
STATES OF JERSEY



GOVERNANCE AND ACCOUNTABILITY OF INDEPENDENT BODIES AND OFFICE HOLDERS (THINKPIECE) (R.174/2022): EXECUTIVE RESPONSE

**Presented to the States on 13th February 2023
by the Public Accounts Committee**

STATES GREFFE

REPORT

In accordance with paragraphs 69-71 of the [Code of Practice](#) for engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’, (as derived from the [Proceedings Code of Practice](#)) the Public Accounts Committee presents the Executive Response to the Comptroller and Auditor General’s Report entitled: [Governance and Accountability of Independent Bodies and Office Holders \(Thinkpiece\)](#) (R./2022 presented to the States on 30th December 2022).

The Committee intends to review the response and determine whether to present further comments in due course.

Deputy L. Feltham

Chair, Public Accounts Committee

Chief Executive to C&AG Review: [Governance and Accountability of Independent Bodies and Office Holders: A Thinkpiece](#) - Executive Response to PAC by 10th February 2023 please.

Summary of response:

1. The C&AG's Thinkpiece provides a welcome, helpful overview of the statutory governance arrangements for 16 independent entities and how these could be enhanced, in addition to certain practical developments which may be advanced outside legislation. Observations have been made on the key areas for consideration that the C&AG has highlighted, in the table. Further general comments which have applicability across the subjects covered in this Thinkpiece are set out below.

Legislative Priorities

2. Implementation of the majority of the suggested actions in the Thinkpiece would require legislative amendments. It should be noted that the Government's legislative timetable is a matter for the Council of Ministers to determine. Resources are currently fully committed to delivering the Government's Legislative Programme in 2023 which was published in October 2022. It would be a matter for ministers as to whether work on amendments in the area should be prioritised in future years.

Variability

3. The Thinkpiece notes the degree of variability across legislation governing the 16 entities considered. It is acknowledged that uniformity in some areas of governance across these entities (as well as other independent entities which were not considered in this report) would be desirable, for example, to ensure that entities produce annual reports which accord with current best practice principles. However, there are significant challenges and, indeed, weaknesses in adopting a uniform approach across Jersey's independent entities.
4. Firstly, the 16 entities have each been separately established under Law to perform functions, each of which are different. Legislation and governance processes must be tailored to enable them to perform those functions as effectively as possible. For example, pure regulatory bodies such as the Jersey Financial Services Commission (JFSC), Data Protection Authority and the Jersey Care Commission (JCC) are required to ensure that bodies, including public sector bodies, comply with relevant regulatory standards – the penalties for failing to do so may lead to criminal prosecution. Given the extent of these powers, it has been deemed appropriate by the States Assembly to confer body corporate status on these entities which provides them with separate legal personality from the Government of Jersey. In contrast, the Official Analyst performs a service to public bodies, companies and individuals and while the chemical and microbiological analysis they conduct may be relied upon in legal proceedings, the Official Analyst does not hold regulatory or enforcement powers directly. The States Assembly has, therefore, provided the Official Analyst with complete professional independence, preventing any body or individual from interfering with their work and influencing their scientific findings.

5. Secondly, different types of office holder must meet different professional standards and requirements, which means that legislation and governance practices must reflect this. For example, in developing the proposed Jersey Public Services Ombudsperson (JPSO), consideration has been made to the standards expected by the Ombudsman Association, as it is a clear policy aim to meet these standards and for the JPSO to become accredited to the Association. The Ombudsman Association requires that the Ombudsperson should be appointed by the national parliament and so legislative proposals have been drafted which would provide the States Assembly with the power to appoint and to dismiss the Ombudsperson. This would not, however, be a practical way of appointing all other independent professionals or chairs of entities and, indeed, the States decided in [P.205/2009](#) that, in most cases, it is not appropriate for appointments to be made by the Assembly. This led to the introduction of the States of Jersey (Appointments Procedures) (Jersey) Law 2018 which requires the States Assembly to be given at least two weeks' notice of a Minister's intention to make an appointment, during which time appointments can be questioned or challenged.
6. Thirdly, the funding arrangements for independent entities vary considerably, but not by accident – there are clear policy reasons why particular bodies charge fees, are grant funded, centrally funded out of the consolidated fund or receive funding in a combination of these ways. In each case, this policy is provided under legislation and in practice. For example, the JFSC is largely self-funding from fees charged to regulated services, while the JCC is funded partially by charging fees to health and social care providers and partially by the States Assembly under the Government Plan, because there are clear public policy reasons for not charging health and social care providers at the same rate as financial service providers. As entities are funded differently, the arrangements for how entities account for the resources they use must also differ. For example, it would be unnecessarily costly to impose the same audit requirements on small entities with limited budgets for which the Government provides business support as are imposed on larger independent entities which directly control significant funds.
7. Finally, as indicated in the above paragraphs, ultimate decision-making on these matters rests with the States Assembly. All legislation governing established independent entities has been considered and approved by the Assembly – it is not by accident that entities have been established but, rather, the Assembly has made conscious policy decisions to establish each entity in a particular way. While there are merits in developing overarching policy frameworks on aspects of the governance and accountability arrangements for independent entities to attempt to embed a consistent approach where possible, it is unlikely that such frameworks would be adhered to with uniformity. Each independent entity and their stakeholders have opportunities to engage with States Members and may, rightly, advocate degrees of variance from any uniform framework which may be developed. This is likely to maintain or reintroduce the variability that results from tailored approaches to differing circumstances at different points in time.

Independent Entities

8. The C&AG has focused this Thinkpiece on 16 independent entities which “undertake activities of a regulatory, audit, oversight and challenge nature.”¹ There are a wide range of further entities which may be considered Arm’s Length Bodies (ALBs) but which the C&AG has not considered in this Thinkpiece. Although there is no universally agreed list of ALBs, the Government is working to establish one as part of the Arm’s Length Bodies Oversight Board (ALBOB) work programme. Categories of ALB may include:
- States owned entities (wholly and majority-owned businesses);
 - Arm’s Length Organisations;
 - External regulatory bodies;
 - Pension funds;
 - Tribunals, complaints and related bodies;
 - Committees of the States Assembly;
 - Grant receiving bodies; and
 - Strategic suppliers.
9. Certain issues which the C&AG notes in her Thinkpiece are applicable to other ALBs. There are, equally, bodies which have not been considered by the C&AG which may be considered akin to some of the 16 entities, such as Statistics Jersey, but which have not been examined. It is challenging to adopt uniform policy responses across ALBs or certain categories of ALB, while there remains no established definition of ALBs in Jersey. The challenges presented by simply defining ALBs tests the underlying assumption of the Thinkpiece that it is possible to develop effective, meaningful policy to govern ALBs or certain categories of ALB. ALBOB has been established and is working to address these issues by developing effective policy across all ALBs in the medium to long-term. Given the challenges of developing overarching policy in this area, in the short-term, it is likely to be a more effective use of the Government’s resources to ensure that specific issues with governance and accountability arrangements for particular ALBs which may be problematic are examined and, where necessary, remedied expeditiously.

Types of Independence

10. Different entities have been provided with independence for different reasons. Thus, it appears self-evident that the nature of that independence should differ. Effective independence from government, the States or any other party can only be guaranteed under legislation. Historically, it appears that there are two broad types of independence which have been provided for under Law by the States Assembly: structural independence and professional independence.
11. Certain bodies and/or office holders require and hold **structural independence** as separate legal entities outside the government. Regulatory bodies such as the Data Protection Authority and the JCC are clear examples of this. Under the Law they are separate entities

¹ Governance and Accountability of Independent Bodies and Office Holders: A Thinkpiece, Comptroller and Auditor General, paragraph 6, p.4

with body corporate status (under Article 35(2) of the Regulation of Care (Jersey) Law 2014 (the “2014 Law”)) and Article 2(2) of the Data Protection (Jersey) Law 2018 (the “2018 Law”). Their ability to act independently is also put beyond doubt by further provisions– see Article 36 of the 2014 Law and Article 12 of the 2018 Law.

12. For certain offices, **professional independence** is necessary to enable them to perform their functions. The Official Analyst has been established as an office holder with professional independence. This is upheld by Article 6 of the Official Analyst (Jersey) Law 2022. They require independence to be able to conduct chemical analysis without any interference, and in accordance with the scientific and ethical standards of their profession. Their role does not require them to be a structurally independent entity and it is, therefore, a conscious policy decision to establish the Official Analyst in this way – they are a professionally independent office holder. It would be unnecessary to provide them with legal independence (as suggested under A1), as there is no clear policy reason for it. This was endorsed by the States Assembly in April 2022 when it adopted the Law. Currently, the Chief Statistician/Statistics Jersey also holds professional independence under the Law in this way, as does the Commissioner for Standards.

Action Plan

Areas for Consideration	Action	Target date	Responsible Officer
<p>A1 Clarify the legal nature of the following independent bodies and office holders, including in particular whether they have legal personality:</p> <ul style="list-style-type: none"> • Comptroller and Auditor General • Independent Prison Monitoring Board • Jersey Appointments Commission • Official Analyst • Police Authority; and • Statistics Users Group. 	<p>As set out in paragraphs 11 and 12, above, effective independence under Law does not require an entity to have structural independence as a separate legal entity per se. With this in mind:</p> <ul style="list-style-type: none"> • Consideration will be given to this issue if and when ministers seek to amend the Comptroller and Auditor General (Jersey) Law 2014 as part of the Government’s Legislative Programme in future years. • Consideration will be given to clarifying the position of the Independent Prison Monitoring Board on the next occasion that amendments are made to the Prison (Independent Prison Monitoring Board) (Jersey) Regulations 2017. • A project to amend the Employment of States of Jersey Employees Law 2005 is listed under the Government’s Legislative Programme for 2023. 	<p>Incorporated into Ministerial prioritisation of the legislative programme.</p>	<p>Group Director, Public Policy</p>

	<p>It is for ministers to consider the role and functions of the Jersey Appointments Commission before determining whether to advance amendments to these at this time.</p> <ul style="list-style-type: none"> • The Official Analyst holds robust legal protections for their professional independence under Article 6 of the Official Analyst (Jersey) Law 2022. This policy position was set out to and approved by the States Assembly in April 2022. • Consideration will be given to clarifying the position of the Jersey Police Authority on the next occasion that amendments are made to the States of Jersey Police Force Law 2012. • A project to amend the Statistics and Census (Jersey) Law 2018 is listed under the Government's Legislative Programme for 2023. The role and functions of the Statistics Users Group or a similar body are being considered as part of this project. 		
<p>A2 Update legislation for the Director of Civil Aviation, the Independent Prison Monitoring Board, the Police Authority and the Police Complaints Authority to include an unequivocal statement of the independence of the body and/or its freedom from direction.</p>	<p>This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial priorities under the Government's Legislative Programme, as set out under paragraph 2, above.</p> <p>The recent draft Police (Complaints and Conduct) (Jersey) Law 202- together with the forthcoming associated draft Regulations will make significant changes to the operation of the Police Complaints Authority (to be reconstructed as the new Police Complaints Commission). These changes will serve to enhance its capacity to act and serve to restate its nature as an independent body corporate. The freedom and</p>	<p>Incorporated into Ministerial prioritisation of the legislative programme.</p>	<p>Group Director, Public Policy</p>

	<p>independence of the body are unmistakeable from its design, powers and relationships but consideration will be given to making an explicit unequivocal statement to that effect on the next occasion that amendments are made to the relevant legislation. It is not possible to use the existing legislative process to do this as the Law has been approved by the Assembly.</p>		
<p>A3 Where appointments of Chairs and members of independent bodies and of independent office holders are made by a Minister, review the arrangements for the appointment, including whether there is a compelling reason for not requiring a two week notice period to the States Assembly.</p>	<p>This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial priorities under the Government's Legislative Programme, as set out under paragraph 2, above.</p>	<p>Incorporated into Ministerial prioritisation of the legislative programme.</p>	<p>Group Director, Public Policy</p>
<p>A4 Consider the rationale for differences in the initial terms of office of Chairs of independent bodies.</p>	<p>This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial priorities under the Government's Legislative Programme, as set out under paragraph 2, above. In general, it is accepted that a maximum term length of nine years is appropriate for independent office holders in most cases. This is in line with the Jersey Appointments Commission Guidelines. There are, however, certain cases where this would not be appropriate, which is why policy in this area will be developed on a case-by-case basis.</p>	<p>Incorporated into Ministerial prioritisation of the legislative programme.</p>	<p>Group Director, Public Policy</p>
<p>A5 Ensure that legislation reflects the Jersey Appointments Commission Guidance that the maximum term of office for independent members of Boards does not exceed nine years.</p>	<p>This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial</p>	<p>Incorporated into Ministerial prioritisation of the legislative programme.</p>	<p>Group Director, Public Policy</p>

	priorities under the Government's Legislative Programme, as set out under paragraph 2, above.		
A6 Ensure appropriate processes are in place in cases where the removal of members of independent bodies and of individual office holders is proposed.	This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial priorities under the Government's Legislative Programme, as set out under paragraph 2, above.	Incorporated into Ministerial prioritisation of the legislative programme.	Group Director, Public Policy
A7 Introduce a clear, understandable and objectively justifiable framework for funding of independent bodies and office holders by the: <ul style="list-style-type: none"> • development of overarching principles for when a body should be funded by • fees, levies, grants or revenue heads of expenditure; and • adoption of a consistent pattern of responsibility for the setting of fees and levies. 	<p>This is dependent upon other work driven by ALBOB, to include:</p> <ul style="list-style-type: none"> • Agreement of definitions and categories of independent body • Assigning Accountable Officers to bodies • Specifying reporting requirements • Consideration of audit arrangements • Consideration of support service arrangements <p>This will be reviewed by the ALBOB and incorporated into the ALBOB work programme.</p>	Incorporated into the ongoing ALBOB work programme.	Chief of Staff and Head of Financial Governance
A8 Where independent bodies and office holders operate within the States of Jersey, ensure that there is a clearly identified, separate revenue head of expenditure and that the senior officer within the independent body has Accountable Officer status.	This will be considered by Treasury and Exchequer. Initial views are that the costs of a proliferation of small heads of expenditure are unlikely to outweigh any benefits but that more AOs is a more achievable outcome.	Incorporated into the ongoing ALBOB work programme.	Head of Financial Governance
A9 Introduce legislation for all independent bodies and office holders to specify that States of Jersey employees working for an independent body or office holder shall be treated as if they were the staff of the independent body or office holder.	This will be implemented on a case-by-case basis, when existing legislation is being reviewed and when legislation is being proposed to establish new independent entities. This will be subject to ministerial priorities under the Government's Legislative Programme, as set out under paragraph 2, above.	Incorporated into Ministerial prioritisation of the legislative programme.	Group Director, Public Policy

A10 Introduce minimum good employer standards for independent bodies empowered to employ their own staff.	There are inherent tensions with the GoJ imposing good employer standards for independent bodies. P&CS have recently published codes of practice for GoJ employees which may be useful for independent bodies to consider, and may go some way to embed a consistent approach if this was agreed as an appropriate way forward by the States Employment Board and arm's length entities.	Incorporated into the ongoing ALBOB work programme.	Chief of Staff
A11 Explicitly apply the PFM, with suitable adaptations, to all the independent bodies and office holders covered by this Thinkpiece.	This will be built into the improvement process for the PFM and implemented where appropriate to do so.	31 st March 2024	Head of Financial Governance
A12 Document minimum standards for the responsibilities of an Audit Committee or similar body for all independent bodies and office holders.	This is dependent upon other work driven by ALBOB, to include: <ul style="list-style-type: none"> • Agreement of definitions and categories of independent body • Assigning Accountable Officers to bodies • Specifying reporting requirements • Consideration of audit arrangements • Consideration of support service arrangements 	Incorporated into the ongoing ALBOB work programme.	Chief of Staff and Head of Financial Governance
A13 Specify minimum mandatory content of annual reports for independent bodies and office holders.	This is already planned as a result of other C&AG recommendations.	31 st March 2024	Head of Financial Governance
A14 Introduce standardised requirements for the timing of annual reports of independent bodies and office holders.	This is already planned as a result of other C&AG recommendations.	31 st March 2024	Head of Financial Governance
A15 Specify minimum standards for annual financial reporting, even where the financial performance of independent bodies and office holders is already reflected in the annual accounts of the States of Jersey.	This is already planned as a result of other C&AG recommendations.	31 st March 2024	Head of Financial Governance
A16 Introduce a presumption in favour of internal audit provision for independent bodies and office holders	It is endorsed that independent bodies and office holders should have good governance which includes assurance on key systems and controls.		

<p>unless there is a clearly documented case that the costs would outweigh the benefits.</p>	<p>However, an internal audit provision for the bodies and office holders themselves needs to be proportional and risk based. This is dependent upon other work driven by ALBOB, to include:</p> <ul style="list-style-type: none"> • Agreement of definitions and categories of independent body • Assigning Accountable Officers to bodies • Specifying reporting requirements • Consideration of audit arrangements • Consideration of support service arrangements <p>Internal Audit already undertake reviews of grants provided to several ALBs for example and will continue to do so.</p>	<p>Incorporated into the ongoing ALBOB work programme.</p> <p>As part of the Internal Audit Plan.</p>	<p>Chief of Staff and Head of Financial Governance</p> <p>Chief Internal Auditor</p>
<p>A17 Where independent bodies and office holders are required to prepare full annual accounts and their expenditure exceeds a specified threshold, introduce a requirement that they should be subject to audit by auditors appointed by the Comptroller and Auditor General. In other cases, introduce a requirement for an assurance engagement providing a lower level of assurance by an independent examiner appointed by the Comptroller and Auditor General.</p>	<p>This is dependent upon other work driven by ALBOB, to include:</p> <ul style="list-style-type: none"> • Agreement of definitions and categories of independent body • Assigning Accountable Officers to bodies • Specifying reporting requirements • Consideration of audit arrangements • Consideration of support service arrangements 	<p>Incorporated into the ongoing ALBOB work programme.</p>	<p>Head of Financial Governance</p>
<p>A18 Document the services and standards for the provision of services by the Government of Jersey to independent bodies and office holders.</p>	<p>There is an ongoing piece of work to document some support services and standards. This will be incorporated into formal agreements with ALBs where relevant as these agreements are renewed.</p>	<p>Incorporated into the ongoing ALBOB work programme.</p>	<p>Chief of Staff</p>
<p>A19 Independent bodies and office holders should continue to work collectively to explore opportunities to</p>	<p>Work is planned for GoJ to support ALBs to explore, prioritise and pursue opportunities for shared services. The scope of this work incorporates a wider group than</p>	<p>April 2023</p>	<p>Chief of Staff Chief Officer, Economy.</p>

share support services and, in some cases, accommodation.	those independent bodies and office holders set out in this Thinkpiece. A working group will be established in Q1 2023 to consider a long list of options.		
A20 Develop a clear policy framework for the governance and accountability of independent bodies and office holders, including consideration of the nature and extent of independence that is required in each case and how such independence can be secured, having regard to relevant international standards and the experience of other jurisdictions.	There would be clear challenges associated with developing such a framework which are set out under paragraphs 3 to 9, above. Given these challenges and the overall value and utility of such a framework, as set out under paragraph 9, it is intended to continue to ensure that specific issues with governance and accountability arrangements for particular ALBs which may be problematic are examined and, where necessary, remedied expeditiously.	Incorporated into the ALBOB programme.	Chief of Staff
A21 In light of any policy framework adopted, consider framework legislation for governance and accountability of independent bodies and office holders including consistent provisions for independent bodies and office holders, or groups of independent bodies and office holders, in the absence of a clear rationale to the contrary.	It is important to ensure that legislation which establishes arm's length entities continues to be fit for purpose to enable those bodies to perform their functions effectively, and to provide assurance to the public that they are doing so. Where any deficiencies in this regard are diagnosed, ministers will be advised and asked to direct whether amendments to individual pieces of legislation should be taken forward as part of the following year's Government Legislative Programme. Where legislation is already subject to review, opportunities will be taken to amend it to, where appropriate, improve legal arrangements for the governance and accountability of individual arm's length entities.	Incorporated into Ministerial prioritisation of the legislative programme.	Group Director, Public Policy
A22 In light of any policy framework adopted, beneath legislation develop common standards for the governance and accountability of independent bodies and office holders addressing the areas covered in this Thinkpiece.	See action in response to A20.	Incorporated into the ALBOB programme.	Chief of Staff

Recommendations not accepted

	Recommendation	Reason for rejection