

STATES OF JERSEY



DRAFT PUBLIC FINANCES (AMENDMENT No. 4) (JERSEY) LAW 201-

**Lodged au Greffe on 6th June 2013
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT PUBLIC FINANCES (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources, the provisions of the Draft Public Finances (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**

Minister for Treasury and Resources

Dated: 4th June 2013

REPORT

1. Introduction

The Minister for Treasury and Resources is pleased to present Amendment No. 4 to the Public Finances (Jersey) Law 2005 (“the Finance Law”). During the course of the 2011 debate on the amendments to the Finance Law, which saw the introduction of the Medium Term Financial Plan and longer-term budgeting, the Minister indicated that he would bring back further amendments to the Law which would promote improved financial management and accountability throughout the States. This amending Law proposes changes to the following areas of the Public Finances (Jersey) Law 2005 with the intent of meeting this objective.

- Establishment of the States Insurance Fund;
- Medium Term Financial Plan and Heads of Expenditure;
- Role and Remit of the Treasurer;
- Extending the Accounting Officer role;
- Formalisation of the Fiscal Policy Panel; and
- Miscellaneous – Law to be amended by Regulation; and amendments to the administration arrangements for Special Funds.

2. Establishment of the States Insurance Fund (Part 2 – Articles 2–8)

- 2.1 Part of this Amendment deals with the formal establishment of the existing States Insurance arrangements as a Special Fund under the terms of the Public Finances Law. The Fund will be specifically set up to facilitate the brokering and administration of insurance arrangements across the States. It is proposed that the principal Law is amended to recognise the Fund whilst the more detailed administrative arrangements are included in a Schedule which is to be attached to the Law.
- 2.2 The States of Jersey currently manages the cost of insurance by operating a level of self-insurance which will continue under the new Insurance Fund arrangements. Under the terms of the existing arrangements, a reserve of approximately £7.5 million has been built up in the States Consolidated Fund to provide a buffer against possible future insurance claims. The amending Law details the process required to transfer this existing buffer from the Consolidated Fund to the Insurance Fund.
- 2.3 All States Departments will participate in the Insurance Fund. However, the Minister for Treasury and Resources may also enter into agreements with other persons and bodies that are connected with the States. Any such participation with external bodies will be subject to agreed terms and conditions and depend on the level of insurance cover required and any associated risks.

2.4 The Amendment also enables money to be directly allocated to the Insurance Fund from the Consolidated Fund in a Budget or at any time on a proposition from the Minister for Treasury and Resources and; conversely if a surplus should accrue in the Fund, money may be withdrawn from the Fund and paid into the Consolidated Fund or Contingency.

3. Medium Term Financial Plan and Heads of Expenditure (Part 3 – Articles 9–12)

3.1 The amending Law proposes the formal recognition of the existing Central Planning head of expenditure. It further proposes that the Minister for Treasury and Resources will be able to allocate funds from this head of expenditure to scope and assess future capital projects which have been approved “in principle” by the States.

3.2 In Amendment No. 3 to the Public Finances (Jersey) Law 2005, changes (which mainly dealt with the introduction of medium-term financial planning) were made which resulted in a general tightening of the provisions that allowed variations to heads of expenditure. Experience has shown that it is necessary for there to be more flexibility within the rules – it is therefore proposed that the Law is amended to allow the Minister for Treasury and Resources to approve the transfer of funds between heads of expenditure for any reason.

3.3 Although this means that the Minister for Treasury and Resources will have the authority to approve the transfer of money between all heads of expenditure (capital and revenue), all such transfers will need to be approved by the Minister or other person responsible for the States Department both relinquishing and receiving the funds. The States will continue to be notified of any such transfers in the six-monthly update report.

3.4 There are exceptions to this which enable transfers between capital and revenue expenditure in order to comply with accounting requirements, or a transfer which reflects a transfer of Ministerial functions which will continue to only require approval from the Minister for Treasury and Resources.

3.5 Within Amendment No. 3, the States agreed changes which incorporated the concept of an annual contingency; at the same time, it was agreed that the previous provision which enabled the Minister for Treasury and Resources to take forward additional funding requests to the States if the expenditure was absolutely necessary was removed (these were previously referred to as 11(8) funding requests).

3.6 Transitional Arrangements have enabled this additional funding route to be retained until 30th June 2013 only, principally to enable the allocation of funds for the Innovation Fund.

3.7 Experience now shows that it is prudent to permanently re-introduce this facility in the principal Law itself and, therefore, the amendment incorporates provision for the Council of Ministers, on the recommendation of the Minister for Treasury and Resources, to take a proposition to the States if they are fully able to justify that additional expenditure is urgent and needs to be funded, and that it cannot reasonably be funded out of existing heads of expenditure and there are insufficient contingency funds available. It is expected that this funding route would be taken as a last resort and that all other funding options

would be considered by the Council of Ministers prior to a request to the States. The final decision as to whether any such funding request should be approved lies with the States Assembly itself.

4. Role and remit of the Treasurer (Part 4 – Articles 13–15)

- 4.1 The previous Comptroller and Auditor General recommended that the role of the Treasurer of the States should be strengthened.
- 4.2 Article 28 of the principal Law establishes the office of Treasurer of the States and details the roles and responsibilities attributed to that post.
- 4.3 Currently the Treasurer is responsible to the Minister for Treasury and Resources for the supervision and administration of the Law and of the public finances of Jersey, and for ensuring the proper stewardship and administration of the public finances of Jersey. Also under Article 26(6) of the States of Jersey Law the Treasurer is accountable to the Minister in respect of policy direction.
- 4.4 Amendments extend the functions of the Treasurer to include responsibility for ensuring that financial systems are provided for the administration of public finances of Jersey and for monitoring compliance with the financial management standards set by the Treasurer.
- 4.5 The Amendment introduces a new responsibility for the Treasurer, building upon the post's current reporting relationship to the Minister for Treasury and Resources, and proposes that the Treasurer advises the Council of Ministers upon the public finances of Jersey. This is necessary because the development of strategy and the preparation of the Medium Term Financial Plan is the responsibility of the Council of Ministers, and it is imperative that the Council receives all the necessary financial advice and input to ensure that the Plan's recommendations support the proper stewardship and administration of public finances.
- 4.6 A further amendment to the role and remit of the Treasurer expands upon the Treasurer's current role, detailed in Article 30 of the principal Law, to report directly to the States if public money has been dealt with unlawfully. The Amendment extends the kind of impropriety that the Treasurer may report to the States from a failure to comply with the Law to a failure to comply with a financial direction. The amendment further details the circumstances under which the Treasurer may report to the States where money has been either dealt with unlawfully or in a way which contravenes the Law and whilst it has been possible to rectify the situation, the consequences of the action or the money involved, in the Treasurer's view were material.
- 4.7 It is proposed that an amendment is made to the basis on which the Treasurer prepares the financial accounts of the States. Currently, Article 32 of the principal Law requires that the States of Jersey accounts are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and prescribed accounting standards – however, as the financial environment changes and in order to reflect best financial practice, the Treasurer needs to move forward and produce Accounts in line with changing and improving accounting standards (such as new and emerging International Financial Reporting Standards). The amendment requires the Minister to lay details of the accounting standards being followed before the States. The Treasurer will

continue to prepare accounts in line with appropriate and approved accounting standards and these will be audited against by the Comptroller and Auditor General.

5. Extending the Accounting Officer role (Part 4 – Article 16)

The Law as currently drafted establishes a Chief Officer as the Accounting Officer for the expenditure and income of their States Department. This Amendment rightly builds on this role by empowering the Minister for Treasury and Resources to appoint an accounting officer who will be personally accountable for the proper financial management for all non-departmental States Income and Special and Trust Funds.

6. Formalisation of the Fiscal Policy Panel (Part 5 – Articles 18–19)

6.1 The Fiscal Policy Panel was formally established by the States in its approval of Report and Proposition P.133/2006 – Establishment of a Stabilisation Fund and Policy for Strategic Reserve. The Panel already exists and operates within the parameters set in the Report.

6.2 The role and format of the Panel will continue to be to provide advice and make recommendations on the prevailing economic climate. The Panel may not be directed on the content of any report prepared by it. The Panel comprises at least 3 members who have the relevant knowledge and experience and will be appointed by the Minister for Treasury and Resources for up to 5 years (although not specified in the Law the Minister will consult upon the appointment with the States Economic Adviser). The Law specifies that the Minister gain the views for such appointments from the States Appointments Commission. Under new arrangements, the Minister will also be required to give the States 2 weeks' notice of his/her intention to make an appointment to the Panel.

6.3 The amendment proposes that the Panel must provide reports to the Minister –

- for the completion of the Draft Medium Term Financial Plan (and any amendment thereto);
- at any other time that the Minister requests;
- whenever a significant change in States expenditure or new States expenditure is proposed or there is a proposal to dispose of a significant States asset.

Although there is no obligation for the Panel to prepare a report for the Annual Budget, there is provision for the Minister to make a request to the Panel for such a report if changes to economic conditions require.

6.4 The Amendment places an obligation on the Council of Ministers and the Minister to have due regard to the reports published by the Panel.

6.5 The Panel are required to produce an Annual Report on the economy (global and Island) and States finances (including transfers to/from the Strategic Reserve and Stabilisation Fund).

6.6 In order to allow States Members adequate time to consider the Annual Report, it is recommended that the lodging period for the Budget be extended

to 8 weeks. This matter has been discussed with the Privileges and Procedures Committee, who have agreed that changes to States Standing Orders can be made to this area and have laid such changes before the States in a separate Proposition.

7. Miscellaneous – Law to be amended by Regulation and Special Funds (Part 6 – Articles 20–21)

7.1 Minor amendments are proposed which will ensure that –

- when the States adopt a proposition to establish or vary a Special Fund the Fund is able to retain money received by it; and
- the States may authorise any Minister to lend from a Special Fund on its behalf subject to such restrictions as the States impose.

7.2 The final part of the amendment enables the Minister for Treasury and Resources to make Regulations to amend Parts 3 and 4 of the principal Law (excluding Article 15 which deals with the power to give immediate effect to a Law that is a taxation draft). These Parts deal with the States administrative process for the Medium Term Financial Plan and Budget and States Trading Operations.

7.3 The States would still be required to approve any amending Regulations, but these would not require further approval by the UK Privy Council.

8. In summary

8.1 The Minister for Treasury and Resources is pleased to present Amendment No. 4 to the Public Finances (Jersey) Law 2005, which proposes changes to improve financial management and control throughout the States.

8.2 The Minister is grateful for the input of States Members and officers, who have influenced in particular the proposals with regard to the inclusion of the Fiscal Policy Panel, and changes which would enable the Council of Ministers to bring forward an amendment to the Medium Term Financial Plan if an urgent situation arose which could not be funded from existing funds or from the central contingency.

9. Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amending legislation. The introduction of these proposed changes will continue to build upon the improvement in financial management within the States started by the introduction of the new medium term financial planning process.

10. Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Note on the
Draft Public Finances (Amendment No. 4) (Jersey) Law 201-**

This note has been prepared in respect of the Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ Opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law amends the Public Finances (Jersey) Law 2005, with many of the changes being of a technical nature that do not give rise to any human rights considerations.

It is noted that a report made by the Treasurer to the States under Article 30 (as to be amended) will be subject to absolute privilege under Article 34 of the States of Jersey Law 2005. Absolute privilege may give rise to issues under Article 6 of the European Convention on Human Rights (“determination of civil rights”) insofar as it prevents redress for any alleged libel. However, nothing in the proposed amendments alters the essential position as regards the Treasurer reporting to the States as created by the relevant provisions of the Public Finances (Jersey) Law 2005 and the States of Jersey Law 2005. Allowing reports by the Treasurer to the States to have absolute privilege was advised to be human rights compatible in 2005, and it remains a proportionate approach to uphold the independence of the Treasurer, which is and will remain the purpose behind Article 30.

The Law Officers also advise that the draft Article 56A does not give rise to human rights issues in respect of the removal of members of the Fiscal Policy Panel. It is very much doubted if membership of such a Panel can be analysed as a Convention right. In any case, removal from such positions is not regarded as a matter which requires a specific appeal right over and above such rights as might be enforced by way of judicial review.

Explanatory Note

Part 1 – Preliminary

Article 1 defines the Public Finances (Jersey) Law 2005 as the “principal Law”.

Part 2 – Establishment of Insurance Fund

Article 2 amends Article 1 of the principal Law (the interpretation provision) so as to define “insurance fund” by reference to Article 5A, inserted by Article 3 below, and to anticipate the addition of a Schedule to the Law by Article 8 below, which results in the existing Schedule being numbered as Schedule 1.

Article 3 inserts Article 5A in the principal Law. Article 5A establishes the insurance fund and gives effect to Schedule 2, which is added to the Law by Article 8 below. The States are given power, by Regulations, to amend Schedule 2 and to wind up the insurance fund.

Article 4 amends Article 6 of the principal Law with the effect that the provisions set out in that Article regarding the investment of money of the States apply also to the insurance fund.

Article 5 amends Article 17 of the principal Law so as to allow the Minister to approve transfers from contingency expenditure to the insurance fund.

Article 6 amends Article 46 of the principal Law so as to make it clear that the Comptroller and Auditor General’s duties include a duty to assure the States that money withdrawn from the insurance fund is used for the purpose for which it was authorized to be withdrawn.

Article 7 renumbers the Schedule to the principal Law, consequentially upon the addition of Schedule 2.

Article 8 adds Schedule 2 to the principal Law. Schedule 2 states the purposes of the insurance fund and provides for its administration. In the added Schedule 2 –

Paragraph 1 states the purpose of the fund, which is to facilitate the brokering and administration of mutual insurance arrangements across the States. Financial directions will set out the detail of the scheme. The directions may require States funded bodies and accounting officers for funds and other monies to arrange insurance only through the mutual arrangements.

Paragraph 2 enables the Minister to permit persons who, or bodies which, are connected with the States, but are not States funded bodies, to participate in the mutual insurance arrangements. Participation will be subject to terms and conditions, for example, an obligation for the person or body to report any event that may give rise to an insurance claim.

Paragraph 3 is concerned with the income of the insurance fund. Upon the establishment of the fund, £7.5 million will be transferred to it from the consolidated fund. This is on account of amounts already recharged to States funded bodies and held for insurance purposes. The States may further decide to transfer money from the consolidated fund to the insurance fund at any time. A further transfer may be required if, at the time the Law comes into

force, the balance already held for insurance purposes and the amounts currently recharged to States funded bodies exceed the £7.5 million provisionally provided for. Once the fund is established, money paid into it is not part of the annual income of the States.

Paragraph 4 provides for the circumstances in which money may be withdrawn from the insurance fund. The States may approve the withdrawal of money from the fund, as part of a budget. Otherwise, insurance fund money is used for the purposes of the mutual insurance arrangements. Those arrangements may include settling claims without admitting liability. If a surplus should accrue in the insurance fund, the Minister for Treasury and Resources (the “Minister”) may approve a transfer of the surplus to the consolidated fund and, in so doing, specify that the surplus is appropriated to contingency expenditure. Approvals must be reported to the States within 6 months.

Part 3 – Medium term financial plan and heads of expenditure

Article 9 amends the definition of “States income” in the principal Law, so as to exclude capital receipts that would otherwise appear twice in a medium term financial plan – both as States income and as a receipt that is netted off against the total cost of a capital project.

Article 10 amends Article 9 of the principal Law. Article 9 restricts the circumstances in which a medium term financial plan may be amended. Currently, the circumstances are that there is a state of emergency, an immediate threat to the health or safety of Islanders or a serious threat to the economic, environmental or social wellbeing of Jersey which requires an immediate response. A plan may also be amended following the appointment of a new Council of Ministers mid-term. The Council of Ministers is also obliged to bring forward an amendment to a plan in order to avoid a deficit in the consolidated fund.

This Article adds a new circumstance in which a medium term financial plan may be amended – that there is an urgent need for expenditure, that the balance available for contingency expenditure is insufficient to fund the urgent expenditure and that the urgent expenditure cannot reasonably be funded from existing heads of expenditure.

Article 11 amends Articles 1, 10 and 16 of the principal Law so as to introduce a new kind of capital head of expenditure – the central planning vote.

Article 10(3) of the principal Law requires a draft budget to seek the approval of the States to a capital head of expenditure for each capital project to be started in the financial year to which the budget relates. What this provision does not cater for is the approval of capital expenditure to scope a proposed capital project that, if approved, would start in a future financial year.

Paragraph (3A), as inserted in Article 10 of the principal Law, would allow the Minister to seek the States’ approval, in the budget, of a single capital head of expenditure (the central planning vote) out of which would be paid any preliminary costs to scope or assess the feasibility of a future capital project that the States have already agreed in principle but which is not yet sufficiently developed that the capital head of expenditure for the project can be proposed and voted upon.

Article 16 of the principal Law sets out what is permitted by a head of expenditure, once it has been approved by the States. For a capital head of expenditure, paragraph (3) provides that, once it is approved, a States funded body may withdraw the money approved for the purposes of the project over a period commencing with the financial year for which the approval is given and ending when either the project is complete or all the money approved has been spent.

Paragraph (3A), as inserted in Article 16 of the principal Law, describes how the central planning vote would be accessed. Money in the central planning vote would be transferred to new capital heads of expenditure approved by the Minister for the purposes permitted by the central planning vote.

Article 12 amends Articles 17 and 18 of the principal Law. The principal changes are in Article 18 which describes the circumstances in which a head of expenditure may, with the approval of the Minister, be varied. Those circumstances are currently – to transfer from capital to revenue or vice versa in order to comply with accounting practices, to reflect a transfer of Ministerial functions or another transfer of a service or function from one States funded body to another, to transfer to contingency expenditure or to withdraw funds after the financial year end.

Paragraph (1) of this Article amends Article 17(1) of the principal Law consequentially upon the replacement, in Article 18, of paragraph (1)(d) by the inserted paragraph (1A).

Paragraph (2) of this Article amends Article 18(1) of the principal Law with the effect that a transfer will now be allowed between heads of expenditure for any reason. Generally, any transfer from a head of expenditure must be approved not only by the Minister for Treasury and Resources but also by the Minister or other person responsible for the administration of the States funded body from which the transfer is made. There is an exception for a transfer from capital to revenue or vice versa in order to comply with accounting practices, or a transfer that reflects a transfer of Ministerial functions. Both of these transfers require only the approval of the Minister for Treasury and Resources. This exception is already provided for in Article 18(1) and (2) of the principal Law, and is preserved by the amendments made by this draft Law.

The paragraphs inserted in Article 18 of the principal Law as paragraphs (1A) and (3A) re-enact the rules currently found in paragraph (1)(d) and (e) of that Article for transfers from heads of expenditure to contingency expenditure and for carry forwards.

Part 4 – Administration

Article 13 amends Article 28 of the principal Law. Article 28 establishes the office of Treasurer of the States and imposes duties on that post-holder. Specifically, the Treasurer is responsible –

- (a) to the Minister, for the supervision and administration of the principal Law and of the public finances of Jersey; and
- (b) for ensuring the proper stewardship and administration of the public finances of Jersey.

This Article expands the detailed list of functions that, in particular, fall within the second of these duties, adding that the Treasurer must ensure that financial systems are

provided for the administration of the public finances of Jersey and for monitoring compliance with the financial management standards that the Treasurer is required to set for the administration of the public finances of Jersey.

This Article also adds a new duty for the Treasurer of the States. The Treasurer is already responsible to the Minister as described at (a) above and, under Article 26(6) of the States of Jersey Law 2005, is accountable to the Minister in respect of policy direction. This amendment adds a duty for the Treasurer to advise the Council of Ministers upon the public finances of Jersey.

Article 14 amends Article 30 of the principal Law. Article 30 firstly establishes the independence of the Treasurer – that is, that the Treasurer may not be directed on how a function of the office of Treasurer is to be carried out. Article 30 also empowers the Treasurer to report directly to the States if public money has been dealt with unlawfully and it has not been possible to correct the situation. This amendment expands upon the kind of impropriety in dealing with public money that the Treasurer may report to the States, so that it means not only a failure to comply with an enactment, but also a failure to comply with financial directions issued under the principal Law. This amendment further expands upon the circumstances in which the Treasurer may report directly to the States. The Treasurer may also report a case where any public money controlled or managed on behalf of the States or by a Minister has been dealt with by a person acting either unlawfully or in a way that is contrary to financial directions and the consequences of the person's actions are material or would have been material if the situation had not been corrected.

Article 15 amends Articles 18 and 32 of the principal Law. Article 32 requires the Treasurer to prepare an annual financial statement of the accounts of the States, and to do so in accordance with GAAP and prescribed accounting standards. This amendment provides that the accounts must be prepared, instead, in accordance with accounting standards issued by the Treasurer, with the Minister's approval. There are 2 reasons for making the amendment. Firstly, the requirement to prepare accounts in accordance with both GAAP and prescribed accounting standards is incorrect. These should be alternatives, not cumulative. Secondly accounting standards are technical standards, unsuited for inclusion in legislation. This amendment requires the Minister to lay the accounting standards before the States, so that they remain readily accessible to States Members and the public. Existing accounting standards that are prescribed by Order shall remain in force until such time as accounting standards are first issued by the Treasurer. As a consequence of the amendment of Article 32, the purpose of the power conferred by Article 18(1)(a) of the principal Law to transfer money from a capital head of expenditure to a revenue head of expenditure, or vice versa, to comply with accounting standards, becomes a power to do so in order to comply with the accounting standards so issued.

Article 16 creates a new category of accounting officer, for funds and other money which do not obviously fall within the responsibilities of an accounting officer for a States funded body. The funds and money are the consolidated fund, the strategic reserve fund, the stabilisation fund, the currency fund, the insurance fund, any special fund, States income as a whole, or any part of it, receipts from taxation and money forming part of trust assets. The Minister may appoint an accounting officer for any of these funds and money. The accounting officer will be personally accountable for the proper financial management of the fund or money. Financial directions may make further provision as to the functions of such an accounting officer.

Article 17 amends Article 39 of the principal Law. Article 39 requires an employee of a States-funded body to produce records associated with public finance, when required to do so. Article 39 was originally drafted before the enactment of the Employment of States of Jersey Employees Law 2005. Under that Law, civil servants are employees of the States Employment Board rather than employees of the States funded body within which they work. This amendment makes it clear that the requirement in Article 39 applies to States employees.

Part 5 – Fiscal Policy Panel

Article 18 amends Article 1 of the principal Law (the interpretation provision) so as to add a definition “Fiscal Policy Panel” (the “Panel”). The definition itself cross-refers to Article 56A, added as described below.

Article 19 inserts Part 6A in the principal Law. Part 6A provides for the establishment of the Panel and associated matters.

Article 56A establishes the Panel. The Panel is already constituted in accordance with P.133/2006. Under Article 56A, the Panel shall continue to be comprised of at least 3 members with the necessary knowledge and experience to advise on economic matters. The arrangements for appointment of the members of the Panel are altered. The Minister will appoint the Panel members rather than the States. The Minister will be required to seek the views of the Appointments Commission before making an appointment. The Minister will also be required to give the States at least 2 weeks’ notice of his or her intention to make an appointment. The maximum period for which a Panel member may be appointed is extended from 3 to 5 years, and a Panel member’s appointment may be renewed. The Minister is empowered to dismiss a Panel member, on any of the grounds specified in paragraph (10). The Minister must notify the States once he or she has terminated the appointment of a Panel member.

Article 56B makes it clear that the Panel may not be directed on the advice, comments and recommendations contained in a report prepared by it in the discharge of its functions.

Articles 56C to 56E are concerned with the various reports that the Panel must or may be required to produce.

Article 56C requires the Panel to produce an annual report. Paragraph (2) specifies the minimum contents of the report. Paragraph (3) describes when the report must be published. Paragraph (4) imposes a new obligation on the Council of Ministers and Minister to have regard to the Panel’s annual report.

Article 56D requires the Panel to produce a report in a year in which a draft medium term financial plan is prepared. Paragraph (2) specifies the minimum content of the report. The report must be published sufficiently early that it may be taken into consideration when the draft medium term financial report is being prepared. Paragraph (4) requires the Minister to request a report if the Council of Ministers is preparing a proposition to amend a medium term financial plan. The report must be published sufficiently early that it may be taken into consideration when the amendment is being prepared. Paragraph (6) imposes a new obligation on the Council of Ministers to have regard to a report prepared under this Article.

Article 56E empowers the Minister to ask the Panel to prepare a report – for the purposes of the preparation of a draft budget; in respect of significant

proposals to change States expenditure or for the disposal of assets; or if significant change in economic conditions means that the Panel's recommendations in relation to the medium term financial plan require reconsideration. The Panel must publish a report for the purpose of a draft budget sufficiently early that the report may be taken into consideration when the draft budget is being prepared. Any other report under this Article must be published as soon as is practicable. As before, a new obligation is imposed on the Minister and Council of Ministers to have regard to the report.

Part 6 – Miscellaneous and closing

Article 20 amends Article 3 of the Law so as to make it clear that the States, when adopting a proposition to establish or vary a special fund, may allow the fund to keep money received by it, as opposed to receipts being credited to the consolidated fund. In addition, the States may, in adopting such a proposition, provide that income kept by a special fund is not part of the annual income of the States. Article 23 of the Law is also amended, to make it clear that the States may authorize any Minister to lend on its behalf, subject to such restrictions as the States impose.

Article 21 amends the principal Law so as to enable the States to make Regulations amending Parts 3 and 4 of the principal Law being the Parts dealing, respectively, with the process for financial planning and budgeting and States trading operations. The power to amend Parts 3 and 4 does not extend to Article 15 of the principal Law, which is the power to give immediate effect, by acte opératoire, to a Law that is a taxation draft. Nor does it extend to any power to make Regulations that supplement, rather than amend, the Law. Existing powers to make Regulations amending specific provisions of Parts 3 and 4 of the principal Law are repealed, in reliance on the wider power conferred. Some of the existing powers being repealed reserved to the Minister the power to lodge Regulations to make certain amendments to the provisions of the principal Law that are concerned with borrowing or lending by the States. Only the Minister may lodge Regulations under the wider power conferred.

Article 22 repeals the existing Regulation-making powers that are superseded by the wider power conferred by the amendment made by Article 19.

Article 23 provides for the citation and commencement of this Law. If required, the Minister has power, by Order, to make transitional provisions for the commencement of this Law.



Jersey

DRAFT PUBLIC FINANCES (AMENDMENT No. 4) (JERSEY) LAW 201-

Arrangement

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DRAFT PUBLIC FINANCES (AMENDMENT No. 4) (JERSEY) LAW 201-

A LAW to amend further the Public Finances (Jersey) Law 2005

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

PRELIMINARY

1 Interpretation

In this Law “principal Law” means the Public Finances (Jersey) Law 2005¹.

PART 2

ESTABLISHMENT OF INSURANCE FUND

2 Article 1 amended

In Article 1 of the principal Law –

- (a) in paragraph (1), after the definition “independently audited States body” there shall be inserted the following definition –

“ ‘insurance fund’ means the fund established by Article 5A;”;

- (b) in paragraph (1), in the definition “non-Ministerial States funded body” for the words “the Schedule” there shall be substituted the words “Schedule 1”;
- (c) in paragraph (3), for the words “the Schedule” there shall be substituted the words “Schedule 1”.

3 Article 5A inserted

After Article 5 of the principal Law there shall be inserted the following Article –

“5A Insurance fund

- (1) There is established an insurance fund.
- (2) Schedule 2 has effect to specify the purposes of the insurance fund and make provision for its administration.
- (3) The States may by Regulations –
 - (a) amend Schedule 2; or
 - (b) wind up the insurance fund and, in so doing, repeal this Article and Schedule 2 and make any consequential amendments to other provisions of this Law.”.

4 Article 6 amended

In Article 6(1)(a) of the principal Law for the words “and the currency fund” there shall be substituted the words “, the currency fund and the insurance fund”.

5 Article 17 amended

In Article 17(2) of the principal Law after the words “heads of expenditure” there shall be inserted the words “or the insurance fund”.

6 Article 46 amended

In Article 46(2)(a) of the principal Law for the words “or the currency fund” there shall be substituted the words “, the currency fund or the insurance fund”.

7 The Schedule renumbered

The Schedule shall be renumbered as Schedule 1.

8 Schedule 2 added

After Schedule 1 there shall be added the following Schedule –

“SCHEDULE 2

(Article 5A)

INSURANCE FUND**1 Purpose of insurance fund**

- (1) The purpose of the insurance fund is to facilitate the provision of mutual insurance arrangements (the ‘mutual insurance arrangements’) for –
 - (a) States funded bodies;
 - (b) any fund or money for which an accounting officer is appointed; and
 - (c) any other bodies and persons participating in those arrangements pursuant to paragraph 2.
- (2) Financial directions –
 - (a) may prohibit a States funded body or accounting officer appointed for a fund or money from arranging any insurance otherwise than through the mutual insurance arrangements; and
 - (b) shall specify the descriptions of liabilities and persons insured by, the terms of, and the administrative processes connected with, the mutual insurance arrangements.

2 Participation by other persons and bodies

The Minister may permit persons or bodies that appear to the Minister to be connected with the States to participate in the mutual insurance arrangements on such terms and conditions as the Minister specifies.

3 Income of insurance fund

- (1) There shall be transferred from the consolidated fund to the insurance fund, upon the establishment of the insurance fund, the sum of £7.5 million.
- (2) There shall be transferred from the consolidated fund to the insurance fund such amount as the States may decide –
 - (a) in a budget, in accordance with Article 10(3)(f); or
 - (b) at any time, on a proposition lodged by the Minister.
- (3) There shall be paid into the insurance fund such amounts, due from bodies or persons in respect of their participation in the mutual insurance arrangements, as are required by financial directions to be paid in.

- (4) There shall be paid into the insurance fund such amounts, received by or on behalf of the States or bodies or persons participating in the mutual insurance arrangements from insurers or otherwise in settlement of an insurable claim, as are required by financial directions to be paid in.
- (5) Amounts paid into the insurance fund do not form part of the annual income of the States.
- (6) Article 17(2) provides for the approval of transfers from contingency expenditure to the insurance fund.

4 Withdrawals from insurance fund

- (1) Money shall only be withdrawn from the insurance fund –
 - (a) in accordance with financial directions, for the purposes of the mutual insurance arrangements;
 - (b) in accordance with an approval under sub-paragraph (3); or
 - (c) as approved by the States in a budget, in accordance with Article 10(3)(f).
- (2) Financial directions may permit payments to be made from the insurance fund, in accordance with the terms of the directions, in settlement of insurable claims without any admission of liability.
- (3) If it appears to the Minister that the amount in the insurance fund exceeds the amount required for the mutual insurance arrangements, the Minister may, at any time, approve the transfer of all or part of the excess to the consolidated fund and may further approve that all or part of the amount transferred shall be taken to have been appropriated to contingency expenditure.
- (4) The Minister must report to the States, within 6 months, any approval given under sub-paragraph (3).”.

PART 3

MEDIUM TERM FINANCIAL PLAN AND HEADS OF EXPENDITURE

9 States income

In Article 1(1) of the principal Law, in the definition “income”, after sub-paragraph (d) there shall be inserted the following sub-paragraph –

- “(e) a capital receipt, where the receipt is intended to be used for a capital project and the amount allocated for capital expenditure in a medium term financial plan, or the amount appropriated to a capital head of expenditure in a budget, is shown net of the receipt.”.

10 Variation of medium term financial plan

In Article 9(2) of the principal Law after sub-paragraph (c) there shall be inserted the following sub-paragraph –

- “(ca) if the Council of Ministers is satisfied, on the recommendation of the Minister –
 - (i) that there is an urgent need for expenditure, and
 - (ii) that –
 - (A) the balance currently available for contingency expenditure is insufficient to fund the expenditure that is urgently needed, and
 - (B) the expenditure that is urgently needed cannot reasonably be funded out of existing heads of expenditure;”.

11 Central planning vote

(1) In Article 1(1) of the principal Law, after the definition “capital head of expenditure” there shall be inserted the following definition –

“‘central planning vote’ means a capital head of expenditure described in Article 10(3A);”.

(2) In Article 10 of the principal Law –

(a) after paragraph (3) there shall be inserted the following paragraph –

“(3A) A draft budget may seek the approval of the States, for the financial year to which it relates, to a capital head of expenditure (a ‘central planning vote’) to fund work to scope or assess the feasibility of proposed capital projects that the States have agreed, in principle, will start in the future.”;

(b) in paragraph (6) for the words “paragraph (3)(d)” there shall be substituted the words “paragraphs (3)(d) and (3A)”.

(3) In Article 16 of the principal Law –

(a) in paragraph (3), for the words “the approval by the States of a capital head of expenditure” there shall be substituted the words “the approval of a capital head of expenditure by the States or, under paragraph (3A), by the Minister;”;

(b) after paragraph (3) there shall be inserted the following paragraph –

“(3A) The approval by the States of a central planning vote authorizes the Minister to approve –

- (a) capital heads of expenditure to fund work to scope or assess the feasibility of proposed capital projects that the States have agreed, in principle, will start in the future; and
- (b) the transfer of amounts to such capital heads of expenditure, for such purposes, from the central planning vote.”;

- (c) in paragraph (5) after the words “as described in Article 10(3)(d)” there shall be inserted the words “, or by the Minister under paragraph (3A).”.

12 Permitted variations of heads of expenditure

- (1) In Article 17(1)(c) of the principal Law for the words “Article 18(1)(d)” there shall be substituted the words “Article 18(1A)”.
- (2) In Article 18 of the principal Law –
- (a) in paragraph (1) –
- (i) the word “or” shall be inserted following sub-paragraph (b);
- (ii) for sub-paragraphs (c), (d) and (e) there shall be substituted the following sub-paragraph –
- “(c) be transferred from one head of expenditure to another head of expenditure for any purpose not mentioned in sub-paragraph (a) or (b).”;
- (b) after paragraph (1) there shall be inserted the following paragraph –
- “(1A) All or any part of the amount appropriated by a head of expenditure may, with the approval of the Minister, be transferred from the head of expenditure to contingency expenditure, within or after the end of the relevant financial year.”;
- (c) in paragraph (2) for the words “or (d)” there shall be substituted the words “or (1A)”;
- (d) in paragraph (3) for the words “paragraph (1)(b) or (c)” there shall be substituted the words “paragraph (1)”;
- (e) after paragraph (3) there shall be inserted the following paragraph –
- “(3A) The Minister may approve the withdrawal from the consolidated fund, after the end of the relevant financial year, of all or part of the amount appropriated by a revenue head of expenditure.”;
- (f) in paragraphs (4) and (6)(a) for the words “paragraph (1)” there shall be substituted the words “this Article”.

PART 4

ADMINISTRATION

13 Duties of Treasurer

- (1) In Article 28(3) of the principal Law for sub-paragraph (a) there shall be substituted the following sub-paragraph –
- “(a) to set financial management standards and ensure that financial systems are provided –
- (i) for their administration, and
- (ii) for monitoring compliance with those standards;”.

- (2) After Article 28(3) of the principal Law there shall be added the following paragraph –

“(4) Without prejudice to the generality of the Treasurer’s duties in paragraphs (2) and (3) of this Article and Article 26(6) of the States of Jersey Law 2005², the Treasurer shall advise the Council of Ministers upon the public finances of Jersey.”.

14 Reporting of unlawful financial management

For Article 30(2) there shall be substituted the following paragraph –

“(2) If the Treasurer is satisfied –

(a) that any person has in any way –

- (i) dealt with money of the States, including money forming part of any trust assets or any other money controlled or managed on behalf of the States or by a Minister,
- (ii) dealt with money lent or borrowed in the name of or on behalf of the States, or
- (iii) 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 or financial directions; and

(b) that –

- (i) any action taken in accordance with this or any other enactment or financial directions has been insufficient to correct the situation, or
- (ii) the person’s actions described in sub-paragraph (a) had or, if the situation had not been corrected, would have had, material consequences,

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 document before the States.”.

15 Accounting Standards

- (1) In Article 18(1)(a) of the principal Law for the words “generally accepted accounting principles or an Order made under Article 32;” there shall be substituted the words “accounting standards issued for the purposes of Article 32(2);”.

- (2) In Article 32 of the principal Law –

(a) for paragraph (2) there shall be substituted the following paragraph –

“(2) The statement must be prepared in accordance with accounting standards issued by the Treasurer with the approval of the Minister.”;

- (b) in paragraph (3) for the words “accounting practice and standards” there shall be substituted the words “accounting standards”;
- (c) after paragraph (6) there shall be added the following paragraph –
 - “(7) The Minister shall lay before the States any accounting standards issued for the purposes of paragraph (2).”.
- (3) Notwithstanding the substitution of Article 32(2) of the principal Law by paragraph (2)(a) of this Article, any Order made under Article 32(2)(b) of the principal Law and in force immediately before paragraph (2)(a) of this Article of this Law comes into force shall continue in force until such time as accounting standards are first issued for the purposes of Article 32(2) as substituted and shall then expire.

16 Accounting officers

- (1) At the end of the heading to Article 38 of the principal Law there shall be added the words “of States funded bodies”.
- (2) In paragraphs (3) and (4) of Article 38 of the principal Law after the words “an accounting officer” there shall be inserted the words “of a States funded body”.
- (3) After Article 38 of the principal Law there shall be inserted the following Article –

“38A Accounting officers of funds, etc.

- (1) The Minister may appoint a person to be the accounting officer of any fund established in Part 2, any special fund, any States income, any money derived from taxation or any money forming part of trust assets.
- (2) The accounting officer of any fund or money is personally accountable for the proper financial management of that fund or money.
- (3) Although a function of an accounting officer appointed under paragraph (1) 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 appointed under paragraph (1) and how they are to be carried out.”.

17 Duties of States employees

- (1) In the cross heading preceding Article 39 after the words “Duties of” there shall be inserted the words “States employees and”.
- (2) At the beginning of Article 39 of the principal Law there shall be inserted the words “A States employee or”.

PART 5

FISCAL POLICY PANEL

18 Article 1(1) amended

In Article 1(1) of the principal Law, after the definition “non-Ministerial States funded body” there shall be inserted the following definition –

“ ‘Panel’ means the Fiscal Policy Panel established by Article 56A(1);”.

19 Establishment of Fiscal Policy Panel

After Part 6 of the principal Law there shall be inserted the following Part –

“PART 6A

FISCAL POLICY PANEL

56A Establishment of Fiscal Policy Panel

- (1) There shall be a Fiscal Policy Panel.
- (2) There shall be at least 3 members of the Panel.
- (3) The Minister shall appoint the members of the Panel.
- (4) The persons appointed by the Minister as members of the Panel must have the appropriate qualifications and experience to discharge the functions described in Articles 56C, 56D and 56E.
- (5) Before appointing a member of the Panel, the Minister must seek the views of the Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005³ on the appointment.
- (6) The Minister must, at least 2 weeks before appointing a member of the Panel, present to the States a notice of his or her intention to make the appointment.
- (7) The Minister shall appoint a member of the Panel for a period not exceeding 5 years.
- (8) The Minister may appoint a person as a member of the Panel more than once.
- (9) A member of the Panel may resign by notice in writing given to the Minister.
- (10) The appointment of a member of the Panel may be terminated by the Minister on any of the following grounds –
 - (a) that the person is incapable, by reason of illness, of discharging his or her duties as a member;
 - (b) that the person has been made bankrupt;

- (c) that the person has not, through absence, discharged his or her duties as a member; or
 - (d) that the person is otherwise unable or unfit to discharge his or her duties as a member.
- (11) The Minister must, not more than 2 weeks after terminating the appointment of a member of the Panel, present to the States a notice that the Minister has terminated the appointment.
- (12) The Minister must ensure that the Panel is provided with appropriate and sufficient resources to discharge its functions.
- (13) The Minister must provide the Panel with such information as it reasonably requires to discharge its functions.

56B Independence of Panel

The Panel may not be directed on the advice given by it, and the comments and recommendations made by it, in any report prepared by it in the discharge of its functions under Articles 56C, 56D and 56E.

56C Annual report

- (1) The Panel must prepare an annual report upon the state of the economy in Jersey and States finances.
- (2) The matters commented upon in the report must include –
- (a) the strength of the economy in Jersey;
 - (b) the outlook for the economy in Jersey and, generally, world economies and financial markets;
 - (c) the economic cycle in Jersey;
 - (d) the medium and long-term sustainability of the States finances, having regard to the foregoing matters; and
 - (e) transfers to or from, the strategic reserve fund and stabilisation fund, having regard to the foregoing matters.
- (3) The Panel must publish its annual report –
- (a) in a year in which a draft medium term financial plan must be lodged – no later than 2 weeks before the date by which an amendment to the draft medium term financial plan must be lodged in order to be debated during the same meeting of the States as that draft plan; or
 - (b) in any other year – no later than 2 weeks before the date by which an amendment to the draft budget must be lodged in order to be debated during the same meeting of the States as that draft budget.
- (4) The Council of Ministers and the Minister must have regard to the Panel's annual report.

56D Report before preparation of draft medium term financial plan or amendment to plan

- (1) The Panel must prepare a report, in a year in which a draft medium term financial plan must be lodged, for the purposes of the preparation of that draft plan.
- (2) The report required by paragraph (1) must provide advice and recommendations on the prevailing economic conditions and on the medium and long-term sustainability of the States finances.
- (3) The Panel must publish the report required by paragraph (1) sufficiently early in the year in which the draft medium term financial plan must be lodged that regard may be had to it in the preparation of that draft plan.
- (4) The Minister must request that the Panel prepare a report, and the Panel must comply with the request, if the Council of Ministers is preparing a proposition to amend a medium term financial plan.
- (5) The Panel must publish a report required under paragraph (4) sufficiently early that regard may be had to it in the preparation of the proposition to amend a medium term financial plan.
- (6) The Council of Ministers, when preparing a draft medium term financial plan or a proposition to amend a medium term financial plan, must have regard to the relevant report prepared and published under this Article.

56E Other reports prepared on request

- (1) The Minister may, for the purposes of the preparation of a draft budget, request that the Panel prepare a report and the Panel must comply with the request.
- (2) The Panel must publish a report required under paragraph (1) sufficiently early in the year in which the draft budget must be lodged that regard may be had to it in the preparation of that draft budget.
- (3) The Minister may request that the Panel prepare a report –
 - (a) in respect of proposals for any significant change in, or new, States expenditure or for a disposal of significant States assets; or
 - (b) at any time that the Minister is of the opinion that, by reason of a significant change in economic conditions, the advice and recommendations previously given by the Panel in compliance with Article 56C requires reconsideration,and the Panel must comply with the request.
- (4) The Panel must publish a report required under paragraph (3) as soon as is practicable.
- (5) The Minister, when preparing a draft budget, and the Council of Ministers, when being consulted on a draft budget, must have

regard to a report prepared and published following a request under paragraph (1).

- (6) The Council of Ministers and Minister must have regard to a report prepared and published following a request under paragraph (3).”

PART 6

MISCELLANEOUS AND CLOSING

20 Special funds

- (1) In Article 3 of the principal Law –
- (a) in paragraph (2) after the words “any other enactment” there shall be inserted the words “or by a proposition under paragraph (3)”;
 - (b) in paragraph (3), after sub-paragraph (a) there shall be inserted the following sub-paragraphs –
 - “(aa) permit money received by a fund so established to be credited to that fund;
 - (ab) direct that money credited to a fund so established does not form part of the annual income of the States;”.
- (2) After Article 23(1) of the principal Law there shall be inserted the following paragraph –
- “(1A) An authorization of the States referred to in paragraph (1) may take the form of an authorization for any Minister to lend or authorize the lending of money on behalf of the States, from any special fund established for the purpose in such circumstances, in such amounts and otherwise subject to such terms, conditions and limitations as are specified in the authorization.”.

21 Power to amend principal Law by Regulations

- (1) After Article 69 of the principal Law there shall be inserted the following Article –

“69A Power to amend Law by Regulations

- (1) Subject to paragraph (2), the States may by Regulations amend Parts 3 and 4 (apart from Articles 15, 21(5), 22, 23(3) and (5) and 24(2)).
- (2) Only the Minister may lodge Regulations under paragraph (1).
- (3) Regulations under paragraph (1) may amend other provisions of this Law consequentially upon the amendment of Part 3 or 4.
- (4) Regulations under paragraph (1) may also contain savings and transitional provisions.”.

22 Amendments consequential upon Article 21

The following provisions of the principal Law are repealed –

- (a) Article 7(5);
- (b) Article 8(8);
- (c) Article 10(10);
- (d) Article 21(5)(a);
- (e) Article 23(5)(a).

23 Citation, commencement and transitional arrangements

- (1) This Law may be cited as the Public Finances (Amendment No. 4) (Jersey) Law 201- and shall come into force 7 days after it is registered.
- (2) The Minister may by Order make transitional arrangements for the purposes of this Law.

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- ¹ *chapter 24.900*
² *chapter 16.800*
³ *chapter 16.325*