

STATES OF JERSEY



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

Presented to the States on 29th April 2019
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

1. The Draft Public Finances (Jersey) Law 201- ([P.28/2019](#)) was lodged by the Minister for Treasury and Resources on 12th March 2019, for debate in the States Assembly on 30th April 2019. The report accompanying the draft Law notes that the proposed changes are part of a wider process of improving and modernising the way that the public administration works, enshrined in the framework of [P.1/2018](#), which after adoption by the States became the [Machinery of Government \(Miscellaneous Amendments\) \(Jersey\) Law 2018](#). As further explained in the report, KPMG was commissioned in early 2018 to undertake a review of the existing [Public Finances \(Jersey\) Law 2005](#) (“the current Law”), and the Council of Ministers subsequently endorsed KPMG’s proposals to substantially reform it.

Review background

2. The Panel co-opted Senator S.C. Ferguson, Chairman of the Public Accounts Committee, onto the Panel to help with the review. The Panel’s [terms of reference](#) for reviewing this legislation recognise that the proposed Law contains major changes to the current Law, which need to be examined carefully, particularly with regard to proposed changes in respect of the balance of power between the States Assembly and the Government.
3. The Panel engaged the Chartered Institute of Public Finance & Accountancy (“CIPFA”) as an expert adviser for a short ‘desk-top’ review, and also asked the Comptroller and Auditor General (“C&AG”) for her views on the proposed Law; their responses were subsequently published¹. Whilst broadly supportive, both responses highlighted areas of concern which the Panel wishes to explore further and may potentially require amendments to be made to the proposed Law.

Stakeholder comments

4. The Panel has also sought general and specific stakeholder comments on the potential impact of the draft Law via e-mail to interested parties or social media.² The Panel has received comments back (including responses from JT, Jersey Post and Jersey Overseas Aid), some of which raised areas of concern on the impact of the proposed Law.³

Call in and potential amendments

5. Following the Panel’s initial evidence-gathering, which has included private briefings with the key senior Treasury officers and a [Public Hearing with the Minister for Treasury and Resources](#), the Panel has concluded that amendments may be necessary, and it is important that the process to review important pieces of legislation should not be rushed. It has therefore informed the Minister that it intends to ‘call in’ the draft Law after the debate on the principles. The additional time allowed for the Scrutiny ‘call-in’ under Standing Orders will

¹ Link to [C&AG comments](#), link to [CIPFA report](#)

² Link to [CSSP Scrutiny Review page](#)

³ Link to submissions: [Jersey Post](#), [JT](#), [Jersey Overseas Aid](#)

help ensure that there is adequate time for legislative Scrutiny and passage through the Assembly, allowing the Panel and other Members to carefully scope and instruct amendments where necessary.

6. The Panel also wishes to widen its call on Members' expertise to undertake the next phase of scrutinising the draft Law. Accordingly, it has established a sub-Panel comprised of the Chairman, Senator S.C. Ferguson, along with Deputy S.M. Wickenden of St. Helier, and another member of the Corporate Services Scrutiny Panel. The sub-Panel will be tasked with undertaking a line-by-line review of the proposed Law, considering concerns raised by stakeholders and others, and potentially bringing amendments to the draft Law.

Issues identified thus far

Government Plan

7. The Panel understands the rationale for replacing the Medium Term Financial Plan ("MTFP") found in the existing Law with a "Government Plan". The Government Plan is described as an annual plan proposed by the Council of Ministers. Through the Plan, the States Assembly will be asked to approve a detailed one-year budget for the following financial year, with respect to both income and expenditure, whilst also setting income and expenditure proposals for years 2, 3 and 4 on a rolling basis. Given the significant changes being proposed, and in order to meet the Government's preferred timetable for lodging the 2020 Government Plan, the Panel asked the Minister for Treasury and Resources to consider bringing forward, in the short term, only the changes necessary to allow for the substitution of the MTFP for the Government Plan. The remainder of the draft Law could then have been lodged and scrutinised separately without the time pressure. However the Minister did not agree to the request, preferring to bring the entire draft Law to the Assembly as a whole.⁴ The Panel therefore decided that it would need to call in the proposed Law to allow sufficient time for Scrutiny.

Documentation requests

8. The Panel has requested key documents to aid its understanding of the process from accepting the proposals of the KPMG report to the drafting of the proposed Law. The Panel had sight of the draft Law while it was being developed, as well as the report from KPMG. It has also recently received minutes of the Steering Group which was set up to consider the redrafting of the current Law. The Panel considered it would be helpful for it and States Members to be provided with a comparison document between the current Law and the proposed Law. However, the Panel was advised by the Treasury that such a document had not been prepared.⁵ The Panel also asked for the law drafting instructions, but was advised that the instructions were based on KPMG's recommendations, and were developed through meetings with the legislative drafters, rather than existing as a single standalone document. The Panel considers, in the absence

⁴ Link to transcript of [Public Hearing with the Minister for Treasury and Resources](#), 28th March 2019

⁵ Link to transcript of [Public Hearing with the Minister for Treasury and Resources](#), 28th March 2019

of these key documents, that more time is needed for the sub-Panel to review the legislation.

Balance of power

9. The report accompanying the draft Law highlights that it is much less prescriptive, and therefore removes some controls, checks and balances that are in the current Law. In some cases, it might be considered that the proposals remove some of the control that the States Assembly currently has on the Island's finances. The Panel has identified several areas that it would wish the sub-Panel to receive further information about, and although it does not set out an exhaustive list of points for clarification, it does set out some of its more substantial concerns below.

Limits on borrowing

10. The current Law has detailed provisions setting out the maximum amount of funds the States may borrow (which is limited to total borrowing equal to the States' total income in the previous year). These provisions have been removed, with any borrowing now subject to a decision of the States in a Government Plan (but without a maximum limit set out in statute). Furthermore, as Article 26 is currently drafted, a limit is placed on short-term financing, but not on overdrafts. The Panel is keen to explore whether a framework for borrowing should be put in place.

States' Funds or Grants recipients

11. Article 42, as drafted, requires persons who are involved in the administration of money of the States to provide information or produce a record at the request of the Council of Ministers, the Minister for Treasury and Resources, the Treasurer of the States, the Principal Accountable Officer, or an accountable officer acting in accordance with the functions under the Law. The Minister for Treasury and Resources and the Treasurer reassured the Panel that the proposed changes to the Law (the current Law only imposing an obligation on States employees) would not be unduly onerous, and that all requests for information would be proportionate to the size of the organisation.⁶ However, the Panel was keen to engage with external stakeholders, and may wish to bring an amendment to the proposed Law regarding the possible impact of Article 42 on recipients of States' funding.

Internal audit function

12. The current Law provides for the appointment of a Chief Internal Auditor, and made certain provisions to protect the independence of the internal audit function. The draft Law replaces those provisions with a duty on the Treasurer to establish a system of internal auditing in support of the 'proper stewardship and administration of the public finances of Jersey'. The Panel would like to task the sub-Panel with determining whether Article 32 of the proposed Law is

⁶ Link to transcript of [Public Hearing with the Minister for Treasury and Resources](#), 28th March 2019

sufficiently robust to protect the independence and necessary funding for the internal audit function.

Public Finances Manual

13. The Panel notes that the draft Law is supposed to be underpinned by a Public Finances Manual (“PFM”), which would contain the detail currently set out in legislation and in Financial Directions. However, the Panel has only seen drafts of the PFM, and is awaiting a response from the Minister about whether it will be published. The C&AG has noted that there is no general statement of the scope and coverage of the PFM contained in the draft Law: the draft Law merely states that the Manual ‘may include directions and information with respect to the proper administration of this Law and of the public finances in Jersey’. The draft Law does not impose any specific duty on compliance with the Manual or any part of it. This is in contrast with Article 10A of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) that imposes a duty on Accounting Officers to ensure compliance with Codes of Practice issued under Article 8 of the Employment of States of Jersey Employees (Jersey) Law 2005.⁷ The Panel will task the sub-Panel with determining whether the proposed Law should be amended to ensure adequate compliance and best practice in compiling and maintaining the Public Finances Manual.

Conclusion

14. These Comments serve as an interim report to inform Members about the context for its decision to call in the proposed Law and establish a sub-Panel to consider amendments to it. The sub-Panel will publish a further report upon completion of its work, along with any potential amendments identified through the Scrutiny process.

⁷ Link to [C&AG comments](#)