



Caro Tomlinson
Officer PAC
States Greffe
States of Jersey
c.tomlinson2@gov.je

04 March, 2019

Dear Caro

Draft Public Finances Law and CSSP Review

Further to my email of 19 February 2019, I am happy to provide some written observations on the Draft Public Finances Law. I attach a schedule with observations on individual articles of the draft Law.

As I previously explained, I do not normally make submissions to Scrutiny Panels. However, I have agreed to the Panel's request to make a submission in this case because elements of the draft Law directly relate to my statutory responsibilities and to recommendations I have made in reports to the States Assembly. My observations are solely in this context and do not represent a comprehensive analysis of the draft legislation.

I should also note that no direct comparison of the Public Finances (Jersey) Law 2005 and the draft Law has been provided. This makes it more difficult for me and the Panel to identify and evaluate the impact of the draft Law.

Please do get in touch if there are any observations that you wish to follow up. As I indicated in my earlier email, either Stephen or I are happy to meet the Panel if that would be helpful.

Yours sincerely

Karen McConnell
Comptroller and Auditor General

cc Stephen Warren Deputy Comptroller and Auditor General

Observations on Draft Public Finances (Jersey) Law 201- (Draft 29, 13 February 2019)

Article	Heading	Observation
9	Preparation and lodging of government plan	<p>I strongly welcome the proposed replacement of the Medium Term Financial Plan (MTFP) with the rolling Government Plan. The proposed approach facilitates forward looking, flexible financial planning by overcoming the two major disadvantages of the MTFP:</p> <ul style="list-style-type: none"> • rigidity of budgets for the period of the MTFP; and • a 'cliff edge' at the end of the period of the MTFP. <p>I also welcome the wider coverage of the Government Plan that promotes a broad view of financial management of the States by requiring consideration of the Social Security funds over the same period as the Consolidated Fund and other funds established under the Public Finances (Jersey) Law.</p>
17	Approval pending at start of financial year	<p>As drafted, in a situation where the Government Plan has not been approved, the legislation restricts monthly withdrawals from the Consolidated Fund in respect of a proposed head of expenditure to 1/12 of the amount in the most recently approved Government Plan. I understand the rationale for placing a restriction on drawings in such a situation.</p> <p>However, the legislation as drafted may have unintended consequences where expenditure under a particular head of expenditure is front loaded to the start of the financial year and would significantly exceed 1/12 of the annual amount.</p>
31	Public Finances Manual	<p>The Public Finances (Jersey) Law 2005 provided for issuing Financial Directions. I have previously reported my concerns about the design and implementation of Financial Directions.</p>

Article	Heading	Observation
		<p>The draft Law provides for a Public Finances Manual in place of Financial Directions. I welcome that step in that it emphasises that the framework of control must be seen as an integrated whole. However, I am concerned that there is no general statement of the scope and coverage of the Public Finances Manual contained in the draft Law: the draft Law merely states that the Manual 'may include directions and information with respect to the proper administration of this Law and of the public finances in Jersey'.</p> <p>I also note that the draft Law does not impose any specific duty on compliance with the Manual or any part of it. This is in contrast with Article 10A of the Employment of States of Jersey Employees (Jersey) Law 2005 that imposes a duty on Accounting Officers to ensure compliance with Codes of Practice issued under Article 8 of the Employment of States of Jersey Employees (Jersey) Law 2005.</p>
32	Office of the Treasurer	<p>An effective internal audit function operating in accordance with recognised professional standards is an important element of a system of internal control. I have previously reported on the States' internal audit function and have monitored the implementation of the recommendations that I made.</p> <p>The Public Finances (Jersey) Law 2005 established an office of Chief Internal Auditor and in broad terms described their duties, including to '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'. The 2005 Law also made certain provisions to protect the independence of the internal audit function.</p> <p>The draft Law replaces those provisions with a duty on the Treasurer to establishing a system of internal auditing in support of the 'proper stewardship and administration of the public finances of Jersey'.</p>

Article	Heading	Observation
		<p>I am concerned that:</p> <ul style="list-style-type: none"> • the draft Law places the responsibility for the internal audit function on the Treasurer of the States. Many organisations now provide for direct accountability of the internal audit function to the Chief Executive, reflecting its importance and wide remit; and • the draft Law makes only a very general reference to the objective of internal audit and makes no reference to the standards to which it should work.
35	Report on a person's actions	<p>The Public Finances (Jersey) Law 2005 contained a similar provision but required the Treasurer of the States to consult with the Comptroller and Auditor General before issuing a report. The draft Law instead imposes a duty on the Treasurer of the States to notify the Comptroller and Auditor General of their intention to issue such a report.</p> <p>I welcome the proposed change as it makes clear that the Comptroller and Auditor General is not part of the process for deciding whether to issue a report and, in so doing, reinforces the independence of the Comptroller and Auditor General.</p> <p>It would be helpful if, consistent with the approach in Article 40, there was a duty to provide a copy of any report issued under Article 35, to the Comptroller and Auditor General.</p>
37	Annual financial statements	<p>The draft legislation provides for 'a financial statement' but is silent on its content. The Public Finances (Jersey) Law 2005 required compliance with 'accounting standards issued by the Minister'.</p> <p>I welcome the removal of the unnecessary procedural provisions of the 2005 Law. However, I am concerned that the draft Law contains no provision about the contents or basis of preparation of the 'financial</p>

Article	Heading	Observation
		<p>statement' and does not therefore promote high quality annual reporting. The States have improved their annual reporting in recent years. The States now prepare and publish:</p> <ul style="list-style-type: none"> • annual financial statements largely compliant with International Financial Reporting Standards and including reporting of expenditure against the sums authorised by the States Assembly; and • an annual report following United Kingdom corporate reporting principles. <p>I would welcome the inclusion of some provision about the contents and basis of preparation of the 'financial statement' but cast in sufficiently wide terms that the provision was future proofed. In the context of English local authorities such a provision can be found in Regulation 5 of the Accounts and Audit Regulations 2015.</p>
Schedule 6: 20 Comptroller and Auditor General (Jersey) Law 2014	Article 12(2)	<p>The Draft Law makes provision for consequential amendments to various legislation, including the Comptroller and Auditor General (Jersey) Law 2014.</p> <p>Article 12(2) of the 2014 Law currently provides:</p> <p>'The certificate mentioned in paragraph (1)(b) must certify whether the annual financial statement properly represents the activities of the States for the financial year and whether Article 32(2) of the Public Finances Law has been complied with.'</p> <p>Article 32(2) of the Public Finances (Jersey) Law 2005 provides:</p> <p>'The statement must be prepared in accordance with accounting standards issued by the Treasurer with the approval of the Minister.'</p>

Article	Heading	Observation
		<p>The draft Law would amend Article 12(2) of the 2005 Law to read:</p> <p>‘The certificate mentioned in paragraph (1)(b) must certify whether the annual financial statement properly represents the activities of the States for the financial year and whether <i>the Public Finances Manual issued under</i> the Public Finances Law has been complied with.’</p> <p>In my view this amendment would go beyond a consequential amendment and has significant consequences that are not highlighted in the Explanatory Note:</p> <ul style="list-style-type: none"> • it would replace a narrow provision about compliance with accounting standards issued by the Treasurer with a broad provision about compliance with the Public Finances Manual. The contents of the Public Finances Manual are not prescribed in Article 31(3) but I understand it is intended that they cover many areas of which accounting standards for annual reporting are only one. There is a risk that no audit firm would be willing to undertake an engagement couched in such broad terms. In contrast, recognising the importance of compliance with established arrangements for the application of public funds, I already require the auditor I appoint to audit the States’ accounts to report on the ‘regularity’ of income and expenditure, including compliance with ‘governing authorities’ (including Financial Directions). However, this engagement is in accordance with recognised professional pronouncements approved by the Financial Reporting Council; and • it would create the situation where the auditor was reporting on compliance with something that does not bind the preparers of the financial statement: Article 31(3) of the draft Law provides that the Manual may include both directions (that is presumably mandatory) and information (that is presumably not).