

STATES OF JERSEY

r

DRAFT PUBLIC FINANCES (JERSEY) LAW 200-

**Lodged au Greffe on 26th October 2004
by the Finance and Economics Committee**

STATES GREFFE



Jersey

DRAFT PUBLIC FINANCES (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Finance and Economics Committee has made the following statement –

In the view of the Finance and Economics Committee the provisions of the Draft Public Finances (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

Introduction

The Finance and Economics Committee is pleased to present a new Public Finances Law. The existing Law was enacted in 1967 and although it has been amended over the years to take account of changing circumstances the Committee had scheduled work on a new Law to bring States finances up to date in relation to best practice in the public sector. This work became a high priority more recently, to take account of the States decision to move to ministerial government. The opportunity has been taken to look at more recent equivalent Laws of other jurisdictions, to identify best practice and to incorporate this in the new Law where appropriate in the Jersey context.

The guiding principles in this new Law are those of financial discipline, transparency and flexibility. For example, in terms of discipline, the agreement of an annual budget linked to States approved plans, the consideration of the allocation of all resources without exception at one point during the year (apart from real emergencies) and the role of audit through the Comptroller and Auditor General and his/her link to the Public Accounts Committee. In terms of transparency, the reduction of Reserve Funds and the introduction of the Consolidated Fund through which States transactions will pass, the production of annual accounts which are compliant with Generally Accepted Accounting Principles and a hopefully more understandable Law. In terms of flexibility, any future changes to budgetary requirements can be accommodated and there is a certain amount of flexibility in the use of funds, within the limits voted by the States, if circumstances change during the financial year.

Consolidated Fund and Special Funds (Articles 3 – 6)

It is proposed that, with certain exceptions, there should be one Fund through which the financial transactions of the States flow, a practice which is common in many other jurisdictions. Broadly these transactions mirror what is often referred to as “General Revenues”. The proposed Consolidated Fund will include both revenue and capital transactions, but not the Strategic Reserve and the Currency Fund, which will continue as separate Funds. Any balances in the current Capital Fund and the General Reserve will be transferred to the Consolidated Fund. Funds which have been authorised by other legislation (e.g. Social Security Funds) will continue to be administered separately. It is proposed that the Consolidated Fund should, as now, provide for the full cost of capital at the outset of each project funded there from. Provision for any Contingency or Supplementary expenditure, which is expected to be minimal, should be made in the balances to be carried forward to the next financial year. It is hoped that as a result of these changes it will be easier to understand States transactions.

The provisions for the investment of States money will be little changed from the current Law as the Regulations were reviewed recently. The new regulations will mirror the existing ones and will set out permitted categories of investment and provisions for the appointment of investment managers.

Appropriation and Budgeting (Articles 7 – 21)

The draft Law provides for a 3-stage budgeting programme, which links estimates to Strategic Business Plans approved by the States. The 3 stages are –

1. Submission of estimates by Ministries and Departments and their consideration by the Council of Ministers.
2. Proposed business plan and expenditure allocations considered by the States and approved or amended.
3. Approval of taxation and other income proposals by the States.

It is anticipated that Stage 2 will take place at about the same time as the current Resource Plan, fixing the net expenditure budgets in relation to anticipated income. Having agreed the expenditure for the following year the Budget in December will concentrate on income generation including any tax proposals, funding requirements, and any transfer to and from Reserves.

There has been consideration of whether it would be possible to agree States expenditure and taxation at the same time, but this approach has been discounted for 4 reasons. Firstly, if there are changes to the proposed expenditure agreed by the States in the Annual Business Plan which result in the need for additional taxation, the Council of Ministers would need adequate time to consider detailed proposals. Secondly, it is not until later in the year that more accurate tax estimates become available. Thirdly, the Annual Business Plan may well include important planning and non-financial matters which need adequate time for consideration. Fourthly, to debate an Annual

Business Plan and both expenditure and taxation proposals at the same time would be a mammoth task for the States, with an impractical number of variables.

The Annual Business Plan will contain mandatory financial information as required by the new Law which is necessary for the States to make decisions on spending plans. Otherwise the non-financial aspects of the Plan are at the option of the Council of Ministers. This flexibility is deliberate as each successive Council of Ministers may have different ideas as to content.

The Finance and Economics Committee has considered the position of those departments which will be independent of the Executive and whether they should have a different route to obtaining funds. In other jurisdictions there is sometimes a process for obtaining such funding directly from the Parliament, particularly in respect of parliamentary expenditure. The Committee believes that such a process is not to be recommended because it strongly believes that all expenditure should be prioritised, and that there should be no “sacred cows”. In addition, the cost of the States as a parliament, including States Members pay and expenses and the cost of scrutiny is a higher proportion of total expenditure than, for example, in the United Kingdom. Should there be any disagreement about the level of funding it is entirely in the hands of the States to change any recommendations since the Executive does not have a majority in the States. Safeguards have been built into the Law in that where a budget request from a non-Ministerial Department has been reduced by the Council of Ministers this will have to be referred to and an explanation given in the Annual Business Plan.

The Finance and Economics Committee also believes that all expenditure should be considered at the same time. It has become apparent that the States have in the past approved propositions for expenditure and subsequently it has not been possible to find the funds within the Budget. This leads to disappointment and to criticism of States procedures. The new Law allows a States Member to bring a proposition involving expenditure or the raising of income, in principle only, and therefore subject to the funds being agreed by the States in the Annual Business Plan. Again in the event that funds cannot be found there is a safeguard in that the Annual Business Plan must set out reasons why the expenditure is not recommended, and again the States will have the final say.

The current Law allows some variations in the use of funds, where necessary after the States have approved expenditure. This is because in any organisation circumstances and priorities can and do change. These provisions are carried over into the new Law, with the requirement for the Minister of Treasury and Resources (hereinafter referred to as the Minister) to report such variations to the States.

The new Law makes provision for Contingency Expenditure which is linked to a state of emergency or a threat to the safety of the population.

In relation to taxation proposals it has been provided that any amendments need not be limited to an amendment of the proposals put forward by the Executive, but individual members may make alternative proposals.

It is expected that Scrutiny of the financial proposals will be accommodated within the timetable for the Annual Business Plan.

Borrowing and lending (Articles 22 – 25)

Other than a specified borrowing limit and reference to the issue of Loan Stock, the current Law makes little mention of borrowing or lending. In other jurisdictions the provisions for borrowing and lending are given more prominence. At present any borrowing and lending proposals, other than those approved by other legislation, have to be approved by the States on a transaction by transaction basis, even for fairly small sums. This is not appropriate for a diverse organisation like the States, where for example a photocopier purchased on instalment terms would legally need the approval of the States. The Finance and Economics Committee is therefore proposing that only major borrowing or lending would need to be approved by the States and that Regulations would delegate more minor transactions to the Minister. It will be proposed that Regulations would also delegate authority where the States have agreed a general policy (e.g. loans to parishes for housing projects).

An overall ceiling is proposed for both borrowing and lending, which can be changed by Regulation. For borrowing, an amount not exceeding the estimated income of the States from taxation for the previous financial year is recommended. It should be noted that under the current Law the borrowing limit is twice the annual income of the States, which the Committee feels is too high. It should be noted that the Committee is not advocating any extension of the use of borrowing to fund States expenditure at this time.

In respect of lending, the limit proposed is 15% of the estimated income of the States from taxation in the previous year. There is no limit for lending at present and the rationale behind the 15% is that external loans should not go materially higher than at present.

It should be noted that based on the States 2003 accounts the borrowing limit would be £428 million and in respect of lending the limit which would be £64 million compared with loans outstanding of £56 million.

States Trading Operations (Articles 26 – 28)

As in existing legislation the new Law provides for different Rules for Trading Operations, which are at present set financial targets for payment to the States and are allowed to carry forward surpluses to a Trading Fund to be used mainly for the funding of capital expenditure.

Administration (Articles 29 – 40)

These Articles set out the appointment, duties and independence of the Treasurer of the States, including the preparation of annual accounts, the administration of bank accounts and the issue of financial directions. The duties of the Chief Internal Auditor are also set out.

The concept of Accounting Officers is introduced. These will normally be the Chief Officers of Ministries and Departments, and they will have personal accountability for the proper financial management of the resources of the body which they direct. This is a completely new approach for Jersey, but one which is followed by other jurisdictions.

Comptroller and Auditor General (Articles 41 – 57)

These Articles reflect the States decision to create the office of Comptroller and Auditor General. He or she will carry out the work currently undertaken by the States Auditor and the Audit Commission. Care has been taken to emphasize the independence of the person appointed, however he or she will be expected to work closely with the Public Accounts Committee and with Internal Audit. The post holder has been given wide powers of access to records and information and to question anyone in relation to an audit.

Offences (Articles 58 – 67)

The existing Law is lacking in this area as compared with other jurisdictions, with virtually no sanctions and no penalties for non compliance with its provisions. The new Law has been given “teeth” in that there is set out a number of offences and penalties relating to the Law which have been approved by the Attorney General.

Miscellaneous Provisions (Articles 68 – 75)

Provision is made in these Articles for the administration of Trust Assets, and the Ministers duties in relation to States shareholdings. These are new provisions, not in the current Law, which the Committee considers best practice to include in the new Law.

Regulations

There are a number of references to Regulations in the Law. These will be considered by the States at a later date.

Conclusion

The Finance and Economics Committee is pleased to present a Law, which has been the subject of considerable research and consultation with interested parties both within and outside the States, and which will replace the old Law which dates from 1967. The Committee commends it to the States.

Financial implications

There are no additional direct costs associated with adopting this Law, however the cost of the office of the Comptroller and Auditor General will need to be funded. The FSR process identified an additional cost of £91,000 per annum from 2005. Further funds may be transferred from existing cash limits.

Manpower implications

There are no additional manpower implications associated with adopting this Law, however the additional manpower implications of the office of the Comptroller and Auditor General were identified by the 2005 FSR process as one additional post.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 30th September 2004 the Finance and Economics Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Finance and Economics Committee the provisions of the Draft Public Finances (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law sets out the way in which the public finances of Jersey must be regulated, controlled, supervised and administered, and establishes a system of both internal and independent auditing to ensure that this happens.

In brief, the Law –

- Establishes a consolidated fund into which all monies received by or on behalf of the States must be paid and from which money can only be withdrawn in accordance with the specific approval of the States or by virtue of an enactment;
- Establishes a strategic reserve fund, being a permanent reserve that cannot be used to defray directly expenditure of the States;
- Establishes a currency fund containing sufficient money to cover currency in circulation;
- Provides for the investment of money standing to the credit of those funds;
- Establishes an appropriation and budget programme that continues the present 3-stage budget process, while integrating planning and expenditure approval, by providing –
 - as a first stage, each Ministry and other States-funded body to provide estimates to be agreed by the Council of Ministers;
 - as a second stage, the approval by the States of an annual business plan that incorporates the expenditure approvals (these first 2 stages being completed during the first 3 quarters of a financial year); and
 - as a subsequent stage (to be completed during December of a financial year), the approval by the States of taxation and any borrowing proposals;
- Provides for the establishment of States trading operations (much like the present Trading Committees);
- Establishes the office of Treasurer and sets out the functions of the office;
- Provides for a chief internal auditor and sets out his or her functions;
- Provides for each States funded body to have an accounting officer and sets out the obligations of the person holding the office;
- Specifies the obligation of employees of States funded bodies to provide records and information when required to do so under the Law;
- Establishes the office of Comptroller and Auditor General and sets out the duties and powers of the office;
- Creates a number of offences in respect of any non-compliance with the Law and provides for relevant penalties;
- Provides for a system of Regulations made by the States, Orders made by the Minister and financial directions issued by the Treasurer (with the approval of the Minister) required to give effect to the Law.

All this is explained in more detail in the following Article by Article analysis of the Law.

INTRODUCTION

Article 1 sets out the special meaning given to various words and expressions used in the Law.

Article 2 makes it clear that it is the function of the Minister to ensure compliance with the Law.

THE FUNDS

Article 3 establishes the consolidated fund and provides that all monies received by or on behalf of the States must be paid to the credit of the fund and that no money may be paid out of the fund except under the authority of an expenditure approval or by virtue of an enactment. It also allows special funds to be established for specific purposes.

Article 4 establishes the strategic reserve fund.

Article 5 establishes the currency fund.

Article 6 provides how money in the funds or other money of the States may be invested.

THE APPROPRIATION AND BUDGETING PROCESS

The stages to be followed

Article 7 sets out the appropriation and budget programme the States must follow during a financial year.

Stage 1 - Preparation

Article 8 requires that estimates of the expenditure and income of each States funded body for the next financial year are to be provided to the Minister.

Article 9 provides that the Council of Ministers must determine how much to recommend to the States each States funded body should receive in revenue and capital funding during the next financial year and for the result of these determinations to be incorporated into a draft annual business plan to be lodged by the Chief Minister.

If the Council of Ministers does not agree the estimate for a head of expenditure of a States funded body that is not in the charge of a Minister, the estimate of the States funded body must be noted in the draft annual business plan and an explanation of the variation given.

Stage 2 – Approval of annual business plan

Article 10 provides when the draft annual business plan for a financial year must be lodged, when it may be debated, how it may be amended and what it must contain.

Article 11 sets out what financial provisions a draft annual business plan must contain. In particular it must contain a financial report and a summary. The summary must set out –

- the total amount required by each States funded body for the following financial year for its revenue expenditure;
- the total amount it is proposed should be appropriated to each States funded body for the following financial year for its revenue expenditure (after taking into account the estimated income of the body);
- the total amount it is proposed should be appropriated to each States funded body for each capital project due to start or continue for which no other expenditure approval to complete the project exists;
- the amount (if any) each States trading operation is to be required to contribute to the funds of the States in the following financial year; and
- the estimates of each States trading operation.

Article 12 provides that the summary mentioned in Article 11 when approved (after taking account of any amendment made to the draft annual business plan by the States) is an expenditure approval.

Expenditure approval

Article 13 provides that each item in an expenditure approval that authorizes withdrawals from the consolidated fund is a head of expenditure and sets out in detail what a head of expenditure authorizes, namely, the withdrawal from the consolidated fund of amounts not exceeding the amount mentioned in the head of expenditure and its expenditure for the purpose approved by the States.

The Article also acknowledges the fact that some States funded bodies will be paying amounts they receive (such as fees and rents) into the consolidated fund which they should be able to withdraw from the fund to offset their expenditure.

The Article allows this to happen but limits the amount that may be withdrawn to the lesser of –

- the amount the States decided the States funded body required for its revenue expenditure; or
- the amount the States funded body estimated it would pay into the consolidated fund.

Article 14 provides that proposed amendments of an expenditure approval once approved by the States may only be lodged by the Minister. However if a proposal lodged by any other member that would require an amendment of a head of expenditure for its implementation is approved by the States the Council of Ministers must take it into account when next considering estimates.

Article 15 provides that certain necessary variations from the prescribed regime may be permitted by the Minister who has to report to the States any permission given.

Article 16 acknowledges the fact that there may be emergency situations where a States funded body may need to spend money but has insufficient expenditure approval to withdraw the amount required under a head of expenditure.

The Article allows the Minister to give approval to the amount being withdrawn from the consolidated fund provided that subsequent States approval for the withdrawal is obtained or if no approval is forthcoming the money is found from some other head of expenditure.

Stage 3 – The Budget

Article 17 requires the Minister to lodge a budget proposition in respect of a financial year in sufficient time to allow it to be debated and agreed during the month preceding that year.

The budget proposition must contain a Budget statement, a draft of any taxation legislation, and, where it is intended to borrow money, a draft of any necessary Act of the States to approve the borrowing. Any transfer of money to or from the strategic reserve fund also has to be provided for.

Article 18 specifies what a Budget statement must contain. In broad terms it must give details of the state of the finances of the States.

The Minister is prohibited from producing a Budget that provides for the estimated amount in the consolidated fund at the end of a financial year to be a negative amount after all agreed expenditure and income has been taken into account.

Article 19 provides that only the Minister may propose legislation that relates to taxation, namely its imposition, amendment or abolition.

However, if during the year the States agree a proposition from any other member that suggests a taxation measure the Minister must include the measure in his or her next Budget or explain why this has not been done.

Article 20 sets out an arrangement whereby immediate effect may be given to taxation measures.

Article 21 provides that in general draft taxation legislation and proposals to borrow money or to transfer money to or from the strategic reserve fund can only be amended by an amendment lodged for at least 14 days (i.e. not on a “blue”) so that due consideration can be given to the proposed amendment.

If an amendment is passed the Minister may require an adjournment of the debate so that the long term results of the amendment may be considered and any necessary other amendments can be proposed.

Paragraph (5) of the Article makes it clear that States members in proposing amendments for the purpose of the Article are not confined to amendments that would merely amend the contents of any proposition to which the Article applies but are given a wide discretion in the amendments they may propose.

Paragraph (6) of the Article provides that if a rejection by the States or an amendment by the States of any proposed taxation or borrowing could result in the amount in the consolidated fund being a negative amount, the Minister must bring to the States proposals to ensure that this does not happen.

Borrowing and lending by the States

Article 22 provides that, in general, money can only be borrowed in the name of the States with the approval of the States.

Article 23 allows the States to authorize the Minister or the Treasurer to make certain small borrowings in the name of the States.

Article 24 provides that loans can only be given by or in the name of the States with the approval of the States or in accordance with Regulations made by the States.

The total amount to be lent is limited to an amount equal to 15% of the estimated taxation revenue for the previous financial year. The States may amend that percentage by Regulations.

Article 25 provides that guarantees and indemnities can only be given by or in the name of the States with the approval of the States or in accordance with Regulations made by the States.

STATES TRADING OPERATIONS

Article 26 allows for parts of the States operations to be designated by the States as States trading operations, the equivalent of the present Trading Committees.

Article 27 provides that in general the provisions of this Law will apply to trading operations except that a trading operation must maintain a profit and loss account and a balance sheet including a trading fund, which will not be

part of the consolidated fund.

The Minister may also make an Order providing for the financial control of a trading operation while the Treasurer may, with the approval of the Minister, issue financial directions providing for the financial administration of trading operations.

Article 28 sets out how the returns and estimates of a trading operation are to be determined and when they may be varied.

ADMINISTRATION

The Treasurer

Article 29 establishes the office of Treasurer and specifies the duties of the office.

Article 30 provides for the Minister to appoint a person to the office of Treasurer and for the revocation of the appointment by the States.

Article 31 provides for the independence of the Treasurer.

Article 32 allows the Treasurer to authorize employees in the Treasury to carry out certain functions of the office of Treasurer. These do not include lending money of the States or borrowing money on behalf of the States.

Article 33 requires the Treasurer to prepare an annual financial statement in respect of the accounts of the States.

Article 34 allows the Treasurer to open bank accounts convenient or necessary for the administration of the Law.

Article 35 allows the Treasurer, with the approval of the Minister, to issue financial directions that specify certain procedures to be followed for the proper administration of the Law and of the public finances of Jersey.

Chief internal auditor

Article 36 provides for a chief internal auditor.

Article 37 sets out the duties of the chief internal auditor.

Accounting officers

Article 38 provides that each States funded body must have an accounting officer, normally its chief officer, although the Minister may appoint another officer or, if appropriate, more than one.

Article 39 sets out the functions of an accounting officer. The accounting officer is personally responsible for the proper financial management of the resources of the body.

The Treasurer may issue financial directions specifying the functions of an accounting officer and how they are to be carried out.

Although the functions of an accounting officer may be carried out by someone else the accounting officer remains personally responsible.

Records to be provide

Article 40 sets out the duty of employees of States funded bodies to provide records and information.

COMPTROLLER AND AUDITOR GENERAL

Appointment of Comptroller and Auditor General

Article 41 establishes the office of Comptroller and Auditor General.

Article 42 provides for the States to appoint a person to the office of Comptroller and Auditor General.

Article 43 provides for the terms and conditions of appointment of a person to be the Comptroller and Auditor General.

Article 44 prohibits the Comptroller and Auditor General from taking on other professional activities without approval.

Article 45 provides that the States may revoke the appointment of a person to hold the office of Comptroller and Auditor General and sets out the grounds on which they may do so and the procedures that must be followed.

Article 46 sets out when the office of Comptroller and Auditor General becomes vacant.

Duties of Comptroller and Auditor General

Article 47 provides that it is the duty of the Comptroller and Auditor General to assure the States that the provisions of the Law are being complied with.

Article 48 requires the Comptroller and Auditor General to ensure that the annual financial statement in respect of the accounts of the States is audited.

Article 49 applies to States bodies and companies controlled by the States where there already exists legislation that ensures that their accounts are properly kept and independently audited, and allows the Comptroller and Auditor General to report on their accounts.

Article 50 applies to independent bodies to which the States, in a financial year, have contributed funds of a certain amount, and allows the Comptroller and Auditor General to audit them to check that the funds provided by the States have been used for the purpose intended.

Administration - Comptroller and Auditor General

Article 51 provides for the Comptroller and Auditor General to have sufficient resources to carry out the functions of the office.

Article 52 allows the States to make Regulations to allow the Comptroller and Auditor General to delegate his or her functions.

Article 53 secures the independence of the Comptroller and Auditor General.

Article 54 requires the Comptroller and Auditor General to produce an annual report.

Reports by Comptroller and Auditor General

Article 55 specifies the reports to be provided by the Comptroller and Auditor General when the accounts of a body have been or are being audited.

Power of Comptroller and Auditor General

Article 56 allows the Auditor to summons people to attend before him or her and to produce records.

Article 57 allows the Auditor to enter buildings and land occupied or controlled by a States funded body, and to inspect, for example, records, stores and plant.

OFFENCES

Article 58 makes it an offence to fail to provide a record or information when required to do so by a person acting in accordance with the Law.

Article 59 makes it an offence to fail to comply with certain additional requirements of the Comptroller and Auditor General.

Article 60 makes it an offence, when required to produce a record or information, for a person to produce a record or any information that is false or misleading.

Article 61 makes it an offence not to bank money in accordance with the Law.

Article 62 makes it an offence to try to secure for any person the improper payment of money of the States or the improper use of money or resources of the States.

Article 63 makes it an offence to hinder or obstruct a person carrying out a function under the Law.

Article 64 provides that a person can claim certain privileges against disclosure of information but cannot refuse to disclose information on the grounds that doing so may tend to incriminate the person. It also protects a person who discloses information when required to do so under the Law where the disclosure might otherwise be in breach of a duty owed to a person.

Article 65 provides that if a person refuses to do something when required to do so by a person acting in accordance with the Law the Royal Court may order compliance.

Article 66 makes a person whose actions contributed to an offence under the Law by a corporation equally guilty of the offence. Equally liable are those who aid, abet, counsel or procure the commission of an offence under the Law.

Article 67 provides that the Attorney General may bring a prosecution and must approve any prosecution under the Law before it is brought.

MISCELLANEOUS PROVISIONS

Article 68 provides for Regulations to be made prescribing how the States must handle money that forms part of any trust assets held by or on behalf of the States.

Article 69 provides that where the States hold shares in a company the Minister may exercise the rights and is responsible for any obligations attached to the shares.

Article 70 provides that those acting or purporting to be acting under the Law and who act in good faith will not be liable to any civil action.

Article 71 repeals the present Law.

Article 72 provides for transitional arrangements.

Article 73 allows the States to make Regulations amending other Laws consequent on the revised arrangement.

Article 74 provides for the commencement of the Law.

Article 75 provides how the Law may be cited.

The Schedule sets out the names of the bodies presently considered to be non-Ministerial States funded bodies (i.e. not the responsibility of any Minister).



Jersey

DRAFT PUBLIC FINANCES (JERSEY) LAW 200-

Arrangement

Article

PART 1

INTRODUCTION

- 1 Interpretation
- 2 Functions of the Minister

PART 2

THE FUNDS

- 3 The consolidated fund and special funds
- 4 The strategic reserve fund
- 5 The currency fund
- 6 Investment of money of the States

PART 3

APPROPRIATION AND BUDGETING

- 7 The appropriation and budgeting programme
 - The stages to be followed*
 - Stage 1 - Preparation*
- 8 Estimates to be provided
- 9 Appropriations to be determined by the Council of Ministers
 - Stage 2 - Approval of annual business plan*
- 10 Draft of annual business plan to be lodged
- 11 Draft annual business plan to contain report and summary
- 12 Approval of annual business plan
 - Expenditure approval*
- 13 Expenditure approval, heads of expenditure and withdrawals from the consolidated fund
- 14 Restrictions on amending or proposing expenditure approvals
- 15 Permitted variations
- 16 Contingency expenditure
 - Stage 3 - The Budget*
- 17 Budget proposition to be lodged
- 18 The budget statement
- 19 Restriction on lodging taxation drafts
- 20 Taxation draft may be given immediate effect
- 21 Amendment of taxation drafts, and borrowing and transfer proposals

Borrowing and lending by the States

- 22 Borrowing by the States
- 23 Minister and Treasurer may be authorized to borrow
- 24 Loans by the States
- 25 Guarantees and indemnities

PART 4

STATES TRADING OPERATIONS

- 26 States may designate States trading operations
- 27 Financial control and administration of States trading operations
- 28 Returns of States trading operations to be agreed

PART 5

ADMINISTRATION

The Treasurer

- 29 Establishment of the office of Treasurer of the States
- 30 Appointment and removal of the Treasurer
- 31 Independence of the Treasurer
- 32 Treasurer may authorize others to carry out functions

Duties of the Treasurer

- 33 Treasurer to prepare annual financial statements in respect of accounts of the States
- 34 Treasurer to open bank accounts
- 35 Financial directions

Chief internal auditor

- 36 Chief internal auditor
- 37 Duties of chief internal auditor

Accounting officers

- 38 Each States funded body to have an accounting officer
- 39 Functions of accounting officers

Duties of employees of States funded bodies

- 40 Records to be provided

PART 6

THE COMPTROLLER AND AUDITOR GENERAL

Appointment of Comptroller and Auditor General

- 41 Establishment of office of Comptroller and Auditor General
- 42 Appointment of the Comptroller and Auditor General
- 43 Terms and conditions of appointment of Comptroller and Auditor General
- 44 Restrictions on Comptroller and Auditor General's other professional activities
- 45 States may revoke appointment of Comptroller and Auditor General
- 46 When office of Comptroller and Auditor General becomes vacant

Duties of Comptroller and Auditor General

- 47 Comptroller and Auditor General to ensure compliance with Law
- 48 Comptroller and Auditor General to audit the annual financial statement of the States
- 49 Comptroller and Auditor General may report on accounts of independently audited States bodies
- 50 Comptroller and Auditor General may audit States aided independent bodies

Administration - Comptroller and Auditor General

- 51 Comptroller and Auditor General to be provided with resources
- 52 Delegation of functions of Comptroller and Auditor General
- 53 Independence of Comptroller and Auditor General
- 54 Annual report of office of Comptroller and Auditor General

Reports by Comptroller and Auditor General

- 55 Reports of Comptroller and Auditor General on certain bodies

Powers of Comptroller and Auditor General

- 56 Power to summons people to appear and to provide records
- 57 Power to enter and inspect

PART 7

OFFENCES

Range of offences

- 58 Failure to provide a record or information
- 59 Failure to appear, to answer questions or to provide information
- 60 Provision of false record or information
- 61 Failure to pay money into a bank account
- 62 Unlawful acquisition or use of money of the States
- 63 Offence to hinder or obstruct

Concomitant provisions

- 64 Privilege, protection and self incrimination
- 65 Royal Court may order compliance
- 66 Responsibility
- 67 Authority for prosecutions

PART 8

MISCELLANEOUS PROVISIONS

- 68 Money forming part of trust assets
- 69 Minister's responsibility in respect of certain companies
- 70 Limitation of civil liability
- 71 Repeal
- 72 Transitional and saving provisions
- 73 Amendment of other enactments
- 74 Commencement
- 75 Citation

SCHEDULE

NON-MINISTERIAL STATES FUNDED BODIES



Jersey

DRAFT PUBLIC FINANCES (JERSEY) LAW 200-

A LAW to provide for the administration of the public finances of Jersey and for related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTRODUCTION

1 Interpretation

(1) In this Law, unless a contrary intention appears –

“budget proposition” has the meaning given to that expression by Article 7(4);

“Comptroller and Auditor General” means the person for the time being holding or performing the functions of the office of Comptroller and Auditor General established by Article 41;

“consolidated fund” means the fund established by Article 3(1);

“consolidated fund bank account” has the meaning given to that expression by Article 34(1);

“Council of Ministers” has the same meaning as in the States of Jersey Law 200-;^[1]

“currency fund” means the fund established by Article 5(1);

“expenditure approval” has the meaning given to that expression by Article 13(1);

“financial directions” means directions issued by the Treasurer in accordance with Article 35;

“financial year” means a year starting on 1st January;

“function” includes a power and a duty;

“head of expenditure” has the meaning given to that expression by Article 13(1);

“income”, in respect of the States, means all money received by the States other than –

- (a) money derived from taxation;
- (b) money received directly by a States funded body;
- (c) money received by the States on behalf of a States funded body;
- (d) trust money received by the States;

and in respect of a States funded body means all money received by the States funded body from any source and includes money received by the States on behalf of the States funded body;

“independently audited States body” means –

- (a) a person (including a corporation sole), office or body, whether or not incorporated, established by this or any other enactment or by an Act of the States where the establishing enactment or Act provides for the person, office or body to be audited otherwise than by the Comptroller and Auditor General; and
- (b) any company, wherever incorporated, that is owned or controlled by the States;

“lodge” means lodge au Greffe in accordance with standing orders;

“Minister” means the Minister for Treasury and Resources;

“non-Ministerial States funded body” means a body specified in the Schedule, being a States funded body for which no Minister is responsible to the States for its administration or funding;

“Public Accounts Committee” means the Committee established in accordance with Article 44(3)(a) of the States of Jersey Law 200-;^[2]

“record” means information recorded in any form and, in relation to information recorded otherwise than in legible form, a reference to its provision or production includes a reference to providing or producing a copy of the information in legible form;

“special fund” means a fund established under Article 3(3);

“standing orders” means standing orders made under the States of Jersey Law 200-;^[3]

“strategic reserve fund ” means the fund established by Article 4(1);

“States aided independent body” has the meaning given to that expression by Article 50(7);

“States funded body” means any of the following –

- (a) a Ministry;
- (b) a department of the States (including one or any part of one that has been designated a States trading operation);
- (c) a committee or other body established by an Act of the States or by or in accordance with standing orders;
- (d) the holder of a Crown or States appointment funded by the States including any associated establishment of the holder;

“States trading operation” or “trading operation” means an area of operation of the States designated by the States by Regulations to be a States trading operation in accordance with Article 26(1);

“tax” includes a duty and “taxation” shall be interpreted accordingly;

“taxation draft” means draft legislation that contains provision for any of the following –

- (a) the imposition of a tax;
- (b) the variation of a tax;
- (c) the renewal of a tax (whether at the same or at a different rate and whether with or without modification);
- (d) the abolition of a tax;

“trading fund”, in respect of a States trading operation, means the trading fund maintained by the trading operation in accordance with Article 27(2);

“Treasurer” means the person for the time being holding or performing the functions of the office of Treasurer of the States established by Article 29(1);

“Treasury” means the department of the States for which the Minister has responsibility to the States

in the Minister's capacity as the Minister responsible to the States for the public finances of Jersey; "trust assets" has the meaning given to that expression by Article 68(2).

- (2) The States may by Regulations amend paragraph (1).
- (3) The Minister may by Order amend the Schedule.
- (4) Regulations made under paragraph (2) may make consequential amendments to this Law.
- (5) Regulations made under paragraph (2) and Orders made under paragraph (3) may contain saving transitional, consequential, incidental or supplementary provisions.

2 Functions of the Minister

The Minister must ensure that the public finances of Jersey are regulated, controlled and supervised in accordance with this Law and that the provisions of this Law are otherwise duly complied with.

PART 2

THE FUNDS

3 The consolidated fund and special funds

- (1) There is established a consolidated fund.
- (2) Except as otherwise provided by this or any other enactment –
 - (a) all money received by or on behalf of the States shall be credited to the consolidated fund; and
 - (b) money shall not be withdrawn from the consolidated fund and used for any purpose except with and in accordance with an expenditure approval.
- (3) The States may establish special funds for specific purposes.
- (4) Where the Minister is satisfied that a special fund has served the purpose for which it was established or can no longer do so the Minister shall wind up the fund and transfer any balance to the consolidated fund.

4 The strategic reserve fund

- (1) There is established a strategic reserve fund, being a permanent reserve that shall not be used to defray directly expenditure of the States.
- (2) There shall be transferred from the consolidated fund to the strategic reserve fund such amount as the States may decide on a proposition lodged by the Minister.
- (3) Money shall not be withdrawn from the strategic reserve fund otherwise than in accordance with a decision of the States made on a proposition lodged by the Minister that provides for the amount withdrawn to be credited to the consolidated fund.

5 The currency fund

- (1) There is established a currency fund.
- (2) There shall be credited to the currency fund money received from the issue of currency notes or coins.
- (3) Money must not be withdrawn from the currency fund except –
 - (a) to pay for the production of currency notes or coins, for expenses relating to their circulation

and sale, and for any associated expenditure; or

(b) as a transfer to the consolidated fund of all or any part of a surplus in the currency fund as determined by the Minister after making provision for the repayment of currency in issue.

(4) If at any time the Minister is satisfied that the amount standing to the credit of the currency fund may be insufficient to meet the repayment of currency in issue the Minister may transfer from the consolidated fund to the currency fund such amount as the Minister considers is necessary to correct the deficiency.

6 Investment of money of the States

(1) This Article applies to –

(a) money in the consolidated fund, any special fund, the strategic reserve fund and the currency fund; and

(b) any other money of the States held, whether on trust or otherwise, by the States, the Minister, the Treasurer or an investment manager.

(2) Except as provided by paragraph (5), money to which this Article applies may be invested to the extent and in the manner prescribed by Regulations made by the States on a proposition lodged by the Minister.

(3) The Regulations may, in particular, provide for –

(a) investment by the Minister or the Treasurer; and

(b) the appointment of investment managers and their investment powers.

(4) Despite any other provision of this Law –

(a) any profit arising from the investment of money in a fund or trust in accordance with this Article shall be credited to that fund or trust; and

(b) any loss arising from the investment of money in a fund or trust in accordance with this Article, including any investment costs, shall be taken to have been lawfully withdrawn from that fund or trust.

(5) Article (2) is subject to any provision of –

(a) an instrument that established a special fund; or

(b) a trust,

that provides for money in the special fund or trust to be invested in a different way.

(6) In this Article –

“investment costs” includes the fees charged by investment managers, other fees paid in relation to obtaining investment advice and administrative costs;

“money in the consolidated fund” includes money for the time being standing to the credit of a consolidated fund bank account.

PART 3

APPROPRIATION AND BUDGETING

The stages to be followed

7 The appropriation and budgeting programme

(1) The annual appropriation and budgeting programme of the States shall be carried out in 3 stages.

- (2) Stage 1 shall consist of –
 - (a) each States funded body providing the Minister with details of its expenditure for which it seeks approval; and
 - (b) the Council of Ministers agreeing how much of that expenditure to recommend to the States for approval.
- (3) Stage 2 shall consist of the Chief Minister seeking the approval of the States for the recommended expenditure by lodging an annual business plan that incorporates the expenditure.
- (4) Stage 3 shall consist of the Minister seeking the approval of the States for any proposed taxation and borrowing measures by lodging a proposition that incorporates those measures, in this Law called a “budget proposition”.

Stage 1 – Preparation

8 Estimates to be provided

- (1) When called upon to do so by the Minister –
 - (a) the Minister responsible to the States for the administration of a States funded body; or
 - (b) in the case of a non-ministerial States funded body, a person determined by the Minister, must provide the Minister with the estimates specified in paragraph (2).
- (2) Those estimates are estimates in respect of the following financial year of –
 - (a) the revenue expenditure and any income of the States funded body in that year;
 - (b) the total cost of any capital project that the States funded body is scheduled to start or continue in that year for which there exists no head of expenditure that authorizes sufficient funding to complete the project;
 - (c) any money that may arise from the disposal by the States funded body of assets in that year; and
 - (d) any other income of the States in that year.
- (3) The Minister must, when calling for estimates in accordance with paragraph (1), specify–
 - (a) the procedures to be followed for providing those estimates;
 - (b) the detail and form in which the estimates are to be provided; and
 - (c) the date by which they must be provided.
- (4) The Minister may in, any particular case, call for estimates for such other period as the Minister may specify.

9 Appropriations to be determined by the Council of Ministers

- (1) After receipt of the estimates mentioned in Article 8(1) the Council of Ministers must determine the amount it intends to recommend to the States should be appropriated from the consolidated fund –
 - (a) to each States funded body for its revenue expenditure during the following financial year; and
 - (b) to each capital project of a States funded body scheduled to start during the following financial year, or to continue during that year, for which no other expenditure approval sufficient to complete the project already exists.
- (2) The recommendations must be incorporated into the draft annual business plan to be lodged in accordance with Article 10(1).
- (3) If the Council of Ministers is unable to agree with a non-ministerial States funded body any estimate of the body there must be incorporated in the draft annual business plan –

- (a) the amount (if any) recommended by the Council of Ministers;
- (b) a note stating the estimate of the non-ministerial States funded body; and
- (c) an explanation stating why a variation from that estimate is recommended.

Stage 2 – Approval of annual business plan

10 Draft of annual business plan to be lodged

- (1) The Chief Minister, taking into account the restriction contained in paragraph (2), must lodge a draft annual business plan for a financial year in sufficient time for it to be debated and approved by the States at least 3 months before the start of that financial year or such other period as the States may decide.
- (2) A draft annual business plan shall not be debated by the States until it has been lodged for at least 6 weeks.
- (3) A draft annual business plan may be in such form and contain such provisions as the Chief Minister may determine but must contain the report and summary mentioned in Article 11.
- (4) A draft annual business plan is not capable of being amended during a debate in the States on the draft except in accordance with an amendment lodged at least 14 days before the start of the debate.
- (5) Paragraph (4) does not apply to an amendment moved by the Chief Minister if the States agree that the amendment may be debated forthwith or at a time approved by the States.
- (6) If during a debate on a draft annual business plan –
 - (a) an amendment is approved by the States; and
 - (b) the Chief Minister requests an adjournment of the debate for a specified period to consider the consequences of the amendment,
 the debate shall be adjourned in accordance with the request.
- (7) The States may by Regulations –
 - (a) amend the period mentioned in paragraph (2) to any period longer than 6 weeks; and
 - (b) amend the period mentioned in paragraph (4) to any period longer than 14 days.
- (8) Paragraph (1) does not prohibit a proposition seeking to amend an expenditure approval being lodged by the Minister at any other time.

11 Draft annual business plan to contain report and summary

- (1) The draft annual business plan lodged in respect of a financial year must contain a report sufficient to indicate –
 - (a) how the revenue expenditure proposed for each States funded body is to be expended during the year and an estimate of its income and the sources of that income during the year;
 - (b) the nature and cost of each capital project scheduled to start or continue in that financial year for which no other expenditure approval sufficient to complete the project already exists;
 - (c) the estimates of each States trading operation as required by Article 28(3); and
 - (d) an estimate of the amounts the States will receive during the year from taxation and other income of the States,
 if the draft annual business plan were to be approved unamended by the States.
- (2) The draft annual business plan must also contain a summary that sets out –
 - (a) the total amount that is required by each States funded body to meet its revenue expenditure during the next financial year;

- (b) the total amount (if any) that may be withdrawn from the consolidated fund by each States funded body to meet its revenue expenditure during the next financial year after taking into account its estimated income for that year;
- (c) the total amount that may be withdrawn by each States funded body from the consolidated fund for each capital project to be undertaken by it that is scheduled to start or continue during the next financial year and for which no other expenditure approval sufficient to complete the project exists;
- (d) the estimated minimum contribution (if any) that each States trading operation is to make to the income of the States during the next financial year; and
- (e) in respect of each States trading operation, its estimates as provided in accordance with Article 28(3) including, in particular, details of each capital project it is scheduled to start during the next financial year.

12 Approval of annual business plan

For the purposes of this Law the approval by the States of an annual business plan for a financial year shall be taken to include the approval of each of the matters set out in the summary mentioned in Article 11(2) amended if necessary to take account of any amendments made by the States to the plan.

Expenditure approval

13 Expenditure approval, heads of expenditure and withdrawals from the consolidated fund

- (1) In this Law –
 - “expenditure approval” means a financial summary mentioned in Article 11(2) that has been approved by the States in accordance with Article 12;
 - “head of expenditure” means –
 - (a) the total amount that a States funded body may withdraw from the consolidated fund for its revenue expenditure during a financial year after taking into account any estimated income of the body for that year; or
 - (b) the total amount that a States funded body may withdraw from the consolidated fund for a capital project,
 as approved by the States by an expenditure approval or expenditure approvals.
- (2) A head of expenditure that relates to the revenue expenditure of a States funded body for a financial year authorizes the body –
 - (a) to withdraw from the consolidated fund during that year amounts not exceeding in total the amounts approved by the head of expenditure; and
 - (b) to use the amounts so withdrawn for its revenue expenditure during that year.
- (3) A head of expenditure that relates to a capital project to be undertaken by a States funded body authorizes the body –
 - (a) to withdraw from the consolidated fund at any time until all payments due in respect of the project have been made amounts not exceeding in total the amount approved for the project by the head of expenditure; and
 - (b) to use the amounts so withdrawn for the project.
- (4) Except as provided by paragraph (5), a States funded body may during a financial year–
 - (a) withdraw from the consolidated fund amounts not exceeding in total the amount it pays into the fund during that year by way of income; and
 - (b) use the amounts so withdrawn for its revenue expenditure during that year.

- (5) The total amount that a States funded body may withdraw from the consolidated fund in accordance with paragraph (4) is limited to the lesser of–
 - (a) its revenue expenditure for the financial year as mentioned in Article 11(2)(a); and
 - (b) its estimated income for that year as mentioned in Article 11(2)(b),
 as approved by the States by virtue of Article 12.
- (6) If during a financial year the Minister is satisfied that the income of a States funded body for the year is likely to exceed the amount mentioned in Article 11(2)(b), as approved by the States by virtue of Article 12, the Minister may authorize the body to withdraw from the consolidated fund during that year an amount not exceeding the likely excess of income.
- (7) Where paragraph (6) applies the total amount that the States funded body is allowed to meet its revenue expenditure during the financial year, as mentioned in Article 11(2)(a) and approved by the States by virtue of Article 12, is increased by the additional amount that the body is allowed to withdraw from the consolidated fund by virtue of that paragraph.
- (8) If during a financial year the Minister is satisfied that the income of a States funded body for the year is likely to fall short of its estimated income as mentioned in Article 11(2)(b) and approved by the States by virtue of Article 12, the Minister may reduce by an amount not exceeding that shortfall the total amount that the States funded body is allowed to meet its revenue expenditure during the financial year, as mentioned in Article 11(2)(a) and approved by the States by virtue of Article 12.
- (9) If the States when approving a head of expenditure provide that the approval is dependent upon the subsequent approval by the States of the funding for the head of expenditure the authority given by the head of expenditure to withdraw an amount from the consolidated fund shall have effect accordingly.

14 Restrictions on amending or proposing expenditure approvals

- (1) An expenditure approval is not capable of being amended by the States except on a proposition lodged by the Minister.
- (2) If a member of the States other than the Minister –
 - (a) lodges a proposition that would require for its implementation an amendment of an existing expenditure approval or the giving at any time of expenditure approval by the States; and
 - (b) the States approves the proposition in principle,
 the Council of Ministers must take that approval into consideration when next considering estimates in accordance with Article 9(1).
- (3) If the approval or any part of it is not adopted a reasoned explanation for not doing so must be included in the subsequent draft annual business plan.

15 Permitted variations

- (1) Despite Article 13(2) and (3), all or any part of the amount appropriated by a head of expenditure may, with the approval of the Minister –
 - (a) be used for the purposes of another head of expenditure; or
 - (b) in the case of revenue expenditure, be withdrawn from the consolidated fund after the end of the relevant financial year.
- (2) The Minister must, at periods of no longer than 6 months, report to the States details of any approval given under paragraph (1).
- (3) The Minister may authorize a States funded body that has disposed of an asset to use all or any part of the proceeds of the sale to acquire a replacement or other asset.

- (4) Nothing in this Part prohibits a States funded body from –
 - (a) varying its revenue expenditure; or
 - (b) taking any action that could vary its estimated income,as approved by an expenditure approval for a financial year, so long as the total of the amounts withdrawn by the body from the consolidated fund during that year does not exceed the amount it is permitted to withdraw by virtue of Article 13(2).
- (5) Financial directions –
 - (a) shall specify how and when an application for the Minister’s approval under paragraph (1) may be made; and
 - (b) may permit expenditure to be incurred for services and goods to be provided and paid for in the subsequent financial year where it is necessary or expedient to do so.

16 Contingency expenditure

- (1) This Article applies where –
 - (a) a state of emergency has been declared under the Emergency Powers and Planning (Jersey) Law 1990;^[4] or
 - (b) the Minister is satisfied that there otherwise exists an immediate threat to the safety of all or any of the inhabitants of Jersey,and where, in either case, the Minister is satisfied that the immediate expenditure of money by a States funded body is required, that no money or insufficient money may be withdrawn from the consolidated fund for the purpose by virtue of any other provision of this Chapter and that there is insufficient time to secure any additional expenditure approval.
- (2) The Minister may authorize the States funded body to withdraw the money or additional money so required from the consolidated fund.
- (3) At the time of its withdrawal the Minister must lodge a proposition seeking expenditure approval for the withdrawal.
- (4) Should that approval not be given the expenditure must be met from an existing head of expenditure as determined by the Minister.

Stage 3 – The Budget

17 Budget proposition to be lodged

- (1) The Minister, taking into account the restriction contained in paragraph (2), must lodge a budget proposition for a financial year in sufficient time for it to be debated and approved by the States no later than during the month preceding the start of that financial year or such other period as the States may decide.
- (2) A budget proposition lodged in accordance with paragraph (1) shall not be debated by the States until it has been lodged for at least 6 weeks.
- (3) A budget proposition lodged in accordance with paragraph (1) must include–
 - (a) a statement setting out the details mentioned in Article 18; and
 - (b) any relevant taxation draft.
- (4) The budget proposition must also include –
 - (a) if it is proposed that the States should borrow money during the subsequent financial year, a draft of the proposition required in accordance with Article 22(1); and

- (b) if it is proposed to transfer money between the consolidated fund and the strategic reserve fund during the subsequent financial year, a draft of the proposition required in accordance with Article 4(2) or (3).
- (5) The States may by Regulations amend the period mentioned in paragraph (2) to any period longer than 6 weeks.
- (6) Nothing in this Article prohibits the Minister lodging at any time during a financial year –
 - (a) a further budget proposition in respect of that year; or
 - (b) a proposition seeking the approval of the States for any proposed borrowing by the States or for any proposed transfer of money between the consolidated fund and the strategic reserve fund.

18 The budget statement

- (1) The statement included in a budget proposition for a financial year must provide in respect of that year details of –
 - (a) the estimated amount the States will receive by way of taxation and other income of the States;
 - (b) any proposed borrowing by the States for which the approval of the States will be sought; and
 - (c) any proposed transfer of money between the consolidated fund and the strategic reserve for which the approval of the States will be sought.
- (2) The statement for a financial year must also contain a note setting out a summary of all the amounts previously authorised by the States to be withdrawn from the consolidated fund during that year, and all money to be paid into the fund during the year.
- (3) It must also contain estimates of the amount that will be in the consolidated fund –
 - (a) at the start of the financial year; and
 - (b) at the end of the year after provision has been made for all expenditure approved at that time and for all money that is to be paid into the fund.
- (4) The Minister must not lodge a budget proposition that includes a statement that shows the amount mentioned in paragraph (3)(b) to be a negative amount.

19 Restriction on lodging taxation drafts

- (1) A proposition that includes a taxation draft may not be lodged except by the Minister.
- (2) However if –
 - (a) the States approve a proposition that suggests that a specified taxation draft be lodged; and
 - (b) the proposed taxation draft is not included in the next budget proposition lodged in accordance with Article 17(1),the Minister must specify the reason for not doing so in the statement forming part of that budget proposition.

20 Taxation draft may be given immediate effect

- (1) The States may at any time after a taxation draft has been lodged declare that all or any part of the draft shall have immediate effect as if the declaration were the registration of a Law passed by the States and sanctioned by Her Majesty in Council that was to come into force on registration.
- (2) Such a declaration shall have effect in accordance with its terms.
- (3) Such a declaration may be made to apply to provisions of a taxation draft that relate to the collection and administration of a tax or duty to which the declaration gives effect.

- (4) Where such a declaration has the effect of renewing an existing tax or duty it shall also have the effect of continuing in force all enactments that were in force with reference to the tax or duty.
- (5) The enactments mentioned in paragraph (4) continue in force subject to any amendments made to them by the taxation draft which shall also have effect by virtue of the declaration.
- (6) If, after a declaration has had effect in accordance with paragraph (2), the taxation draft is amended or the whole or any part of it is not passed by the States or having been passed by the States is not sanctioned by Her Majesty in Council, money paid or deducted in accordance with the taxation draft or that part of it shall, as appropriate, be repaid or made good.

21 Amendment of taxation drafts, and borrowing and transfer proposals

- (1) This Article applies to –
 - (a) a taxation draft; or
 - (b) a draft proposition seeking the approval of the States for any proposed borrowing by the States or for any proposed transfer of money between the consolidated fund and the strategic reserve fund.
- (2) A draft or proposition to which this Article applies is not capable of being amended during a debate in the States on the draft or proposition except in accordance with an amendment lodged at least 14 days before the start of the debate.
- (3) Paragraph (2) does not apply to an amendment moved by the Minister if the States agree that the amendment may be debated forthwith or at a time approved by the States.
- (4) If during a debate on the draft or proposition –
 - (a) an amendment is approved by the States; and
 - (b) the Minister requests an adjournment of the debate for a specified period to consider the consequences of the amendment,
 the debate shall be adjourned in accordance with the request.
- (5) An amendment that may be moved in accordance with paragraph (2) or (3) during a debate on the draft or proposition is not limited to an amendment of that draft or proposition but may provide for –
 - (a) the amendment of any other legislation that imposes a tax or provides for the administration of a tax;
 - (b) the approval of legislation to impose a new tax;
 - (c) an alternative way for the States to borrow money; or
 - (d) an alternative way for the States to obtain financial resources.
- (6) If a draft or proposition to which this Article applies –
 - (a) is not approved by the States or is amended by the States; and
 - (b) as a result the amount in the consolidated fund at the end of the relevant financial year after provision has been made for all approved expenditure at that time would be a negative amount if no further action were to be taken,
 the Minister must lodge as soon as practicable a further draft or proposition to which this Article applies or an amendment to any expenditure approval which if approved by the States would ensure that the amount referred to in sub-paragraph (b) is not a negative amount.
- (7) The States may by Regulations amend the period mentioned in paragraph (2) to any period longer than 14 days.

22 Borrowing by the States

- (1) Except as provided by this or any other enactment, the States may not borrow money except in accordance with a decision of the States made on a proposition lodged by the Minister.
- (2) The decision may specify the assets of the States that may be used to secure the loan.
- (3) The States shall not authorize any borrowing if it would permit the total amount borrowed by the States at that time to exceed an amount equal to the estimated income of the States derived from taxation during the previous financial year.
- (4) In calculating the total amount borrowed by the States for the purpose of paragraph (3) there shall not be taken into account –
 - (a) any amount borrowed from a third party by a company owned or controlled by the States; and
 - (b) the liability of a company owned or controlled by the States under any guarantee or indemnity given by the company.
- (5) Regulations made by the States on a proposition lodged by the Minister may –
 - (a) amend the amount mentioned in paragraph (3);
 - (b) prescribe certain transactions or classes or types of transactions by the States that would otherwise amount to borrowing by the States not to be borrowing for the purposes of this Law.
- (6) Financial directions may be issued giving instructions and guidance on Regulations made for the purpose of paragraph (5)(b).

23 Minister and Treasurer may be authorized to borrow

- (1) The States may on a proposition lodged by the Minister make Regulations that authorize the Minister or the Treasurer to borrow, or to authorize the borrowing of, money in the name of and on behalf of the States.
- (2) The Regulations may, in particular, specify –
 - (a) the circumstances in which the Minister or the Treasurer may exercise or authorize the power to borrow;
 - (b) the maximum amounts that may be borrowed by the Minister or the Treasurer or that the Minister or the Treasurer may authorize may be borrowed in any particular circumstance;
 - (c) any terms, conditions and other limitations subject to which the power to borrow may be exercised; and
 - (d) the assets of the States that may be used to secure loans to which this Article applies.
- (3) Financial directions may be issued giving instructions and guidance on Regulations made for the purpose of paragraph (2).

24 Loans by the States

- (1) Except as provided by this or any other enactment money of the States must not be lent except with the authorization of the States given on a proposition lodged by the Minister.
- (2) The total amount lent under paragraph (1) must not at any one time exceed an amount equal to 15% of the estimated income of the States derived from taxation during the previous financial year.
- (3) Regulations made by the States on a proposition lodged by the Minister may authorize the Minister or the Treasurer to lend or authorize the lending of money on behalf of the States.
- (4) The Regulations may, in particular, prescribe –
 - (a) the circumstances in which the Minister or the Treasurer may exercise the power to lend or

authorize the lending of money on behalf of the States;

- (b) the maximum amounts that may be lent by the Minister or the Treasurer or that the Minister or Treasurer may authorize be lent in any particular circumstance;
- (c) any terms, conditions and other limitations subject to which the power to lend or authorize the lending of money on behalf of the States may be exercised.

(5) Regulations made by the States on a proposition lodged by the Minister may –

- (a) amend the percentage mentioned in paragraph (2);
- (b) prescribe certain transactions by the States that would otherwise amount to lending by the States not to be lending for the purposes of this Law.

(6) Money of the States to be lent in accordance with this Article shall not form part of any expenditure approval but the money shall instead be withdrawn from cash balances.

(7) In calculating, for the purpose of paragraph (2), the total amount lent by the States there shall not be taken into account –

- (a) any amount lent to a third party by a company owned or controlled by the States; or
- (b) the value of any guarantee or indemnity given or provided in the name of the States.

(8) Financial directions may be issued giving instructions and guidance on Regulations made for the purpose of this Article.

25 Guarantees and indemnities

(1) Except as provided by this or any other enactment a guarantee or indemnity must not be given or provided in the name of the States except with the authorization of the States given on a proposition lodged by the Minister.

(2) Regulations made by the States on a proposition lodged by the Minister may authorize the Minister or the Treasurer –

- (a) to give guarantees in the name of the States; and
- (b) to provide indemnities in the name of the States.

PART 4

STATES TRADING OPERATIONS

26 States may designate States trading operations

(1) The States may by Regulations made on a proposition lodged by the Minister designate any disparate or distinct area of operation of the States to be a States trading operation.

(2) The Regulations must specify –

- (a) the area of operation of the States that constitutes the States trading operation; and
- (b) the trading operation to be undertaken.

27 Financial control and administration of States trading operations

(1) The provisions of this Law apply to a States trading operation subject to this Article.

(2) A States trading operation shall maintain –

- (a) a profit and loss account; and
- (b) a balance sheet including a trading fund, (that shall not for the purposes of this Law be

considered part of the consolidated fund) that may be used for such purposes as the Minister may by Order prescribe.

- (3) The Minister may by Order prescribe financial controls to be observed by States trading operations.
- (4) Financial directions may be issued in respect of the financial control and administration of States trading operations.
- (5) States trading operations shall observe such financial directions and any other financial directions expressed to apply to States trading operations.

28 Returns of States trading operations to be agreed

- (1) When requested to do so by the Minister, the Minister with responsibility to the States for a States trading operation shall discuss with the Minister and determine the estimates mentioned in paragraph (2) in respect of the business activities of the trading operation during the succeeding financial year.
- (2) Those estimates are –
 - (a) the estimated income and expenditure of the trading operation;
 - (b) the estimated minimum contribution (if any) (which may be expressed by reference to a rate of return) that the trading operation will be required to make to the income of the States;
 - (c) the estimated amount of any surplus of income over expenditure of the trading operation that may be retained by it and placed in its trading fund or, where there is estimated to be a deficit, debited to its trading fund; and
 - (d) the estimated deficit (if any) of the trading operation,and shall be taken to include details of any capital expenditure.
- (3) The estimates as so determined shall be included in the draft annual business plan for the next financial year when it is lodged for approval by the States.
- (4) If during that financial year the Minister with responsibility to the States for the States trading operation satisfies the Minister that the trading situation of the trading operation makes it impossible or difficult for the trading operation to contribute the minimum contribution agreed in accordance with paragraph (2)(b), the Minister may waive or delay payment of all or any part of the contribution
- (5) The Minister shall at the first practicable opportunity advise the States of any action taken under paragraph (4), and the reason for taking the action, together with details of any revised estimates of the States trading operation.
- (6) Paragraph (1) shall not be taken to imply that the matters that may be discussed and agreed must be limited to the succeeding financial year or to the estimates mentioned in paragraph (2).

PART 5

ADMINISTRATION

The Treasurer

29 Establishment of the office of Treasurer of the States

- (1) There is established the office of Treasurer of the States.
- (2) The Treasurer is the chief officer of the Treasury and as such is responsible to the Minister for the supervision of the administration of this Law and of the public finances of Jersey.
- (3) It is the responsibility of the Treasurer to ensure the proper stewardship and administration of the

public finances of Jersey and, in particular –

- (a) to set financial management standards for their administration and for monitoring compliance with those standards;
- (b) to ensure that professional practices are adhered to in their administration;
- (c) to advise on the key strategic controls that are necessary to secure their sound financial management; and
- (d) to ensure that financial information is available to enable accurate and timely monitoring of their administration,

and to advise on the appropriation and budget process for each financial year.

30 Appointment and removal of the Treasurer

- (1) The office of Treasurer shall be held by a person appointed by the Minister after consulting the Chief Minister.
- (2) Before appointing a person to the office of Treasurer the Minister must take into account the views and recommendations of any body or person appointed by the States to advise on the appointment of senior employees of the States.
- (3) The appointment of a person to the office of Treasurer may not be revoked except by the States on a proposition lodged by the Minister that alleges that the person –
 - (a) has been guilty of any malpractice;
 - (b) is incapable of the proper performance of the functions of the office; or
 - (c) is otherwise unsuitable to continue in office.
- (4) The States shall debate the proposition in camera.
- (5) The Minister may appoint a person to carry out the functions of the office of Treasurer while –
 - (a) the office is vacant; or
 - (b) the holder of the office is unable to perform the functions of the office.

31 Independence of the Treasurer

- (1) The Treasurer may not be directed on how a function of the office of Treasurer is to be carried out.
- (2) If the Treasurer is satisfied –
 - (a) that any person has in any way dealt with money of the States, including money forming part of any trust assets, lent or borrowed money in the name of or on behalf of the States, or given a guarantee or provided an indemnity in the name of or on behalf of the States, in each case, otherwise than in accordance with this or any other enactment; and
 - (b) that any action taken in accordance with this or any other enactment has been insufficient to correct the situation,

the Treasurer may, after consulting the Comptroller and Auditor General, provide a written report on the matter to the Greffier of the States who shall lay the report before the States.

32 Treasurer may authorize others to carry out functions

- (1) Except as provided by paragraph (4), the Treasurer may authorize people employed in the Treasury to carry out functions of the office of Treasurer on behalf of and in the name of the Treasurer.
- (2) An authorization given under paragraph (1)–
 - (a) may be given subject to such terms, conditions and other limitations as the Treasurer considers appropriate;

- (b) does not affect the Treasurer's ability to carry out any function; and
 - (c) may be revoked by the Treasurer at any time.
- (3) Where a function of the office of Treasurer is carried out in accordance with an authorization given under paragraph (1)–
- (a) the person carrying out the function has the same powers as the Treasurer to carry out the function; and
 - (b) the effect is the same as if the function had been carried out by the Treasurer.
- (4) This Article does not apply to any power the Treasurer may have under this Law to lend money of the States or to borrow money on behalf of the States.

Duties of the Treasurer

33 Treasurer to prepare annual financial statements in respect of accounts of the States

- (1) The Treasurer must –
- (a) prepare an annual financial statement in respect of the accounts of the States for a financial year within 3 months of the end of the year; and
 - (b) send the statement to the Comptroller and Auditor General for auditing.
- (2) The statement must be prepared in accordance with –
- (a) generally accepted accounting practice; and
 - (b) accounting standards prescribed by an Order made by the Minister.
- (3) Paragraph (4) applies where the accounting practice and standards mentioned in paragraph (2) require the accounts of any person or body (whether or not incorporated) to be consolidated with those of the States.
- (4) The person or body must provide the Treasurer with any information the Treasurer may require to prepare the annual financial statement.
- (5) The information must be supplied in sufficient time to enable the Treasurer to prepare the statement before the end of the period of 3 months mentioned in paragraph (1) or any extension of that period by virtue of paragraph (6).
- (6) The States may on a proposition lodged by the Minister extend the time within which an action specified in paragraph (1) must be taken.

34 Treasurer to open bank accounts

- (1) The Treasurer must open, operate and maintain a bank account or bank accounts with a bank or banks approved by the Minister through which the consolidated fund shall be operated, any such account being called in this Law a “consolidated fund bank account”.
- (2) Except as specifically provided by this Law or any other enactment, all money received by or on behalf of the States must be paid into a consolidated fund bank account.
- (3) Money standing to the credit of a consolidated fund bank account may, with the approval of the Minister, be used to incur expenditure that will subsequently be recharged.
- (4) In addition to consolidated fund bank accounts, the Treasurer may, with the approval of the Minister, open such other bank accounts as may be convenient or necessary for the proper administration of this or any other Law.

35 Financial directions

- (1) The Treasurer may, with the approval of the Minister, issue financial directions.
- (2) Financial directions –
 - (a) shall specify any matter required by this Law to be so specified by financial directions; and
 - (b) may comprise such additional directions and information as appears to the Treasurer to be necessary or expedient for the proper administration of this Law and of the public finances of Jersey.

Chief internal auditor

36 Chief internal auditor

- (1) There shall be a chief internal auditor who shall be a person employed in the Treasury.
- (2) The Treasurer may appoint a person to carry out the functions of the chief internal auditor while –
 - (a) there is no chief internal auditor; or
 - (b) the chief internal auditor is unable to perform his or her functions.

37 Duties of chief internal auditor

- (1) The chief internal auditor must carry out an internal audit of the transactions and internal controls and systems of each States funded body to ensure that the finances of the States are regulated, controlled and supervised in accordance with this Law.
- (2) The times and frequency of those audits shall be determined by the chief internal auditor with the agreement of the Treasurer.
- (3) However the chief internal auditor may carry out such an audit of the Treasury at any time.
- (4) The role, scope and duties of the chief internal auditor may otherwise be specified by financial directions.
- (5) The Treasurer shall provide the chief internal auditor with sufficient resources to carry out his or her functions.
- (6) The chief internal auditor shall as soon as practicable after completing an audit of a States funded body provide the Comptroller and Auditor General with a copy of the report on the audit.
- (7) In this Article “chief internal auditor” includes a person appointed under Article 36(2).

Accounting officers

38 Each States funded body to have an accounting officer

- (1) The chief officer of a States funded body is also its accounting officer.
- (2) If the Minister is satisfied that there are exceptional circumstances that justify doing so, the Minister may –
 - (a) appoint a person other than its chief officer to be the accounting officer of a States funded body; or
 - (b) appoint an additional accounting officer for a States funded body.
- (3) An appointment under paragraph (2) must be by written notice and has effect when the appointee receives a copy of the notice.
- (4) A copy of the notice must also be sent to the Comptroller and Auditor General and to the Minister, if any, with responsibility to the States for the States funded body.

39 Functions of accounting officers

- (1) The accounting officer of a States funded body is personally accountable for the proper financial management of the resources of the body in accordance with this Law.
- (2) The accounting officer of a States funded body must, in particular, ensure –
 - (a) that, except as otherwise provided by Article 15, the expenditure of the body does not exceed the amount appropriated to it by a head of expenditure and is used for the purpose for which it was appropriated;
 - (b) that, in so far as practical, all money owed to the body is promptly collected and paid into an appropriate bank account, and that all money owed by the body is duly paid;
 - (c) that the body keeps proper accounts of all its financial transactions and proper records of those accounts;
 - (d) that the records of the body are promptly provided when required by the Treasurer for the production of the annual financial statement;
 - (e) that the body is administered in a prudent and economical manner;
 - (f) that the resources of the body are used efficiently and effectively; and
 - (g) that the provisions of this Law in their application to the States funded body are otherwise complied with.
- (3) Although a function of an accounting officer may be carried out by another person the accounting officer remains personally accountable.
- (4) Financial directions may otherwise specify the functions of an accounting officer and how they are to be carried out.

Duties of employees of States funded bodies

40 Records to be provided

An employee of a States funded body must produce a record in the employee's possession or under the employers control when required to do so by –

- (a) the Minister;
- (b) the Minister with responsibility to the States for the States funded body;
- (c) the Treasurer;
- (d) the chief internal auditor as mentioned in Article 37; or
- (e) the accounting officer of the States funded body,

acting in accordance with his or her functions under this Law.

PART 6

THE COMPTROLLER AND AUDITOR GENERAL

Appointment of Comptroller and Auditor General

41 Establishment of office of Comptroller and Auditor General

There is established the office of Comptroller and Auditor General.

42 Appointment of the Comptroller and Auditor General

- (1) The office of Comptroller and Auditor General shall be held by a person appointed by the States on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee.
- (2) The States shall debate the proposition in camera.
- (3) Before recommending to the States the appointment of a person to the office of Comptroller and Auditor General the Chief Minister and the Chairman of the Public Accounts Committee must take into account the views and recommendations of any body or person appointed by the States to advise on the appointment of senior employees of the States.
- (4) A person, on being appointed to the office of Comptroller and Auditor General, shall cease to hold any other office or employment in the service of the States or of any administration of the States and while holding the office of Comptroller and Auditor General shall be disqualified for appointment to any office or employment in the service of the States or of any administration of the States.
- (5) The Chief Minister and the Chairman of the Public Accounts Committee may appoint a person to carry out the duties of the office of Comptroller and Auditor General while –
 - (a) the office is vacant; or
 - (b) the holder of the office is unable to perform the functions of the office.
- (6) The Chief Minister must report an appointment under paragraph (5) to the States at the first practicable opportunity.

43 Terms and conditions of appointment of Comptroller and Auditor General

- (1) A person appointed to the office of Comptroller and Auditor General shall hold the office on terms and conditions agreed between the person, the Chief Minister and the Chairman of the Public Accounts Committee.
- (2) Any such terms and conditions shall be subject to the other provisions of this Part.

44 Restrictions on Comptroller and Auditor General's other professional activities

The Comptroller and Auditor General must not –

- (a) accept any other appointment to, or carry out the functions of any other paid office;
 - (b) enter into any other contract of employment whether or not for remuneration; or
 - (c) carry on practice in any other profession either alone or in partnership with any other person,
- except with and in accordance with the approval of the Chief Minister and the Chairman of the Public Accounts Committee which shall not be unreasonably withheld.

45 States may revoke appointment of Comptroller and Auditor General

- (1) The States may revoke the appointment of a person to the office of Comptroller and Auditor General –
 - (a) on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee; or
 - (b) on a proposition signed by at least 12 members of the States.
- (2) The States shall debate the proposition in camera.
- (3) The proposition must allege one of the following grounds for revocation, namely that the person holding the office of Comptroller and Auditor General –

- (a) has not carried out the duties of the office in a competent manner;
 - (b) is incapacitated either mentally or physically from carrying out the duties of the office;
 - (c) has neglected to carry out all or any of the duties of the office;
 - (d) has failed to comply with Article 44 (restriction on undertaking other professional activities);
 - (e) has failed to comply with any term or condition of his or her appointment;
 - (f) has indulged in dishonourable conduct;
 - (g) has, without the approval of both the Chief Minister and the Chairman of the Public Accounts Committee, taken leave of absence not provided for by his or her terms and conditions of appointment; or
 - (h) has been convicted of an offence and by virtue of the conviction has shown himself or herself not to be a fit and proper person to continue to hold office.
- (4) The Report accompanying the proposition must set out details of the evidence to be relied upon to support the allegation.
- (5) The proposition must not be lodged unless the person holding the office of Comptroller and Auditor General –
- (a) has been given a copy of the Report mentioned in paragraph (4); and
 - (b) has been given such reasonable opportunity as the circumstances allow to prepare a written statement in respect of the evidence mentioned in the report.
- (6) Any statement prepared in accordance with paragraph (5)(b) must accompany the proposition when it is lodged.
- (7) When the proposition has been lodged the Chief Minister may with the approval of the Chairman of the Public Accounts Committee suspend the Comptroller and Auditor General from office.
- (8) If the proposition –
- (a) is withdrawn;
 - (b) is not approved by the States after debate; or
 - (c) is not debated by the States within 3 months of being lodged,
- the Comptroller and Auditor General must be restored to office without loss of remuneration or any other benefits.

46 When office of Comptroller and Auditor General becomes vacant

- (1) The office of Comptroller and Auditor General becomes vacant if the term of appointment of the person holding the office expires and is not extended or renewed by the States on a proposition lodged in accordance with Article 42.
- (2) It also becomes vacant if the person holding the office –
- (a) dies;
 - (b) gives the Chief Minister written notice of resignation from the appointment;
 - (c) accepts nomination to become a member of the States;
 - (d) is appointed to any paid office or other place of profit under the Crown;
 - (e) becomes a member of the States of Jersey Police Force;
 - (f) becomes a paid officer in the service of any parochial authority;
 - (g) is compulsorily detained or subject to a guardianship order under the Mental Health (Jersey) Law 1969;^[5]
 - (h) has a curator of his or her person or property appointed;

- (i) has an attorney appointed without whom he or she may not act in matters movable or immovable;
 - (j) becomes bankrupt or makes a composition or arrangement with his or her creditors;
 - (k) is convicted of an offence involving corruption; or
 - (l) whether in Jersey or elsewhere, is convicted of any offence and ordered to be imprisoned.
- (3) It also becomes vacant if the States, acting in accordance with Article 45, revoke the appointment of the person holding the office.

Duties of Comptroller and Auditor General

47 Comptroller and Auditor General to ensure compliance with Law

- (1) It is the duty of the Comptroller and Auditor General to provide the States with independent assurance that the public finances of Jersey are being regulated, controlled and supervised and accounted for in accordance with this Law and that the provisions of this Law are otherwise being duly complied with.
- (2) That duty shall be taken to include, in particular, assuring the States –
 - (a) that money withdrawn from the consolidated fund, the strategic reserve fund or the currency fund was used for the purpose for which it was authorized to be withdrawn; and
 - (b) that all income due to the States has been collected or otherwise duly accounted for.
- (3) It shall also be taken to require the Comptroller and Auditor General to consider and report to the States 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, in each case, to make recommendations to bring about improvement where improvement is needed.

48 Comptroller and Auditor General to audit the annual financial statement of the States

- (1) When the annual financial statement on the accounts of the States for a financial year is sent to the Comptroller and Auditor General by the Treasurer in accordance with Article 33(1)(b) the Comptroller and Auditor General must ensure –
 - (a) that an audit of it is completed;
 - (b) that a certificate from the person carrying out the audit is attached to the statement; and
 - (c) that the statement with the attached certificate and any note mentioned in paragraph (3) are forwarded to the Minister,
 before the end of the period of 5 months after the end of the financial year.
- (2) The certificate mentioned in paragraph (1)(b) must certify whether the annual financial statement properly represented the activities of the States and was prepared in accordance with the prescribed accounting standards.
- (3) The Comptroller and Auditor General may also attach to the statement a note drawing the attention of the States –
 - (a) to any matter in the statement that the Comptroller and Auditor General considers should be of concern to the States or should receive the attention of the States; and

(b) to any matter that prevented or hindered an audit of any part of the statement or, in the Comptroller and Auditor General's opinion, constituted a significant breach of a provision of this Law.

- (4) The Minister and Treasurer must each sign the annual financial statement.
- (5) The Minister must then present the statement, the certificate mentioned in paragraph (1)(b) and any note mentioned in paragraph (1)(c) to the States as soon as practicable.
- (6) The States may on a proposition lodged by the Minister extend the time within which an action specified in paragraph (1) must be taken.

49 Comptroller and Auditor General may report on accounts of independently audited States bodies

- (1) The Comptroller and Auditor General may at any time report on the accounts of an independently audited States body.
- (2) When requested to do so by the Comptroller and Auditor General an independently audited States body must make such records and accounts available to the Comptroller and Auditor General as are required to enable a report to be prepared in accordance with paragraph (1).
- (3) Where the body is unincorporated the person or persons with possession of the accounts and other records of the body must comply with paragraph (2).
- (4) This Article does not prejudice any other right the Comptroller and Auditor General may have to audit the accounts of the body.

50 Comptroller and Auditor General may audit States aided independent bodies

- (1) This Article applies to a body (including an individual and a corporation sole), whether or not incorporated, that in a financial year receives from the States to aid it to carry out its activities such amount as may be prescribed by the Minister by Order.
- (2) It also applies to such a body if, in a financial year, it receives from the States less than the amount so prescribed but receives instead an amount that is at least half of the total amount it received from all sources to carry out its activities during that financial year.
- (3) The Comptroller and Auditor General may audit the accounts of the body in so far as it is necessary to do so to ensure that the amount it received from the States by way of aid during the relevant financial year was used for the purpose intended by the States.
- (4) When requested to do so by the Comptroller and Auditor General the body must make such of its records and accounts available to the Comptroller and Auditor General as are required for an audit to be carried out in accordance with paragraph (3).
- (5) Where the body is unincorporated the person or persons with possession of the accounts and other records of the body must comply with paragraph (4).
- (6) This Article shall not prejudice any other right the Comptroller and Auditor General may have to audit the accounts of the body.
- (7) A body to which this Article applies is in this Law referred to as a "States aided independent body".

Administration - Comptroller and Auditor General

51 Comptroller and Auditor General to be provided with resources

The Chief Minister must ensure that the Comptroller and Auditor General is provided with sufficient resources to carry out his or her functions.

52 Delegation of functions of Comptroller and Auditor General

The States may make Regulations providing for the delegation (including the sub-delegation) of the functions of the Comptroller and Auditor General.

53 Independence of Comptroller and Auditor General

- (1) The Comptroller and Auditor General may not be directed on how any function of the office of Comptroller and Auditor General is to be carried out.
- (2) However the Comptroller and Auditor General must liaise with the Public Accounts Committee when carrying out those functions, and shall attend all meetings of the Committee.
- (3) The Comptroller and Auditor General may seek legal advice from the Attorney General on any subject relevant to the functions of the office of the Comptroller and Auditor General, and the Attorney General may provide that advice.

54 Annual report of office of Comptroller and Auditor General

- (1) The Comptroller and Auditor General must –
 - (a) prepare an annual report in respect of the activities of the office of Comptroller and Auditor General; and
 - (b) provide a copy of each such report to the Minister and to the Greffier of the States.
- (2) The Greffier of the States shall lay the report before the States.

Reports by Comptroller and Auditor General

55 Reports of Comptroller and Auditor General on certain bodies

- (1) This Article applies where, in accordance with this Law, the Comptroller and Auditor General –
 - (a) has carried out an audit in respect of a States funded body or a States aided independent body; or
 - (b) has made a report in respect of an independently audited States body.
- (2) The Comptroller and Auditor General must prepare a report setting out the results of the audit or incorporating the report.
- (3) The Comptroller and Auditor General must provide the report to –
 - (a) the Chairman of the Public Accounts Committee;
 - (b) the Minister;
 - (c) the Treasurer;
 - (d) the Minister (if any) with responsibility to the States for the body;
 - (e) where the report is in respect of a States funded body, its accounting officer;
 - (f) where the report is in respect of a States aided independent body or an independently audited States body, that body; and
 - (g) the Greffier of the States.
- (4) The Greffier of the States shall lay the report before the States.
- (5) In the report the Comptroller and Auditor General must mention any matter of concern or any matter that should receive attention.

- (6) If as a result of an audit of, or a report on, a body mentioned in paragraph (1), the Comptroller and Auditor General believes that action is necessary in relation to the efficiency and economy with which the body uses its resources, the Comptroller and Auditor General must –
 - (a) prepare a draft report setting out the action that needs to be taken; and
 - (b) send a copy of the draft to the chief officer of the body, requesting written comments in respect of the draft.
- (7) The Comptroller and Auditor General must send a copy of his or her report and any comments of the chief officer to the people mentioned in paragraph (3)–
 - (a) as soon as practicable after receiving the comments of the chief officer; or
 - (b) if no comments are received within a reasonable time of being requested, after a reasonable time.
- (8) If, in the course of carrying out an audit of, or a report on, a body mentioned in paragraph (1), the Comptroller and Auditor General discovers facts that appear to indicate a substantial irregularity, the Comptroller and Auditor General must, as soon as practicable, report the discovery to the people mentioned in paragraphs (3)(a), (b), (c) and (d) and, if the Comptroller and Auditor General suspects any criminal activity, to the Attorney General.
- (9) A report made in accordance with paragraph (8) need not be in writing.

Powers of Comptroller and Auditor General

56 Power to summons people to appear and to provide records

- (1) The Comptroller and Auditor General may in the exercise of his or her functions do all or any of the following –
 - (a) summons a person to appear before the Comptroller and Auditor General or to produce a specified record, or to do both;
 - (b) require a person to answer questions;
 - (c) require a person who has access to a record to provide the information contained in it to the Comptroller and Auditor General in a legible and comprehensible form.
- (2) The power under paragraph (1)(a) to require a record to be produced includes a power–
 - (a) if the record is produced, to retain the record or to take copies of or extracts from the information it contains; and
 - (b) if the record is not produced, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where it is.
- (3) If records are retained a list of the records must be supplied to the person from whom they were obtained.
- (4) A record retained under paragraph (2)(a) –
 - (a) may be retained for one year; but
 - (b) if within that year proceedings to which the record is relevant are commenced against any person, may be retained until the conclusion of those proceedings.
- (5) If –
 - (a) the Comptroller and Auditor General has retained a record under paragraph (2)(a); and
 - (b) a person reasonably requires the record for his or her business,
 the Comptroller and Auditor General must provide the person with a copy of it as soon as reasonably practicable.

57 Power to enter and inspect

- (1) The Comptroller and Auditor General may in the exercise of his or her functions under this Law –
 - (a) enter and inspect any building or other premises occupied or controlled by any States funded body; and
 - (b) while in the building or premises inspect any records, stores, goods, plant, machinery, cash and other valuables.
- (2) If such a building or other premises are lawfully occupied by some other person the Comptroller and Auditor General shall not enter the building or other premises pursuant to paragraph (1) –
 - (a) without first giving the occupier reasonable notice of the Comptroller and Auditor General's intention to enter; and
 - (b) where the building or other premises is or forms part of a residence, without first obtaining the consent of the occupier to enter.

PART 7

OFFENCES

Range of offences

58 Failure to provide a record or information

- (1) A person shall be guilty of an offence if when required to do so by a person acting in accordance with this Law the person refuses or fails –
 - (a) to produce a record that is in the person's possession or under the person's control; or
 - (b) to provide any information (including an estimate) that the person is able to provide.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine not exceeding level 3 on the standard scale.^[6]
- (3) It shall be a defence for a person charged with an offence under paragraph (1) for the person to show that there was a reasonable excuse for the failure or refusal.

59 Failure to appear, to answer questions or to provide information

- (1) A person shall be guilty of an offence if when summonsed or required to do so by the Comptroller and Auditor General acting in accordance with Article 56 the person fails or refuses–
 - (a) to appear before the Comptroller and Auditor General;
 - (b) to produce a specified record;
 - (c) to answer truthfully any question;
 - (d) to provide information contained in a record in a legible and comprehensible form; or
 - (e) to state, to the best of his or her knowledge and belief, where a record is.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine not exceeding level 4 on the standard scale.^[7]
- (3) It shall be a defence for a person charged with an offence under paragraph (1) for the person to show that there was a reasonable excuse for the failure or refusal.

60 Provision of false record or information

- (1) A person shall be guilty of an offence if when required to produce a record under this Law or knowing that a record may be required to be produced under this Law the person with intent to deceive –
 - (a) destroys the record or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve; or
 - (b) alters it in any way to make the information it contains false or misleading in any material way.
- (2) A person shall be guilty of an offence if when required to provide information under this Law the person knowingly provides information that is false, misleading or incomplete in any material way.
- (3) A person guilty of an offence under paragraph (1) or paragraph (2) shall be liable to a fine and to imprisonment for a term not exceeding 5 years.

61 Failure to pay money into a bank account

- (1) A person shall be guilty of an offence if the person refuses or fails to pay money into a bank account when required to do so in accordance with this Law.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine not exceeding level 2 on the standard scale.^[8]
- (3) It shall be a defence for a person charged with an offence under paragraph (1) for the person to prove that there was a reasonable excuse for the failure or refusal.

62 Unlawful acquisition or use of money of the States

- (1) A person shall be guilty of an offence if the person secures for himself or herself, or for any other person –
 - (a) the improper payment of money by the States; or
 - (b) the improper use of any money or other resources of the States.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine and to imprisonment for a term not exceeding 10 years.
- (3) In paragraph (1)“money” includes money forming part of any trust assets.

63 Offence to hinder or obstruct

- (1) A person shall be guilty of an offence if he or she hinders or obstructs a person in the exercise by that person of a function under this Law.
- (2) A person guilty of an offence under paragraph (1) is liable to a fine not exceeding level 4 on the standard scale^[9] and to imprisonment for a term not exceeding 6 months.

Concomitant provisions

64 Privilege, protection and self incrimination

- (1) Nothing in this Law requires a person to produce a record or to provide information that the person would in an action in the Royal Court be entitled to refuse to produce or provide on the grounds of legal professional privilege.

- (2) However a lawyer must disclose the name and address of a client if required to do so by a person acting in accordance with this Law.
- (3) Where a person provides in compliance with a request made in accordance with this Law a record or other information in respect of another person the provision of that record or information shall not be regarded as a breach of any duty owed by the first person to the second person or to any other person.
- (4) An answer given by a person to a question put to the person in exercise of a power conferred by this Law may be used in evidence against the person.
- (5) However in criminal proceedings in which the person is charged with an offence, other than an offence under Article 60 (which relates to the provision of information that is false, misleading or incomplete) –
 - (a) no evidence relating to the answer may be adduced; and
 - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

65 Royal Court may order compliance

- (1) This Article applies where a person has refused or failed to comply with a requirement–
 - (a) to produce a record that is in the person’s possession or under the person’s control; or
 - (b) to provide any information that the person is able to provide,made by a person acting in accordance with this Law.
- (2) The Royal Court may, on the application of the person requiring the production of the record or the provision of the information, order the person required to comply with the requirement to take such action as the Court considers necessary to comply with the requirement.
- (3) The Court need only be satisfied of the facts on which it bases an order under paragraph (2) on the balance of probabilities.

66 Responsibility

- (1) If an offence under this Law that has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person who was purporting to act in any such capacity,that person, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if the person were a director of the body corporate.
- (3) A person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

67 Authority for prosecutions

A prosecution for an offence under this Law shall not be instituted except by or with the consent of the Attorney General.

PART 8
MISCELLANEOUS PROVISIONS

68 Money forming part of trust assets

- (1) This Article applies to money that forms part of trust assets.
- (2) In paragraph (1) “trust assets” means –
 - (a) property in a legacy or bequest in favour of the States or held in trust for the States; or
 - (b) property held by the States on behalf of a person or unclaimed property that is due to or belongs to a person other than the States that has been deposited with the States.
- (3) Money to which this Article applies shall not be paid into and does not form part of the consolidated fund but shall be held, managed, handled and accounted for in accordance with Regulations made by the States.
- (4) The Regulations may apply any provisions of this Law to, or in respect of, money to which this Article applies but shall not derogate from any trust under which the money is held.

69 Minister's responsibility in respect of certain companies

- (1) If the States own, in the name of the States, shares in a company, wherever incorporated, the Minister, on behalf of the States, may exercise the rights and is responsible for any liabilities attached to the shares.
- (2) Where the company is an independently audited States body the Minister shall for the purpose of this Law be taken to be the Minister responsible to the States for the financial interests of the States in the company.

70 Limitation of civil liability

- (1) This Article applies to –
 - (a) a person discharging or purporting to be discharging a function under this Law; and
 - (b) a person who is, or is acting as, an officer, employee or agent of a person mentioned in subparagraph (a) or who is performing a duty or exercising a power on behalf of such a person.
- (2) A person to whom this Article applies shall not be liable in damages for an act done in the discharge or purported discharge of a function under this Law unless it is shown that the act was done in bad faith.

71 Repeal

The following Laws are repealed –

- (a) Public Finances (Administration) (Jersey) Law 1967,^[10]
- (b) Public Finances (Administration) (Amendment) (Jersey) Law 1975;^[11]
- (c) Public Finances (Administration) (Amendment No. 2) (Jersey) Law 1980,^[12]
- (d) Public Finances (Administration) (Amendment No. 3) (Jersey) Law 1986,^[13]

- (e) Public Finances (Administration) (Amendment No. 4) (Jersey) Law 1989,^[14]
- (f) Public Finances (Administration) (Amendment No. 5) (Jersey) Law 1991,^[15]
- (g) Public Finances (Administration) (Amendment No. 6) (Jersey) Law 1991,^[16]
- (h) Public Finances (Administration) (Amendment No. 7) (Jersey) Law 1993,^[17]
- (i) Public Finances (Administration) (Amendment No. 8) (Jersey) Law 1996,^[18]
- (j) Public Finances (Administration) (Amendment No. 9) (Jersey) Law 2000,^[19]
- (k) Public Finances (Administration) (Amendment No. 10) (Jersey) Law 2002.^[20]

72 Transitional and saving provisions

The States may make Regulations containing such transitional, saving, consequential, incidental or supplementary provisions as may be necessary or expedient to bring this Law into effect.

73 Amendment of other enactments

- (1) The States may make Regulations amending enactments consequent on the repeal of the Public Finance (Administration) (Jersey) Law 1967^[21] and its replacement by this Law.
- (2) Regulations made under paragraph (1) may include such transitional, ancillary, consequential and supplementary provision as the States think fit.

74 Commencement

- (1) This Law shall come into force on such day or days as the States may by Act appoint.
- (2) Different days may be appointed for different purposes and for different provisions of this Law.

75 Citation

This Law may be cited as the Public Finances (Jersey) Law 200.

SCHEDULE

(Article 1)

NON-MINISTERIAL STATES FUNDED BODIES

Committees of the States
Scrutiny panels established by Standing Orders
Bailiff's Chambers
Office of the Lieutenant Governor
Office of the Dean of Jersey
States Greffe
Viscount's Department
Judicial Greffe
Law Officers' Department
Comptroller and Auditor General
Data Protection Registrar
Probation Department
Official Analyst

-
- [1] P.124/2004.
- [2] P.124/2004.
- [3] P.124/2004.
- [4] Volume 1990-1991, page 115, Volume 1996-1997, page 281 and Volume 2002, page 82.
- [5] Volume 1968-1969, page 345, Volume 1970-1972, page 549, Volume 1994, page 119, Volume 2001, page 298, Volume 2004, page 699 and R&O 5838.
- [6] Volume 1992-1993, page 437.
- [7] Volume 1992-1993, page 437.
- [8] Volume 1992-1993, page 437.
- [9] Volume 1992-1993, page 437.
- [10] Volume 1966-1967, page 589.
- [11] Volume 1975-1978, page 9.
- [12] Volume 1979-1981, page 329.
- [13] Volume 1986-1987, page 167.
- [14] Volume 1988-1989, page 507.
- [15] Volume 1990-1991, page 401.
- [16] Volume 1990-1991, page 547.
- [17] Volume 1992-1993, page 445.
- [18] Volume 1996-1997, page 291.
- [19] Volume 2000, page 137.
- [20] Volume 2002, page 451.
- [21] Volume 1966-1967, page 589, Volume 1975-1978, page 9, Volume 1979-1981, page 329, Volume 1986-1987, page 167, Volume 1988-1989, page 507, Volume 1990-1991, pages 401 and 547, Volume 1992-1993, page 445, Volume 1996-1997, page 291, Volume 2000, page 137, Volume 2002, page 451, Volume 2003, page 121 and R&O 5140.