MINSITER FOR TREASURY AND RESOURCES

POLITICAL RESPONSIBILITY FOR THE OVERSEAS AID COMMISSION

1. Purpose of Report

1.1. To decide on the most appropriate action to be taken to address a conflict that exists between the Public Finances (Jersey) Law 2005 (the Finance Law) and the States decision to create the Jersey Overseas Aid Commission and the Law which established the Commission.

1.2. The Overseas Aid Commission does not sit within the financial structures and requirements of the Finance Law and the purpose of this report is to identify the options as to where the Overseas Aid Commission should lie in the States structure to ensure that there is accountability and responsibility for the States funding granted to Overseas Aid.

2. Background

2.1 The 2005 Finance Law requires that there is accountability for all States funds – Unlike all other funds allocated by the States **there is no officer who has financial accountability to the States for the £6.33 million (2007 allocation) to the Jersey Overseas Aid Commission.**

2.2 Political accountability to an extent is secured as the Chairman of the Commission is a States member and there are a further two Commissioners who must also be States members. The Commission also comprises 3 non-elected States members and it is supported by an Executive Officer who is a direct employee of the Commission and **not** a States employee. If there was political concern about the manner in which the Commissioners were operating it would be possible for a States member to bring a vote of no confidence in the Commission but this option does not address the issue of accountability which exists in States funded bodies through the Accounting Officer system.

2.3 Concern over the issue of financial accountability has been the subject of discussion and correspondence with members of the Overseas Aid Commission.

2.4 The previous Overseas Aid Committee was recreated as the Jersey Overseas Aid Commission in 2005 by the States. The structure, rules and regulations of the Commission are defined under the terms of the Jersey Overseas Aid Commission (Jersey) Law 2005 and are in line with the States decision of July 2002 (detailed below in 2.5).

2.5 In July 2002 the States approved that a Commission to manage the overseas aid function would be established which would report directly to the States outside of the executive structure of government. Funding for the body being agreed directly by the States and reviewed every 5 years to ensure appropriate funding was provided for the Commission. The current funding agreement links the allocation to States taxation revenues.

In 2002 the then Overseas Aid Committee believed that the way in which it was administered enabled the Committee to react to emergency funding appeals and it felt that any change to this may get lost in the bureaucracy of ministerial government notwithstanding the desire of a Minister, or the Chief Minister, to be so focused.

Although the Treasury expressed its concern on a number of occasions at the structure proposed for the Commission the previous Overseas Aid Committee took forward its proposals to the States and they were approved.

2.6 The Overseas Aid Commission has been established as a body corporate being able to exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity. The Commission has the following powers:-

2.6.1. To have, and to use, a special seal to certify all acts, contracts, agreements and undertakings;

2.6.2. To take, acquire, hold and possess all kinds of movable and immovable property, whether in perpetuity or on lease, to receive, hold and possess all kinds of gifts and legacies of movable and immovable property which may be made to it and to lease, sell or otherwise dispose of such property;

2.6.3 To borrow the amounts that it may from time to time consider necessary or desirable, provided that –

2.6.3.1 the Commission shall not, without the prior written consent of the overseeing authority, borrow an amount which will cause the total debt of the Commission to be more than £5,000, and

2.6.3.2 the Commission shall not, without the prior written consent of the Treasurer of the States, borrow an amount which will cause the total debt of the Commission to be more than £500.

2.6.3.3 All other powers necessary to achieve its objects.

2.6.4 The Commission is able to employ persons and appoint the agents and honorary officers that it considers necessary for carrying out its objects and is also able to make the arrangements it thinks fit concerning the remuneration, expenses, pensions and other conditions of the employees, agents and honorary officers of the Commission.

2.7 The 2005 Public Finances Law was rightly drafted with the clear intention of meeting the guiding principles of financial discipline and good governance, whilst at the same time reflecting Ministerial government. One of the main ways of addressing the governance issue was through the introduction of the role of Accounting Officer for each States funded body.

2.8 Under the Public Finances Law **all** States expenditure should fall under the remit of an Accounting Officer who in the main will be the chief officer of a States funded body, however, the Minister for Treasury and Resources may, if there are exceptional circumstances, appoint another person to be an accounting officer. The accounting officer is personally accountable for the proper financial management of the resources of the body in accordance with the Law (full details of the responsibilities of an accounting officer can be found in the Treasury's financial direction on this issue).

2.9 The Public Finances Law lays down the procedures under which States monies are allocated and it indicates that States funds will only be allocated to "States funded bodies - either Ministerial or Non-ministerial". The term "States funded body" includes the 10 Ministerial Departments, the non-Executive departments such as the Judicial Greffe and the Official Analyst and Crown Appointments (as defined in Schedule 1 of the Finance Law). This list **does not** include the Overseas Aid Commission.

2.10 Under the definitions within the Finance Law the Overseas Aid Commission is **<u>not</u>** a States funded body - It is more akin to the Jersey Arts and Heritage Trusts receiving a grant from the States and thereby falling more easily under the definition of a "States aided independent body".

2.11 The Jersey Arts Trust and the Jersey Heritage Trust receive significant sums in grant aid each year from the States and report to a Minister (in these cases the Minister for Education, Sport and Culture). The Director of Education, Sport and Culture is the Accounting Officer who is personally accountable for ensuring that the grants paid to these two bodies meet the requirements laid down in the Law and relevant financial directions on the payment of grants. If the Accounting Officer had concerns about the manner in which the Trusts were operating he could take steps to stop the grant being paid.

2.12 Although the Commission will undoubtedly claim that there are valid reasons why its funding should be dealt with outside of the normal resource allocation process, there are no justifiable reasons why the States funding, allocated to Overseas aid by the Commission, should not be dealt with in line with the financial controls and standards required by the States.

2.13 Although the Commission has been created as an independent body it does not have the internal structures to operate as such – it relies on the States Treasury to provide a free bureau service for the payment of invoices and salaries, the production of accounts and the provision of financial advice etc; and also on the States Greffe to provide a free Committee clerk and minute keeping service etc.

2.14 In order to secure funds in the 2007 Annual Business Plan a temporary solution was agreed with the Chief Minister's Department that the Overseas Aid grant would be shown as a separate line within the estimates of the Chief Minister's Department. It was made clear that responsibility for the grant did not fall under the remit of the Chief Executive. This was necessary for two reasons – firstly, to reflect the States agreement that the Commission would not be part of the executive structure of the States (i.e. not part of the Chief Minister's Department) and secondly the Chief Executive can not determine how the funds for the Overseas Aid Commission can be spent – that is decided by the Commission in line with its published policies.

3 The options

The following are the two main options for correctly addressing the current impasse in the positioning of the Overseas Aid Commission.

3.1 **Return to the States and establish the Overseas Aid Commission as a separate entity under the Public Finances Law (there would be a further option for the States to agree that the Commission be set up as either a Ministerial or Non-ministerial States funded body)**

Advantages

- The Overseas Aid Commission would be brought into existing States accountability and budgeting structures.
- Funds could be allocated by the States directly to the Jersey Overseas Aid Commission.
- Any designation that ensured that the Commission was not a Ministerial States funded body would help meet the States original intent that the Commission be separate from the States Executive.

Disadvantages

- Revisions would be required to both the Public Finances Law and the Overseas Aid Commission Law (and Constitution) (with changes possibly required to the States of Jersey Law) to accommodate this redefinition. This would be a time consuming exercise for officers and the States Assembly and basically a revisit of previous States work.
- An Accounting Officer would have to be appointed for the Commission – in order to ensure accountability to the States the role and responsibilities

required of this post need to be fulfilled by a States employee (the Commission currently employees its own staff and it must be argued that it would be unfair to expect this role to be carried out by the Commission's Executive officer). The Public Finances Law provides the option for the Minister for Treasury and Resources to appoint another person to be an Accounting Officer should it be necessary to do so.

- The Commission would be subject to **all** the financial directions and requirements which have to be followed by a States funded body – and although in itself not a bad thing this would, it would, however, affect the constitutional set up of the Commission and its ability to hold property in its own name and to receive the direct benefit of bequests – however, these could be held in Trust by the States for "Overseas Aid" purposes.
- If this option is progressed further consideration will need to be given to how the role of the Non-States Commissioners could be incorporated into the structure of a States funded body (Department).

3.2 **Allocate responsibility for the grant to the Overseas Aid Commission to an existing Minister / Department i.e. define the Commission as a States aided Independent body**

Advantages

- The Overseas Aid Commission would be brought into existing States accountability and budgeting structures.
- This approach would enable the format and operation of the Overseas Aid Commission to remain unaltered whilst ensuring that accountability for States funding was achieved. In order to conform to States financial directions a Service Level Agreement would need to be agreed between the Department taking on responsibility for the Commission and the Commission itself.
- Accounting officer responsibility for the Commission could be allocated to an existing Accounting Officer. This approach would also provide the Commission and its officers with a structured route to request and receive advice as and when required.
- This approach may be seen to be taking away some of the independence of the Commission – however, it would still allow the Commission to work at arms length from the direct control of a Minister.
- It is likely that only minor changes would be required to the Public Finances Law and the Overseas Aid Commission Law (the extent of changes depending on which States Department took on responsibility for the Commission) – although it may be necessary to take a report and proposition back to the States to enable this to happen.
- The Overseas Aid Commission would retain the right to receive and make use of funds from sources external to the States.

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Disadvantages

- This is not in line with the original States decision to ensure the independence of the Commission from the States Executive. On the other hand those responsible for the creation of the Commission foresaw that it would operate in a similar manner to the Jersey Arts and Heritage Trusts – this approach would meet that requirement.

- An existing States Department would need to take over responsibility for the Commission. That Department's Accounting Officer would have to take responsibility for the funding allocated to and by the Commission and ensure that the Commission operated in such a manner to ensure that the relevant accounting officer commitments were met.
- When the JOAC was established the States of the day indicated that they did not wish to see the Commission as part of the Executive.
- States funds are allocated to each States funded body (Department) as one sum. Theoretically, a Minister could move funds from Overseas Aid to another area of his/her responsibility – however, the current political set up and the positioning of the Comptroller and Auditor General and Scrutiny Panels make this unlikely.
- A major stumbling block with this approach is deciding which is the most appropriate Department to take on responsibility for the Commission's funding.

4. <u>Comments</u>

4.1 This matter has been the subject of discussion between the Chief Executive and the Treasurer and it was decided that one possible way forward would be to appoint the Greffier of the States as the Accounting Officer for the Commission. The Greffier has indicated that although he would, of course, take on this role if requested to do so should it be necessary it would have to be on the strict understanding that he has strong reservations about his ability to satisfactorily meet what would be his accounting officer responsibilities (see also 4.2 and 4.3 below).

4.2 The Greffier of the States has Accounting Officer responsibility for those areas defined under Article 10 (1) of Finance Law as "States Assembly and its services". Clearly the funding of Overseas Aid does not fall easily under this heading. This area of administration was added as part of an amendment to the Public Finance Law to ensure the autonomy of the States Assembly (that is the full running costs of the Assembly as the Island's legislature including costs of members' services and remuneration, future Scrutiny Panels and the Public Accounts Committee, the future Privileges and Procedures Committee itself, membership of the inter-parliamentary bodies such as the CPA and the APF, the States Greffe, and **any other direct costs of the Assembly**) was not compromised during the budgetary process.

4.3 It is difficult to see how the administration of Overseas Aid can justifiably be classified as expenditure related to the "States Assembly". However, given the current circumstances should this approach be confirmed as the most appropriate way forward full consideration will still need to be given to possible amendments to both the Finance and the Overseas Aid Laws and whether it would be necessary for the States to ratify such a decision.

4.4 The Comptroller and Auditor General has also published a formal Report on the Commission in which he also concludes that it is unsatisfactory for significant amounts of expenditure to fall outside the normal arrangements for managing public finances. He has offered alternatives which reflect those included here and has also proffered a **transitional** arrangement. This involves the Commission deciding voluntarily to comply with all of the requirements of the States financial directions. On the assumption that this was agreed, some of the difficulty for an Accounting Officer in making funds available to the Commission would be alleviated and it may be possible to persuade an existing Accounting Officer to take on responsibility for the Commission.

5. Resource Implications

5.1 Until a firm decision is made on political accountability it is difficult to establish if there will be any additional costs or other resource requirements associated with these proposals. However, should the role be undertaken by an existing Accounting Officer these could be minimal but would need to be subject to further discussion and agreement.

6. Conclusion

6.1 It is **not** an option to leave the Overseas Aid Commission in its current position. It is important that there is financial responsibility and accountability for all States income and expenditure.

6.2 From a practical viewpoint the option to allocate responsibility to another Minister / Department would be more easily achieved but given the difficulty in establishing the most suitable department this is not feasible. Therefore, the only way forward is to establish the Jersey Overseas Aid Commission as a separate non-Ministerial department of the States and to ensure that it is structured such that a body comprising of non-elected members is able to operate within the States structure. This will necessitate a thorough review of the Commission's Law and Constitution, the appointment of an Accounting Officer and States approval.

6.3 The Council of Ministers is requested to approve the way forward identified in 6.2 above.

7. Reason for Decision

7.1 To gain a political steer on where the Overseas Aid Commission should fit into the States financial structure.

States Treasury Corporate Finance

22nd March 2007 for Decision Meeting 12/04/2007