STATES OF JERSEY

DRAFT PUBLIC FINANCES (AMENDMENT OF LAW No. 2) (JERSEY) REGULATIONS 201- (P.42/2015): AMENDMENT

Lodged au Greffe on 19th May 2015
by the Corporate Services Scrutiny Panel

STATES GREFFE

PAGE 11, ARTICLE 1 –

In paragraph (c) –

(a) in the heading to the inserted Article 8A after the words "Medium term financial plan" insert the words "for 2016 to 2019";

(b) in paragraph (1) of the inserted Article 8A, for the words "A draft medium term financial plan" substitute the words "The draft medium term financial plan for the financial years 2016 to 2019";

(c) in paragraph (2) of the inserted Article 8A, for the words "Where such amounts for the second or a subsequent financial year are omitted from a draft medium term financial plan –" substitute the words "If such amounts for the second or a subsequent financial year are omitted from the draft medium term financial plan for the financial years 2016 to 2019 –";

(d) for paragraph (2)(d) of the inserted Article 8A, substitute the following sub-paragraphs –

"(d) a draft addition adding amounts for the financial year 2017 must be lodged no later than 30th April 2016;

(e) a draft addition adding amounts for the financial year 2018 must be lodged in sufficient time for it to be debated and approved by the States before 1st January 2017;

(f) a draft addition adding amounts for the financial year 2019 must be lodged in sufficient time for it to be debated and approved by the States before 1st January 2017.";

(e) in paragraph (5) of the inserted Article 8A, after the words "a draft addition" insert the words "referred to in paragraph (2)(e) or (f)";

(f) after paragraph (5) of the inserted Article 8A, add the following paragraph –

"(6) The minimum lodging period that applies to a draft medium term financial plan shall also apply to a draft addition (whether lodged by the Council of Ministers or, in accordance with paragraph (5), by the Minister).".

CORPORATE SERVICES SCRUTINY PANEL

REPORT

Summary

P.42/2015: Draft Public Finances (Amendment of Law No. 2) (Jersey) Regulations 201- (the "draft Regulations"), *(referred to below in extracts from the adviser's report as the "amendment")* were lodged by the Minister for Treasury and Resources on 22nd April 2015 with a debate date of 2nd June 2015. The draft Regulations set out to introduce flexibility in the way that expenditure is fixed in the Medium Term Financial Plan ("MTFP").

The key element of the proposed change is that for the second and any subsequent year to which the MTFP relates, the draft Regulations give the option of either including the breakdown of expenditure in the MTFP, or coming back at a later date to add it into the Plan. The Panel is of the opinion that although this provides a far greater level of flexibility to the MTFP, it could potentially shorten initial planning horizons, and has major significant and negative consequences.

The Panel appointed the Chartered Institute of Public Finance and Accountancy ("CIPFA") as expert advisers to carry out a full desktop review of the draft Regulations. CIPFA advised the Panel that **full** acceptance of the draft Regulations was **not** an option and there was concern that the proposals would bring a permanent change to the Public Finances (Jersey) Law 2005.

The Panel was advised that from the context of good practice, the draft Regulations are seen as a retrograde step, and have the potential for the MTFP to be totally inadequate in terms of being Jersey's effective platform for robust medium term financial planning and strategy formulation. The Panel was further advised that, although CIPFA recognised the argument of expediency which has been rendered to underpin the draft Regulations, reflecting the gravity of the situation now faced by the States, they recommended that such Regulations are strictly time-limited.

> *"…the vagueness and lack of precision inherent within the current proposed amendment does not make 'good law' as it is:-*
>
> *1 – Imprecise;*
>
> *2 – Lacks legal certainty; and*
>
> *3 – Impossible to enforce*
>
> *Whilst the Panel's further proposal aims to provide more certainty on timescales, in effect this is accommodating what should be a 'one off' situation and* ***is perfectly reasonable…***[1]*"*

It is with this in mind that the Panel brings this amendment to the draft Regulations.

[1] CIPFA Report, paragraph 1.21

Comment

With a deficit of £135 million and a slow economy, the Island is facing a difficult time financially. The Panel recognises that extraordinary decisions will need to be made during this difficult time to help address this problem, and acknowledges the necessity for the Minister for Treasury and Resources to bring these draft Regulations; however, advice from its adviser does result in a number of issues –

> *"… From interview evidence we are led to believe that the level of transformation change is so significant that at the point in time that the MTFP is expected to be lodged, that the planning work to restructure services will be insufficiently advanced to enable meaningful workings on revised departmental estimates reflecting service re-design and revised departmental structures to be introduced to a recalibrated MTFP ..."*[2]

> *"… It has been suggested to the Panel that the amendment will provide vital "breathing space" to allow the construction of "robust departmental estimates reconfigured for both service delivery change structures and critical consequential cost reductions …"*[3]

> *"… Whilst such an approach appears to be expedient we would be concerned that the unintended consequences of the amendment may prevent adequate scrutiny of financial strategy …"*[4]

In their initial report to the previous Corporate Services Scrutiny Panel in 2012 – Review of the MTFP, CIPFA endorsed the MTFP, stating: "*an effective MTFP would be a working model integral to Jersey's financial management*".[5] However, within CIPFA's report to accompany this amendment, it is stated –

> *"…The potential for running a four year MTFP based on only one year of detail and three years of control totals with no reasonable detail for these three subsequent years would* ***negate the benefits of the MTFP and significantly reduce its utility****. A key strength of an MTFP is the provision of enhanced stability and medium term visibility within the financial planning process cycle…"*[6]

Rolling MTFP and timeframe

A key recommendation from the C&AG's report on the MTFP was to consider amending legislation to provide for a rolling MTFP. This recommendation is consistent with CIPFA's approach and was contained within their initial assessment of the MTFP in September 2012, where they recommend that –

> *"…In accordance with good practice the MTFP should be fully "rolling" across a minimum of 3 years and subject to continuous revision…"*[7]

[2] CIPFA Report, paragraph 1.13
[3] CIPFA Report, paragraph 1.15
[4] CIPFA Report, paragraph 1.16
[5] CIPFA Report, MTFP 2012
[6] CIPFA Report, paragraph 1.7
[7] CIPFA Report, MTFP 2012

The Panel and its adviser learned that Treasury and Resources intend to run, in parallel with the fixed MTFP, a rolling MTFP consistent with the C&AG and CIPFA's recent recommendation, and welcome these proposals. Reports showing rolling forecasts of income and expenditure will be maintained and produced in the Annual Budgets between MTFPs, forming an explicit part of the Budget. The reports will be taken to the Council of Ministers in the normal way during the Budget processes for the relevant years, and will be published and made available to States Members. The Panel has also been made aware that Treasury and Resources are committed to updating Members on the MTFP on a regular in-year basis through briefings, including Council of Ministers' briefings; however, timeframes for these have yet to be fixed.

The Panel was also advised that 6 months was not unreasonable for multi-tier functions to estimate planning terms, and have set a deadline to the Department, of 30th April 2016, for any draft additions adding amounts for the financial year 2017 to be lodged.

> *"… we should be talking about a Zero Based Approach (ZBB) rather than 'Top Down' approach to service redesign. My nearest parallels as exemplars would be some examples of Local Government Re-organisation (LGR) in England where a consolidation of multi-tier functions have had to take place, in estimate planning terms, within a strict 6 month window. For some UK Central Government consolidations timescales have been even shorter ..."*[8]

Conclusion

The Panel would not normally be supportive of the draft Regulations, on the basis of its own opinion, and on the opinion of its adviser. "… *Full acceptance of the amendment was not an option within my paper. If this type of practice has to be codified, the potential for the MTFP to be reduced to control totals for subsequent years (a potential consequence that would be legal if passed) would render the MTFP not fit for purpose…."*[9]

Accordingly, in lodging this amendment, the Panel is offering a more pragmatic solution to the issues raised, and does so with the support of the CIPFA.

The Panel will be seeking an undertaking from the Council of Ministers and the Minister for Treasury and Resources that this amendment will be accepted.

Financial and manpower implications

There are no manpower implications arising from this amendment.

There are no known financial implications arising from this amendment.

[8] E-mail – CIPFA
[9] E-mail – CIPFA