# REPORT BY THE COMPTROLLER & AUDITOR GENERAL

# OVERSEAS AID COMMISSION

# MARCH 2007

**Introduction**

1. The purpose of this paper is to review the arrangements for the financial administration of the Overseas Aid Commission (the Commission) and, in particular, an apparent conflict between the law which established that Commission (the Jersey Overseas Aid Commission (Jersey) Law 2005) and the law which controls the administration of the finances of the States of Jersey (Public Finances (Jersey) Law 2005).

**The Overseas Aid Commission**

2. On 23rd July 2002, the States adopted an amendment of the Overseas Aid Committee to proposals concerning the future system of ministerial government and agreed that an Overseas Aid Commission should be established in the following terms:

> *"An Overseas Aid Commission reporting directly to the States will be established outside the executive structure of government to manage the overseas aid functions. The Chairman of the Commission will be a member of the States appointed by the States. There will be six other members appointed by the States, three of whom shall be members of the States and three of whom shall be non-States' members.*
>
> *Funding for overseas aid will be agreed by the States and reviewed every five years to ensure that appropriate funding is provided for the Commission.*
>
> *Detailed proposals and terms of reference for the commission will be brought forward by the Overseas Aid Committee during the transitional period".*

3. The reasons for bringing forward this amendment were set out in the following terms in the report accompanying the Committee's amendment:

> *"The Overseas Aid Committee is of the strong view that the current form of administration is positive, able to react quickly to appeals for emergency aid and is extremely thorough in its allocation of Funds for grant aid and community worked projects.*
>
> *In simple terms, it sees no purpose in changing the current administration and fears that its purpose, focus and sympathetic approach will not be so readily available in the bureaucracy of ministerial government notwithstanding the desire of a Minister or of the Chief Minister to be so focussed. The demands, particularly in the early years, of ministerial government will not, in the estimation of the Overseas Aid Committee allow this."*

4. Subsequently, a draft law implementing this decision was lodged on 25 January 2005[1] and, subject to certain amendments, was adopted by the States on 16 March 2005.

**Public Finances Law 2005**

5. By another law adopted by the States during 2005, the system for the administration of public finances was reformed. Among other reforms, the new law provided that the administration of the public finances in each department should be the personal responsibility of an Accounting Officer who in particular should ensure the proper implementation within their departments of the 2005 law and of any Financial Directions issued by the Treasury Minister.

6. The Financial Directions which have been issued provide, inter alia, that monies should not be paid to independent organisations by way of grant unless those organisations have provided clear undertakings in respect of the use to which that money is to be put and have undertaken to comply with all of the States' Financial Directions.

**Conflict**

7. The conflict which has arisen between the administration of the public finances and the management of the Commission has the following elements:

(1) The Commission was established "outside the executive structure of government" because that is what the States decided should happen. The consequence is that the Commission is not a department of the States which would fall within the Public Finances Law and so does not have an Accounting Officer of its own.

(2) This means that any money paid to the Commission in accordance with the decision of the States has to be paid from a States' Department under the authority of an Accounting Officer who has personal responsibility for ensuring that recipients of the money will comply with the States' Financial Directions.

(3) Since the States decided that the Commission should report directly to the States (i.e. not a States' Department or Minister) any Accounting Officer approving a payment to the Commission has no way of discharging his or her personal responsibility for

[1] P14/2005.

ensuring that the recipient of the funds will comply with the normal requirements for the administration of the States' public finances.

8. The consequence of this is that no Accounting Officer has been able to accept that the Commission should fall within his or her area of responsibility.

**Does this matter?**

9. The States have decided that a particular system of public finance administration should be created. Its requirements have been made a matter of personal responsibility for the Accounting Officers who have been appointed. On occasion, the States have criticised strongly Accounting Officers who have not discharged their functions appropriately. In the circumstances, it would be foolish for the States to ignore any situation in which an Accounting Officer asserts that he or she cannot discharge his responsibilities.

10. It would also be foolish to tolerate a situation in which a significant amount of money is passed to an organisation (ie the Commission) in a way that avoids the basic requirements of the system for public finance administration especially as that has arisen as a result of a decision of the States.

11. Such shortcomings risk the system to falling into disrepute and may be thought to imply that the States does not take seriously the requirements of the reformed system for public finance administration.

**Possible solutions**

12. All of the solutions that might be considered should aim at removing the conflict between the law which created the Commission and the Public Finances Law. By far the most straightforward way of doing this would be to reform the Overseas Aid Commission Law to provide that the Commission should report to a Minister. The grant for the Commission would then be payable under the authority of the Accounting Officer for the department to which the Minister is connected. There is no reason why, by agreement between the Minister and the Commission, the present decision-making process of the Commission, and in particular the ability to respond quickly to disasters and emergencies, could not remain largely unchanged under this new arrangement.

13. Whilst institutionally straightforward, there may some concern that this would lead to the political control of the Commission by ministers which I understand the former Overseas Aid Committee had wished to avoid. It might therefore be necessary to find some arrangement by which the overseas aid programme is safeguarded in some way. If this could not be achieved within a ministerial arrangement, then consideration might be given to re-constituting the Commission as a committee of the States. It is not my purpose to specify what this arrangement might be. It is the principle with which I am mainly concerned. This arrangement would, nevertheless, run totally contrary to the decisions of the States since 2001 to move away from a committee system of government and it might still be difficult, under this arrangement, to identify any officer who would have sufficient personal involvement with the committee to fulfil the rôle of Accounting Officer.

14. If for some reason an approach of this sort did not appear appropriate, or if it cannot be implemented immediately, then a different or transitional arrangement would be needed which would permit the overseas aid programme to continue but within the proper public finance control framework.

15. One approach might involve the Commission in deciding voluntarily that it should comply with all of the requirements of the States' Financial Directions. Assuming that this could be done, some of the difficulty for Accounting Officers in making funds available to the Overseas Aid Commission would have been avoided and it should be possible to persuade an Accounting Officer to take responsibility for payments to the Commission (e.g. the Greffier of the States). If this approach were adopted it would nevertheless be necessary to accept that the level of personal oversight that the Accounting Officer would be considerably less than that expected of all other Accounting Officers and this could be seen as undermining the important principle of personal accountability that underlies the whole Accounting Officer structure.

16. It would have to be accepted that if the Commission were subsequently to decide not to comply with Financial Directions, or it were discovered that the Commission were generally not so complying, then the relevant Accounting Officer would have to refuse to advance funds to the Commission. This could, of course, place the relevant Accounting Officer in a difficult position in relation to the Commission which consists of elected members of the States and non-States members who are appointed by the States.

17. This approach might serve as a transitional arrangement but would not be a proper substitute for making clear institutional arrangements.

**Conclusion**

18. It is unsatisfactory for significant amounts of expenditure to fall outside the normal arrangements for managing public finances. That this has happened as a result of an express decision of the States is likely in the long run to damage the reputation of the States and also of the Overseas Aid Commission. I trust that one of the approaches canvassed in this note might offer a basis for eliminating the conflict and the uncertainty which it has caused.

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