are going to agree to disagree on that one. Why has the list of non-ministerials in schedule 1 been changed?

**Treasurer of the States:**

You will have to remind me, Maria, which ones have changed.

**Consultant:**

Data protection has come out, the Official Analyst, and the Dean of Jersey is out from the current law.

**Treasurer of the States:**

The Dean of Jersey is now in the States, correct. The Official Analyst, that was part of the changes to the Target Operating Model. The first of those was the ...

**Consultant:**

Data protection.

**Treasurer of the States:**

Remind me of that.

**Consultant:**

That has gone to the Strategic Policy Department.

**Senator K.L. Moore:**

Then there is one addition, it is a maintaining of the status quo that was not intended to be maintained, which is the Probation Service.

**Treasurer of the States:**

Yes. We have been drafting this over a long time. The position of the Probation Service changed over the time in terms of what might be envisaged, but it has gone to back to where it was originally, as I understand it.

**Senator S.C. Ferguson:**

At Article 10.2, why does the new law include a provision for the Council of Ministers to make a statement indicating whether or not it supports the budget amounts for the non-ministerials?

**Treasurer of the States:**

That falls into the new protection for all non-ministerial budgets. Previously there were, I think, 2 that were protected under the old law. One was the Office of the Comptroller and Auditor General and the other was the States Greffe. They had - on behalf of the Chair of the P.A.C. in the first, and on behalf the P.P.C. (Privileges and Procedures Committee) in the second - whatever budgets were submitted by those bodies or those organisations had to be included in the M.T.F.P. After much discussion we have now protected all non-ministerial budgets in that way, whereas previously it would have been the responsibility of the Council of Ministers to decide what budget would be put in the M.T.F.P. Now, for all non-ministerial departments, whatever it is that they request would be in the Government Plan, so that is protecting the non-ministerial budgets. We put the other clause in to say: "If the Council of Ministers disagrees with that, they will have to lodge an amendment to their own Government Plan."

**Senator K.L. Moore:**

What about if the Assembly disagrees?

**Treasurer of the States:**

That is submitted to the Assembly, but that would have to be subject to an amendment. If the Council of Ministers agreed that someone in the Assembly did not agree, that would require an amendment, otherwise there would be a separate debate on each of those lines.

**Senator S.C. Ferguson:**

This is effectively to put a check and balance on the non-ministerials so that their budgets are realistic.

**Treasurer of the States:**

That is the point of the clause from the Council of Ministers, so firstly, it was to protect non-ministerial departments being talked off elsewhere, whereby if a Government does not like what the legislature do, it might restrict its budget so it cannot be as effective. The aim therefore of the law is now to protect non-ministerial departments from that, but also then it gives the Council of Ministers the right to put to the Assembly a different budget if they think that the budget is excessive or even I suppose if they thought the budget was not sufficient in non-ministerial departments. That is the protection that is in place, but it gives the Council of Ministers the right to lodge an amendment, which would be debated by the Assembly.

**Senator S.C. Ferguson:**

Yes, but I think you will agree the main point is that these non-ministerials should not be underfunded.

**Treasurer of the States:**

No, exactly.

**The Connétable of St. Martin:**

So it will not affect the independence of the non-ministerial bodies of the States?

**Treasurer of the States:**

They still have the protection they have always had. We are just extending that protection to the other non-ministerial departments.

**Senator S.C. Ferguson:**

Article 13.2 requires that before proposing an amendment to a Government Plan, the Minister for Treasury must be consulted to determine the impact on States finances. Why?

**Treasurer of the States:**

That was experience over a long period of time - every now and then - that perhaps sometimes the financial implications of what is included in an amendment or a proposition are not quite as thorough as they might otherwise be. This is to have that step-in in place whereby the Treasury can advise the States Member in a formal setting. Some States Members - many States Members - will informally seek the view of the Treasury as to the financial implications of their wishes, but it is not universally the case and there is nothing formally to require that. What we set out is a step to the proposal, we can give it some consideration. That would require anyone wishing to lodge an amendment to approach the Minister or the Treasury to ensure that we agree with the financial implications of what it is they are proposing.

**Senator S.C. Ferguson:**

You will be putting in provisions to make sure that this does not affect the independence of Back-Bench or Scrutiny amendment?

**Treasurer of the States:**

I have not had an instance when I have had a complaint after having been approached on a confidential basis that the Treasurer has abused that approach.

**Senator S.C. Ferguson:**

Excellent. Article 17 contains emergency provisions that apply where a Government Plan is not approved at the start of a financial year. How does this affect departments whose expenditure is not uniform throughout the year?

**Treasurer of the States:**

We have discussed that one. The C. & A.G. has raised the issue of particular ... I think what we tried to do is go for a very simple and straightforward rule, rather than a rule that anticipates every single eventuality. I would say that the protection will still be there, because it will still be in the gift of the Minister to transfer between departments to ensure that departments that were in such a situation of having a lot of their expenditure in January rather than evenly spread. It would still be that they could come to the Treasury and the Treasury will identify that, because this is not intended to be hopefully a measure we use every year and that therefore they could advise the Minister that they need to move Treasury to the C. & A.G. to make sure that, for example, a particular cost that they may have can be met in January. Obviously that decision under the rules within the law as it is now, it would have to sit in front of the States for 2 weeks. The advantage of that is that it would be therefore transparent. We would have advance notice of this, of course, because it would be November or December that we would very clearly know that the Government Plan has not been agreed, so it would not have to be something that we would have to do in a kneejerk fashion, an

emergency fashion. We would be able to discuss with accountable officers as to whether they would have any particular issues and we would be able to make adjustments.

**Senator S.C. Ferguson:**

Do you have many cases like that where it is frontloaded like this?

**Treasurer of the States:**

Not that many, no. I think is a peculiarity of a particular budget. Mostly you would be able to, as an accountable officer ... I think the issue here is around an obligation that you could not move as opposed to an accountable officer would be faced. Let us be clear, this will not be easy for departments, because it is about the previous year's budget. It would not therefore mean that we would have any new capital programme approved and it would not include inflation, so had pay awards been agreed, accountable officers will be faced with decisions to make as to how they could make expenditure meet. It is, firstly, that does not make it necessarily overly easy, without there being consequences for a Government Plan to continually not be agreed, do you see what I mean? It is supposed to be there to provide ... you imagine the scenario in the U.S. (United States), where you have a cliff edge. Having had involvement in many budget and M.T.F.P. debates, it is not really satisfactory that the answer for: "What happens if we do not agree the M.T.F.P. or the Government Plan?" and you say: "Really you have to, otherwise we cannot pay for services in January." This clause tries to address that, to say that if there is really is good reason why a plan cannot be agreed, at least we will be able to pay people in January, at least we will still be able to have services in place in January. It is to address that risk, but it is not supposed to be complex, to suit all circumstances within the legislation, but obviously we will adjust that in the background. It is not supposed to be that there is, it is without consequence.

**The Connétable of St. Martin:**

Moving on, Article 26 deals with financing and appears to replace Article 21 and 22, borrowing in the current law, but my question is why does Article 26 introduce an ability for the Minister to borrow up to £3 million without approval by the States and how does it link with Article 9.2(c), requiring financing to be included in the Government Plan?

**Treasurer of the States:**

The clause that you referred to firstly has a mirror clause in the existing legislation. Generally it is for the Assembly to decide upon borrowing, lending and guarantees. However, the existing law, in common with the new law, says that the Minister has limits up to which she or he can lend, or issue guarantees. It is something we brought forward to allow the Minister to respond to fairly low level requests for borrowing. It usually is, so it is where we have been asked to lend to external organisations and there have been one or 2 of those in the last year. There is no real change in that

respect. It is still for the States Assembly to agree, so if we were to go for a bond for a hospital, it is about 2 years trying to do that. We would have to come to the States Assembly.

**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. An example of that is Bermuda, where they run to their limit year in, year out, although not the last few years, because they are already fully on that limit. What you have seen is what this power does - going back to the point the Minister made earlier - you see the income, the expenditure and the balance sheet, the States Members see the full picture of the debt position, they see the long-term plans as well, so they can see when it can be repaid et cetera, so they have the full picture. Also you remove that issue that people feel that that limit has been determined by some kind of economist or something and that is a safe harbour, when in reality it can be a relatively arbitrary limit that someone calculated as a period of time that the world may have been pretty different. There is a removal of limit, yes, but the power still remains with the Assembly in terms of whether you want debt to go up or down, depending on the Government Plan and the matters laid out in that.

**Senator K.L. Moore:**

We will move on to administration. We have already mentioned the Public Finances Manual, which in the law it states will be made publicly available, which is helpful clarification. However, we are aware that the manual has ... we have only recently received it and it was not made public when the law itself was lodged for the public to generally acquaint themselves with it, if they wish. Will that be done?

**Head of Decision Support:**

One must bear in mind that it is 180-something pages, this manual, it is quite considerable, and it has taken - and perhaps Kevin can expand on this - them weeks and weeks of work to go through to update it. It is completely, as I mentioned earlier, a work in progress, so it will continue to be amended after the law has been approved. Issuing it is fine, yes. It is possible, as it has been to you and a couple of politicians who specifically asked for it, but it is a lengthy document and whether



one should issue that 49 times is debatable, but if it is asked for, yes, that is possible. But Kevin has done the work on this so perhaps he could explain a little more about what has been involved in producing it, because it is a new scenario from the financial directions, so it is a different manual.

[14:45]

**Head of Decision Support:**

Do you want me to touch on that?

**Senator K.L. Moore:**

That would be very helpful.

**Head of Decision Support:**

As the Treasurer has already explained, this is not really a new power, this is nothing new here. In the 2005 law, the Treasurer had the ability to issue financial directions. There are about 35 of those and some of them change fairly frequently. Before that, in the 1967 law, there were codes of directions, so this is a very longstanding power to issue additional documents under the law that clarify what is in the law and provides further guidance. An important principle is the manual cannot go further than the law, so if the law says, for example, a borrowing or a lending limit, a financing or a lending limit is £3 million, the manual cannot then say that is £5 million, so it cannot go further than the law. It provides further clarification. The draft manual that you have had sight of, the volume is coming down. I think it was about 300 pages, but gradually we are trying to simplify and streamline it. It is down to about 160 at the moment. It is made up from looking at best practice elsewhere, from existing financial directions. We are already following several recommendations of the C. & A.G. and P.A.C. We are in the process of rewriting all of them to make them more principles-based and to achieve a better-controlled framework through them being easier to work with. This pulls together all of that work, some additional input from KPMG on this and looking at examples elsewhere that we really like. For example, the Scotland Public Finance Manual is one that we really like. Moving away from a very lengthy P.D.F. (Portable Document Format) document into something that is web-based, easy to use, you can go in, you can hone in on the section you want rather than having to wade through a very long document. That is a very long answer to a very short question. As the Minister has already said, if it would really help States Members in taking a view on the law then yes, of course we could circulate the draft manual to States Members. As somebody who probably has primary responsibility for its safekeeping now, it will change between now and the date of debate. We will, like the Scotland manual does, as we see opportunities for improving, make changes, publish those changes, explain why they are and clearly put them out there, so everyone knows what those changes are. It is a really transparent framework here. We can provide it if it would be helpful.

**Senator K.L. Moore:**

That is a helpful explanation, thank you. As it has been described, the finance manual underpins the legislation and sets out the mechanics. It also widens the scope to incorporate some of the specific organisations, I think the term is, which we presume are some of the arm's length organisations, such as Andium and others. Have they been able to see draft manuals at this stage or interact with that process?

**Head of Decision Support:**

This is really a continuation of something that was introduced when the Assembly approved P.1/2018. The Scrutiny Panel at the time, I think, did some consultation with those bodies and there is nothing new in place in the manual or in the law in terms of those relationships. So P.1/2018 introduced the ability for the P.A.O. to appoint an accountable officer in 6 specified bodies within the law. We have already drawn up a draft financial direction which set out that relationship. There is a commitment that before any such appointment is made, and that would mean any made to date, that we would consult with the body concerned on those. It may be that the specific terms of an appointment in Andium may be different from one in J.T. (Jersey Telecom) and may be different from one in S.o.J.D.C. (States of Jersey Development Company). Maybe we want to incorporate some specific items in those. Again, the answer to the previous question stands, perfectly happy for them to see all this, but there is nothing radically new from the discussions that took place and the specific consultation Scrutiny did at the time of the debate of P.1/2018.

**Treasurer of the States:**

Because we want one place for people using the public finances to go, so often what the manual is doing is repeating what is in the law. Otherwise an officer would have to go and seek out the law and seek out the manual. The manual deals with what the law says, but also provides some additional interpretation and some additional guidance as to how to use that particular part of the law on a day-to-day basis.

**Partner, KPMG:**

That why it is particularly important that the glossary in the manual references back to the law, uses law definitions, but also adds other definitions as well, where it helps the user understand what the terms mean and suchlike. But the great thing about that is it creates consistency across the manual, across the States and some of the specified organisations.

**Senator K.L. Moore:**

Is there a need though to ensure compliance with the manual, because that is not explicit in the law as it is drafted?

**Treasurer of the States:**

No, we think there is adequacy in there, that the Minister is given the power to supervise the public finances and do so through the publication of the manual. It follows therefore that those who are subject to the manual need to follow the manual. It is just another example of possibly over-elaboration in the previous legislation. The Minister who is responsible for law issues the manual to guide people as to what that means.

**Senator K.L. Moore:**

Thank you. Article 37 provides the financial statement that removes compliance with any accounting standards. Why is that, please?

**Treasurer of the States:**

Firstly, we would not in legislation name specific accounting standards, because they are prone to change, then every time therefore that we were considering moving from one set of accounting standards to another or they change their name, we would have to come back and change the legislation. Secondly, that will be enshrined within the manual and/or within the reporting manual through which the Minister sets out the standards that I have to prepare the accounts by and by which the auditors audit them. Furthermore, I understand that people would be concerned that if we do not name specifically the standards in legislation we would therefore not continue to follow best practice, but I point out that that would very quickly come to the attention of the P.A.C., the public, half the Island, who are accountants, through the issue of audit papers. That is not something that Treasury would do. I would suggest they are bound by their professional standards to deliver accounts in accordance with best practice.

**Senator S.C. Ferguson:**

Yes, but the previous law, I think it recommended that the Treasurer consulted with the C. & A.G. on that. I cannot remember. I remember long discussions about the standards to be applied and there were big discussions between the previous C. & A.G. and yourself.

**Consultant:**

The current law says the statement must be prepared in accordance with accounting standards issued by the Treasurer with the approval of the Minister. The Treasury must prepare an annual financial statement and send the statement to the C. & A.G. for auditing by assisting officers.

**Treasurer of the States:**

We are just sending it to the C.A.G. to be audited, as opposed to agreeing the standards.

**Senator S.C. Ferguson:**

Yes, but there were great discussions about the standards to be applied, I know. There were technical discussions.

**Treasurer of the States:**

There are many discussions around accounting standards to be applied.

**Senator S.C. Ferguson:**

It is kind of clearer.

**Treasurer of the States:**

The previous law did not require consultation with the C. & A.G. It said with ...

**Senator S.C. Ferguson:**

But I think when he was a previous president of the Institute of Chartered Accountants, it is worth picking his brains.

**Treasurer of the States:**

Yes. There are options as to which standards we will choose. The options you would choose between are still best practice. It is just a matter of judgment as to which one we would go for.

**Senator K.L. Moore:**

Senator, did you want to ask the next question? We are going to move on. I do apologise, it is myself who has missed a question. We are now going to look at Article 42, regarding production of records. It has widened considerably to include any organisation receiving funding. Has any consultation been undertaken with States funding recipients on the potential increased obligation placed upon them?

**Treasurer of the States:**

I will start and if someone can remind me of the conclusion to this. The principle of this is about following every pound of taxpayers' money. Quite a lot of money goes out to organisations externally. This is not about following every pound of benefit, it is about following the pounds of ...

**Senator S.C. Ferguson:**

Are you going to have *de minimis*?

**Treasurer of the States:**

We will apply judgment. This is not about going after every £5. It is not about going after anything, it is just following up in the case where we may need to follow up or where we may need those documents in order to produce the accounts, for example, providing that that responsibility is there. Would you like to add more, Maria?

**Consultant:**

The important point is it is to do with when information is required, and the Minister for Treasury and Resources says when the information is needed. It is not about going to everybody and saying we want everything from them, it is just where there is a need under the provisions of this law that this Article gives the relevant person the ability to go and request that information. It is not about them providing everything all of the time, it is only where there is a request.

**Partner, KPMG:**

The manual lays out that the accountable officer who is responsible for providing that grant or financing applies judgment as to the level of information they require depending on the amount provided and also the type of recipient. We talked about this last time, where if the recipient, for example, is receiving say £500,000 and the person who is responsible is an accountant or suchlike, you would expect a higher quality of information than if they had received several thousand pounds and they were someone who was not financially skilled, then there would just be generally be more discussion. It is about ensuring that taxpayers' money can be appropriately followed up and reports and suchlike are obtained where required and to make sure that grants are deployed efficiently and effectively, so that people are using them for the best interest of the Island and the use they were initially intended for.

**Senator S.C. Ferguson:**

Yes, I am all in favour of that. It is drafted so widely it could pick up people who are getting a grant of £100.

**Partner, KPMG:**

Yes, the drafting is, but the manual ... I cannot remember the section.

**Senator S.C. Ferguson:**

The manual is not law.

**Partner, KPMG:**

No, the manual is not law, but we have put a lot of responsibility on the accountable officer to ensure that they apply judgment for that grant. People receiving that grant have a duty of care to the

taxpayer as well. I am sure if the States have given someone £100 they will use it effectively, but it is the same if they have been given £100 million, you would want them to use it effectively. Kevin.

**Head of Decision Support:**

Yes. I was just looking up the C. & A.G. General Law 2014 because this really mirrors what is in there. The C. & A.G. has powers relating to a body, whether or not incorporated, that in a financial year receives an amount of money from the States to help it carry out its activities. That is the intention here. Mr. Kirkby is quite correct that this would be applied in a proportionate way and perhaps in a much more proportionate way than the current financial direction on grants does. It places some quite onerous obligations in terms of provision at the moment that are not really risk-based and relate to the need for that information. The new approach will only request information where it relates to spending of money received from the States. Because the States gives a grant of £100 to an organisation that perhaps spends £50,000, it does not infer any right for any member of the Treasury and Exchequer to go along and ask questions about how the whole of that money is spent. There are general issues around rate of parity. Broadly, as the Treasurer has said, this is about following the public pound to where it is spent, to try and ensure the overarching requirements on achieving value for money and regularity of spending are carried out.

[15:00]

Yes, technically we can ask for information from anyone who receives a grant of £100, but we certainly do not have the time or resource to be able to do that. This is being applied in a proportionate way, looking at the risk in terms of whether that money is spent properly and gives value for money.

**Senator S.C. Ferguson:**

Back to one of my favourite questions: the Fiscal Policy Panel and Article 43, where Article 43 sets out the appointment terms of the F.P.P. (Fiscal Policy Panel) and my query regarding the Minister appointing the F.P.P. and that remains in the new law. Have you done any work to investigate how much the F.P.P. feel that this compromises their position and their independence? I know the previous F.P.P. felt fairly strongly about this.

**Treasurer of the States:**

I cannot recall any conversation with the previous F.P.P. relating to their independence. What I do know, and as you well know, is the Minister gets the report of the F.P.P. at exactly the same time as all States Members and it is then made public. I also know that we work extraordinarily hard to make sure that there is independence in our approach between both the Treasury and the F.P.P. I did not meet with the Fiscal Policy Panel ahead of this particular report - I have in the past - where they are

information gathering. I met after the report was published to understand any particular issues that I needed to be aware of and to discuss what they are saying and whether there was anything I needed be aware of in their recommendations.

**Senator S.C. Ferguson:**

Yes, but I suppose it is a question of perception. With the best will in the world ...

**Treasurer of the States:**

I am not aware that they have got a problem.

**Consultant:**

No, I was not either.

**Senator S.C. Ferguson:**

With the best will in the world, the perception that they are appointed by the Minister could well lead to that sort of feeling that perhaps they are not as independent. Originally they were appointed by the States. I could never understand why that was changed.

**Treasurer of the States:**

I think that change came about from a piece of legislation that I cannot remember, Maria, that changed all similar appointments across the board - it was not just related to the F.P.P. - falling out of the decision of the States in ...

**Consultant:**

States of Jersey Appointments Procedures (Jersey) Law 2018, the procedure here follows what is laid down in that specific legislation.

**Treasurer of the States:**

Because there was a States decision about how appointments were made, we changed the law on how the appointment was made. That is the explanation as to why. There is a robust process in the background that advises the Minister, independent of the Treasury, as to who should be appointed. Is that overseen by the Appointments ...

**Consultant:**

Jersey Appointments Commission. There is the 2-week lodging period or presentation period before a Member is appointed to the panel. The States are notified of the appointment before it takes effect.

**Senator S.C. Ferguson:**

Very good.

**Senator K.L. Moore:**

Thank you. Do you have any further questions? I think you had a further question.

**Senator S.C. Ferguson:**

Mr. Kirkby, if you first of all made recommendations and then you helped draft the law, do you see any conflict between those 2 roles?

**Partner, KPMG:**

We made recommendations. We did not help draft the law per se, we commented on the direction of travel and facilitated discussions in pointing out pros and cons of different approaches. For instance, where people were talking about debt limits - that is a good example, that came up in a number of conversations during the process - we then pointed out what different jurisdictions had done, where it seemed to have worked or seemed to have failed. There were a number of examples of that where we provided those comments. At the end of the day, we were part of a number of people that made up the Finance Law Implementation Group. We were there just as advisers. Our advice could be discarded and discounted as and when required. As you can see from the schedule in terms of the recommendations there are a number of areas where the Finance Law Implementation Group ... and then through the drafting and the Minister decided that our recommendations were not valid. That is the process we have been through.

**Senator S.C. Ferguson:**

Thank you.

**The Minister for Treasury and Resources:**

It is really just to ask the panel that if you do have concerns about any particular thing that has not been answered today, if you could come back to us, because we really do want to stick with the schedule of this and get it with the Government Plan, because that is the whole idea. We totally appreciate, as I said to start with, that it is a new panel, it is a new Government, but Treasury and Exchequer have been doing this for 2 years with massive amounts of consultation. If you did have further concerns, we would be very grateful if you could then forewarn us, so that this does not get delayed.

**Senator K.L. Moore:**

Thank you. We will do what we can, although we are running up to the Easter break and we also have quite a packed agenda ourselves with more than one piece of work on our books currently, so we will consider it.



**The Minister for Treasury and Resources:**

I appreciate that, but obviously so do we, and we do not want this delayed in the whole scheme of the Government Plan.

**Senator K.L. Moore:**

Part of the process though - and it is really important that we have this opportunity to say this - is that Scrutiny does have within the States of Jersey Law the ability to dictate some of the timetable also. It is our duty to ensure that we are able to take time to consider our work and to give guidance to other States Members as well. If we feel that we need more time we will do our best to let the Treasury team know. Essentially we will be able to make that decision following the principles debate on 30th April. If it becomes clear that the States Members wish to have more information in any particular area, we will find out then. We have had some interest from other States Members, who obviously see it as an important law and something that they want to properly understand and feel reassured that they have a thorough understanding of the implications and the consequences of agreeing the law and how it will progress and impact upon the future. We will endeavour to maintain that communication, but I also do maintain our right to manage our own timetable. Thank you.

[15:08]