

# **Governance and Accountability of Independent Bodies and Office Holders: A Thinkpiece**

**30 December 2022**

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# Summary

## Introduction

1. The States of Jersey have established several entities which operate, to varying degrees, on an independent arm's-length basis. In some instances, the establishment of these entities on an arm's-length basis is a matter of policy choice. In other instances, the activities undertaken by the entity include those of a regulatory, audit, oversight or challenge nature. These, by their nature, need to operate with an element of independence from the Government of Jersey.
2. The particular arrangements for the governance and accountability of individual independent bodies and office holders have arisen through both policy choices reflected in legislation and through the operating models adopted by different entities. The nature of the arrangements and the extent of the independence from Government reflect:
  - relevant international standards, for example the Paris Principles for human rights bodies in the case of the Children's Commissioner for Jersey
  - the frameworks in place in other jurisdictions. In many cases Jersey legislation is based on corresponding UK legislation
  - the particular challenges involved where an independent body or office holder regulates, oversees or challenges an activity of a branch of Government. For example, the Jersey Care Commission regulates services delivered by the Government of Jersey as well those delivered by third parties; and
  - the extent of independence required. For example, the Official Analyst (Jersey) Law 2022 reflects a requirement for professional independence in conducting scientific analysis but not a requirement for structural independence.
3. I recognise that the approach to the governance and accountability of independent bodies and office holders is subject to continuing development. For example, recently there has been:
  - consultation on the establishment of a Public Services Ombudsman
  - consultation on amendments to the Statistics and Census (Jersey) Law 2018; and

- work resulting in proposed amendments to the Employment of States of Jersey Employees (Jersey) Law 2005 to provide for a Public Appointments Commission.
4. In this Thinkpiece I have considered the governance and accountability arrangements of 16 independent entities (independent bodies and office holders) established by the States of Jersey. In doing so, I intend to stimulate thought and debate through:
    - setting out the key differences in arrangements for the governance and accountability of independent bodies and office holders
    - determining the extent to which there is evidence of clear justification for such differences; and
    - considering the extent to which it might be possible to establish an overarching framework for the governance and accountability of independent bodies and office holders.
  5. I would emphasise that I would not expect uniform arrangements in place in all areas. I would expect however that differences in arrangements for governance and accountability are justified in the context of the policy underpinning each independent body or office holder.
  6. I have considered the arrangements of the independent bodies and office holders established by the States of Jersey that undertake activities of a regulatory, audit, oversight and challenge nature. I have not considered other independent bodies and office holders, including Crown officers and those undertaking judicial activities or otherwise involved in the administration of justice.
  7. A list of the independent bodies and office holders covered by the review is included at Appendix One.

## Key findings

8. In my view, there are opportunities to:

- **strengthen operational independence** of the bodies and office holders included in my review through:
  - ensuring a principle of independence in the discharge of functions is enshrined in legislation for each body and office holder
  - justifying differences in the arrangements for appointment, terms of office and arrangements for removal of members of independent bodies and of office holders
  - adopting clear principles to underpin the funding mechanisms in place for independent bodies and office holders including protections from inappropriate pressures on their budgets from the Government of Jersey; and
  - introducing consistent provisions to reinforce that States employees working for the independent body or office holder shall be treated as if they were an employee of the independent body or office holder
- **enhance accountability** of the independent bodies and office holders included in my review through:
  - adopting a requirement for bodies and office holders to comply with the Public Finances Manual (PFM), with appropriate and necessary adaptations
  - specifying requirements in respect of annual reports, including the content and timing; and
  - where appropriate, strengthening requirements in relation to internal audit and the appointment of external auditors; and
- **review and consolidate support services** used by many independent bodies and office holders through:
  - enhancing the accountability of the Government of Jersey for the services it provides through a documented agreement of the nature of services to be provided; and
  - reviewing opportunities to reduce duplication and inefficiency in support functions by seeking to share services and by seeking to share office accommodation where feasible.

## Conclusions

9. Current arrangements for the governance and accountability of independent bodies and office holders are fragmented. In some instances there are identifiable weaknesses in arrangements that compromise the governance and accountability of independent bodies and office holders. As many of the elements of good governance and accountability are common to all or most independent bodies and office holders, there is scope for development of arrangements that would apply to all independent bodies and office holders or to groups of them, except where there are compelling reasons that they should not apply.
10. I strongly encourage the States of Jersey to take forward the areas for consideration that I have outlined, in order to provide greater assurance as to the protection of the independence of the bodies and office holders reviewed as part of this Thinkpiece. At the same time, there are opportunities for independent bodies and office holders to drive greater efficiency in arrangements through shared support services.

# Objectives and scope of the Thinkpiece

11. The Thinkpiece has evaluated:
  - the differences in arrangements for governance and accountability of independent bodies and office holders
  - the extent to which there is evidence of clear justification for such differences; and
  - the extent to which it might be possible to establish an overarching framework for the governance and accountability of independent bodies and office holders.
12. I have considered differences in arrangements for governance and accountability including in relation to:
  - establishment and appointment
  - funding, including maintenance of reserves
  - financial control, including the application of the PFM
  - employment of staff
  - use of Government of Jersey support services, including for finance, IT, estates and human resources
  - oversight by an Audit Committee or equivalent
  - the content and publication of annual reports and accounts; and
  - internal and external audit.
13. My consideration has extended to independent bodies and office holders established by the States of Jersey that undertake activities including those of a regulatory, audit, oversight and challenge nature but excluding those undertaking judicial activities or otherwise involved in the administration of justice.
14. The review does not extend to States controlled companies or external bodies in receipt of grant funding.
15. A list of the independent bodies and office holders covered by the review is included at Appendix One.

# Arrangements to secure operational independence

16. It is fundamentally important that all of the independent bodies and office holders I have considered in this Thinkpiece have operational independence from the Government of Jersey. As a result of decisions of the States Assembly there are differences in the mechanisms by which operational independence is secured. I consider that the following elements are key mechanisms by which operational independence can be secured.

- Form of establishment.
- Appointment.
- Terms of office.
- Funding mechanisms.
- Employment of staff.

## Form of establishment

17. The independent bodies and office holders covered by this Thinkpiece are of different constitutional forms (See Exhibit 1).



## Exhibit 1: Status of independent bodies and office holders covered by this review

Body corporate (7)	Corporation sole (3)
Competition Regulatory Authority Data Protection Authority Financial Services Commission Gambling Commission Jersey Care Commission Office of the Financial Services Ombudsman Police Complaints Authority	Charity Commissioner Children’s Commissioner for Jersey Director of Civil Aviation
Other descriptions (2)	Not specified (4)
Comptroller and Auditor General Official Analyst	Independent Prison Monitoring Board Jersey Appointments Commission Police Authority Statistics Users Group

Source: Jersey Audit Office analysis of legislation

18. Corporations have legal personality meaning that they have the power to contract and to commence and defend legal proceedings in their own name. Where such power is vested in an individual, the body is a corporation sole and where it is not, the body is a body corporate.
19. In some legislation other descriptions are used, such as ‘Office’. In other legislation, the constitutional form of the body is not specified.
20. Clarity of the legal nature of independent bodies and office holders is important. It has been reflected in recent legislation and legislative proposals. For example, the stakeholder consultation on the proposed establishment of a Public Appointments Commission envisages that it would be a body corporate.
21. The independence and effectiveness of bodies and office holders is enhanced by:
  - clear statements about the independence of bodies and office holders and their freedom from direction
  - clear, objective processes for appointment
  - limitations on terms of office of members of bodies and of office holders, where such limitations are international norms; and
  - clear, objective processes for removal from office.

22. In all these areas there is a variety of arrangements in place across the bodies and office holders included in my review.
23. For 12 of the 16 bodies and office holders there is an unequivocal statement of the independence of the body and/or its freedom from direction, in the legislation establishing it. There is, however, no such statement in the legislation for the remaining four bodies: the Director of Civil Aviation, the Independent Prison Monitoring Board, the Police Authority and the Police Complaints Authority. While I accept that:
- there are no such statements in the corresponding UK legislation; and
  - independence may be implied from policy and other statutory provisions
- in my view such statements are a valuable expression of intent.

### **Areas for consideration**

**A1** Clarify the legal nature of the following independent bodies and office holders, including in particular whether they have legal personality:

- Comptroller and Auditor General
- Independent Prison Monitoring Board
- Jersey Appointments Commission
- Official Analyst
- Police Authority; and
- Statistics Users Group or the proposed Statistical Advisory Council.

**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.

## Appointment

24. There is a variety of practice in how both Chairs of independent bodies and independent office holders are appointed (see Exhibit 2).

### Exhibit 2: Appointment of Chairs of independent bodies and independent office holders

By States Assembly (3)	By Minister (13)
Children’s Commissioner for Jersey	Charity Commissioner
Comptroller and Auditor General	Competition Regulatory Authority
Police Complaints Authority	Data Protection Authority
	Director of Civil Aviation
	Financial Services Commission
	Gambling Commission
	Independent Prison Monitoring Board
	Jersey Appointments Commission
	Jersey Care Commission
	Office of the Financial Services Ombudsman
	Official Analyst
	Police Authority
	Statistics Users Group

*Note: Where there is both a Board and an office holder, as in the case of the Data Protection Authority, the Office of the Financial Services Ombudsman and the Statistics Users Group, the analysis relates to the Chair of the Board*

*Source: Jersey Audit Office analysis of legislation*

25. In a majority of cases appointment is by the relevant Minister. The appointments process in such cases is not as inherently transparent as appointment by the States Assembly. Where the independent body or office holder may review or impose sanctions on the Government of Jersey, appointment by a Minister may be seen as a threat to the independence of the appointee. However, appointments by the States Assembly place a time burden on the States Assembly. I note that the role of the Jersey Appointments Commission in senior appointments made by Ministers does provide an additional safeguard.
26. In a minority of cases appointment is by the States Assembly. While the States Assembly is a political body, a majority of its members are not members of the Government of Jersey which, in the case of some independent bodies and office

holders, might itself be subject to review or sanction by the independent body or office holder. Such separation from Government and the very transparent nature of the appointments process may be seen to promote and protect independence.

27. Current arrangements reflect a conscious decision of the States Assembly in 2009, via the adoption of P.205/2009, to shift many appointments from the States Assembly to the relevant Minister.
28. Recent and proposed legislation has contained changes to some of the arrangements for appointments.
  - The Chair of the Jersey Appointments Commission was appointed by the Chief Minister with the approval of the States Employment Board. However the Chair of the proposed Public Appointments Commission would be appointed by the States Assembly on a proposition by the Chief Minister.
  - The Chair of the Police Complaints Authority is appointed by the States Assembly on a proposition by the Minister. However it is proposed that the Chair of the new Police Complaints Commission will be appointed by the Minister.
29. Where appointment is by a Minister there are various checks on their power of appointment.
  - Some legislation, such as that for the Office of the Financial Services Ombudsman, specifically provides that the Minister must take into account the views of the Jersey Appointments Commission.
  - In six cases (the Charity Commissioner, the Jersey Appointments Commission, the Jersey Care Commission, the Office of the Financial Services Ombudsman, the Official Analyst and the Statistics Users Group) the Minister is required by statute to give two weeks' notice to the States Assembly of their intention to appoint an individual, in turn allowing challenge to the proposed appointment. Subject to legislation being adopted, similar provisions will apply to the proposed Public Appointments Commission and the Police Complaints Commission.
30. Article 4 of the Jersey (Appointments Procedures) (Jersey) Law 2018 provides for the application of the two week notice period by Regulation for other appointments. I have not located such Regulations for other bodies within the scope of this Thinkpiece.

## Area for consideration

- 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.

## Terms of office

31. Fixed terms of office provide an element of protection for the members of independent bodies and independent office holders. They also provide assurance to the public that independence is not impaired by over familiarity through holding office for a long period of time. There is however a wide variety of terms for different bodies and office holders in practice. In some cases such variety reflects different international norms for different office holders. Exhibit 3 compares the initial and maximum terms of office of Chairs of independent bodies and independent office holders.

### Exhibit 3: Initial and maximum terms of office of Chairs of independent bodies and independent office holders

#### Initial terms of office

8 years (1)	7 years (1)	Not exceeding 6 years (1)
Children's Commissioner for Jersey	Comptroller and Auditor General	Charity Commissioner
Not exceeding 5 years (5)	Not exceeding 4 years (2)	3 years (2)
Competition Regulatory Authority	Independent Prison Monitoring Board	Police Complaints Authority
Data Protection Authority	Police Authority	Statistics Users Group
Financial Services Commission		
Gambling Commission		
Office of the Financial Services Ombudsman		
Discretionary or not specified (4)		
Director of Civil Aviation		
Jersey Appointments Commission		
Jersey Care Commission		
Official Analyst		

*Note: Under the Police Complaints and Conduct (Jersey) Law 2022 the initial term of office for the Chair of the Police Complaints Commission will be 4 years*

## Maximum terms of office

7 years (1)	8 years (1)	9 years (4)
Comptroller and Auditor General	Children's Commissioner for Jersey	Data Protection Authority Financial Services Commission Jersey Appointments Commission Statistics Users Group
10 years (1)	12 years (1)	None (8)
Gambling Commission	Charity Commissioner	Competition Regulatory Authority Director of Civil Aviation Independent Prison Monitoring Board Jersey Care Commission Office of the Financial Services Ombudsman Official Analyst Police Authority Police Complaints Authority

*Note: Under the Police Complaints and Conduct (Jersey) Law 2022 the maximum term of office for the Chair of the Police Complaints Commission will be 12 years*

*Source: Jersey Audit Office analysis of legislation*

32. There are also differences in that:

- for seven bodies (the Charity Commissioner, Competition Regulatory Authority, Data Protection Authority, Financial Services Commission, Gambling Commission, Independent Prison Monitoring Board and Police Authority) terms are maxima allowing flexibility to facilitate Board continuity. For the remaining independent bodies or office holders with specified terms there is no such flexibility; and
- for six independent bodies and office holders (the Children's Commissioner for Jersey, Comptroller and Auditor General, the Data Protection Authority, the Financial Services Commission, the Jersey Appointments Commission and the Statistics Users Group) there are term limits beyond which an individual cannot

serve as Chair or office holder. For the other independent bodies and office holders there is no such term limit.

33. I have not identified clear reasons underlying the differences in the terms of office of Chairs. In my view there are, subject to consideration of international norms for the relevant independent bodies, merits in:
- greater consistency in terms of office, other than where a compelling case for a longer or shorter term can be justified
  - flexibility in terms of office for members of all independent bodies to facilitate Board continuity; and
  - maximum periods for membership of independent bodies to protect against over familiarity. In this respect I note that guidance issued by the Jersey Appointments Commission provides for a maximum term of office as a member of an independent body of nine years.
34. I also recognise that there are different considerations relating to terms of office of independent office holders as opposed to Chairs. Factors to take into account include:
- relevant international standards
  - the practice in other jurisdictions; and
  - the challenges in securing the relevant skills and expertise.
35. One of the most important safeguards of independence is protection from removal from office. That is not to say that there should not be a mechanism to remove the members of independent bodies or office holders from office for good cause, such as failure to perform their duties. But protection is secured by limiting the grounds for removal and specifying the procedure to be followed.
36. I have found that for most of the bodies and office holders I have reviewed, an individual can only be removed from office for one of a limited number of clearly specified grounds. In four cases they can only be removed by the States Assembly (see Exhibit 4).



## Exhibit 4: Removal of Chairs of independent bodies and independent office holders

By States Assembly on limited specified grounds (4)	By Minister on limited specified grounds (9)
Children’s Commissioner for Jersey Competition Regulatory Authority Comptroller and Auditor General Police Complaints Authority	Charity Commissioner Data Protection Authority Director of Civil Aviation Financial Services Commission Gambling Commission Jersey Care Commission Office of the Financial Services Ombudsman Official Analyst Police Authority
By Minister on wide grounds (2)	Not specified (1)
Independent Prison Monitoring Board Jersey Appointments Commission	Statistics Users Group

Note: Under the Police Complaints and Conduct (Jersey) Law 2022 the Chair of the Police Complaints Commission may be removed by the Minister on limited specified grounds.

Source: Jersey Audit Office analysis of legislation

37. In some cases, independence is further enhanced by:
- removal being vested in the States Assembly on a proposition brought jointly by specified persons. For example, the Children’s Commissioner for Jersey can only be removed on a proposition by the Chief Minister and the President of the Scrutiny Liaison Committee; or
  - involving others in the process. For example, to remove a member of the Data Protection Authority on grounds of serious misconduct, a three-person panel must decide that serious misconduct has occurred.
38. In two cases the grounds for removal from office are wide and discretionary and are consequently less effective in promoting independence.
- The relevant Minister can remove a member of the Independent Prison Monitoring Board if they have ‘acted in a way that is not conducive to the Monitoring Board discharging its functions or duties [...] such that it is not, in the Minister’s opinion, fitting that the person remain a member of the Monitoring Board’.

- The Chief Minister may terminate membership of the Jersey Appointments Commission 'on such grounds as the Chief Minister thinks fit'.
39. I have not identified clear grounds for the difference in practice. I note, however, a trend towards increased protection from removal from office. In the case of the proposed Public Appointments Commission, narrow specified grounds for removal replace the broad grounds for termination of membership of the Jersey Appointments Commission outlined above.
40. In my view, for all independent bodies and office holders, protection from inappropriate removal of office would be secured by consistently:
- specifying limited and narrow grounds for removal from office
  - requiring that such grounds are first put to the member of an independent body or office holder with a right of reply
  - involving more than one party in any decision to remove a member of an independent body or an office holder; and
  - where the right of removal is vested in a Minister, requiring prior notification to the States Assembly.

### **Areas for consideration**

- A4** Consider the rationale for differences in the initial terms of office of Chairs of independent bodies.
- 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.
- A6** Ensure appropriate processes are in place in cases where the removal of members of independent bodies and of individual office holders is proposed.

## Funding mechanisms

41. Independence is enhanced by arrangements to ensure adequacy of funding to perform functions, including access to funds to meet unexpected expenditure.
42. The current sources of funding for the independent bodies and office holders covered by this review differ (see Exhibit 5).

### Exhibit 5: Current sources of funding for independent bodies and office holders

Fees/levies (4)	Fees/levies and grants (3)
Director of Civil Aviation Financial Services Commission Gambling Commission Office of the Financial Services Ombudsman	Competition Regulatory Authority Data Protection Authority Jersey Care Commission
Included in Government Plan as separate revenue head of expenditure (2)	Included in Government Plan within wider revenue head of expenditure (6)
Comptroller and Auditor General Official Analyst	Children’s Commissioner for Jersey Independent Prison Monitoring Board Jersey Appointments Commission Police Authority Police Complaints Authority Statistics Users Group
Other (1)	
Charity Commissioner	

Source: Jersey Audit Office analysis

43. Responsibility for the determination of fees varies. For:
  - the Competition Regulatory Authority, the Authority sets the fees
  - the Director of Civil Aviation, fees are determined by the Minister
  - the Financial Services Commission, the Commission sets the fees
  - the Gambling Commission, licence fees and the Social Responsibility Levy are set by the Commission

- the Office of the Financial Services Ombudsman, the Office sets the fees in the absence of a Direction by the Minister. No such Direction has been given
  - the Data Protection Authority, the fees are set in Regulations made by the States Assembly; and
  - the Jersey Care Commission, fees are determined by the Minister or otherwise by the Commission.
44. Where part funding is also made available by grant there are some statutory provisions. For example in the legislation relating to the Competition Regulatory Authority and the Data Protection Authority, the Minister is required to have regard to the financial position of the body receiving the grant. However, such provisions do not require the Minister to have regard to the sufficiency of the grant to allow the independent body to discharge its functions.
45. In practice, three independent bodies have funding or similar agreements with the Government of Jersey that attach conditions to the award of grants. The obligations imposed in those agreements on the independent bodies vary significantly (see Exhibit 6).

**Exhibit 6: Content of grant agreements with the Government of Jersey**

	<b>Competition Regulatory Authority</b>	<b>Data Protection Authority</b>	<b>Jersey Care Commission</b>
Agreement of operational business plan			✓
Compliance with the PFM	'In so far as practicable'		✓
Annual Financial Assurance Statement			✓
Grant Assurance Statement		✓	
Compliance with Government of Jersey insurance policies			✓
Maintenance of register of gifts and hospitality			✓

	Competition Regulatory Authority	Data Protection Authority	Jersey Care Commission
Operation of complaints policy			✓
Voluntary compliance with Freedom of Information legislation			✓
Reporting against Key Performance Indicators		✓	✓
Half-year financial reporting	✓		
Maintenance of a maximum level of reserves	✓		
Monitoring meetings to be held at specified frequency	✓	✓	✓
Provision of information in advance of monitoring meetings		✓	
Agreement to dispute resolution procedure	✓	✓	✓

Sources: Jersey Audit Office analysis of: (1) Competition Regulatory Authority: Funding Agreement 2021 - 2023, Memorandum of Understanding, 28 September 2021 (2) Data Protection Authority: Partnership Agreement 2020 - 2023; and (3) Jersey Care Commission: Framework Agreement, 15 May 2020

46. Two of the independent bodies or office holders operating within the States of Jersey are funded by separate revenue heads of expenditure included in the Government Plan. In both cases the office holders are Accountable Officers under the PFM and there are some protections relating to the determination of the revenue heads of expenditure. For:

- the Office of the Comptroller and Auditor General, the head of expenditure included in the draft Government Plan is that submitted by the Chair of the Public Accounts Committee following review by the independent Board of Governance of the Office of the Comptroller and Auditor General; and
  - the Official Analyst, under the new Official Analyst (Jersey) Law 2022, the head of expenditure included in the Government Plan is that submitted by the responsible Minister who must make an assessment of the funding required for the Official Analyst to discharge their functions and must consult the Official Analyst.
47. For seven bodies, funding derives from the States Assembly through the Government Plan but as part of a wider revenue head of expenditure. The office holders concerned are not Accountable Officers under the PFM. In the case of the Children’s Commissioner for Jersey, the States Assembly is required to provide ‘sufficient’ funding and resources. In other cases legislation makes no reference to the adequacy of funding. In the case of the Police Complaints Authority the duty is merely on the Minister to make available the funding they think reasonable.
48. Dependence on Government for funding, especially where the process is not transparent, is a potential threat to independence. I have not seen a clear rationale for the different approaches to funding adopted for different independent bodies and office holders.
49. In my view, where the States Assembly has seen fit to establish a separate body or office holder to perform a function, independence is enhanced by:
- transparent allocation of funding for the independent body or office holder; and
  - clear accountability for the application of the funding allocated resting with the independent body or office holder.
50. Where independent bodies and office holders are within the States of Jersey they have no power to retain reserves for unexpected expenditure.
51. In the case of bodies established outside the States of Jersey:
- there are often explicit statutory powers to hold reserves; but
  - constraints on the use of reserves may be reflected in funding agreements, as in the case of the Competition Regulatory Authority.

## Areas for consideration

- A7** Introduce a clear, understandable and objectively justifiable framework for funding of independent bodies and office holders by the:
- 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.
- 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.

## Employment of staff

52. The independent bodies and office holders discharge their functions through staff and contractors. A key governance and accountability challenge is maintaining the independence of such staff.
53. Staff working for the independent bodies and office holders considered in this Thinkpiece are:
- States of Jersey employees holding contracts of employment with the States Employment Board and subject to the human resources policies of the States. For the Official Analyst legislation explicitly provides that the staff shall be States employees
  - employees of individual bodies that have the power to employ staff. In five cases - the Competition Regulatory Authority, the Data Protection Authority, the Financial Services Commission, the Gambling Commission and the Office of the Financial Services Ombudsman - the legislation explicitly provides the power for bodies to employ their own staff; or
  - self-employed with an individual contract for services with the States of Jersey.
54. To maintain the independence of the operations of independent bodies and office holders, the legislation for three - the Charity Commissioner, the Children's Commissioner for Jersey, and the Official Analyst - specifically states that to the extent that any States of Jersey employee provided to the office holder performs a function under the direction of the office holder, the employee is to be treated as a member of the office holder's staff for the purposes of this Law. A similar provision is proposed for the Public Appointments Commission. There are, however, other bodies for which this useful clarity is lacking.
55. I do not consider it to be a threat to independence for independent office holders and staff of independent bodies to hold contracts of employment with the States Employment Board provided that it is clear that such employees shall be treated as if they were the staff of the independent body or office holder. Adopting a common approach to employment of staff across independent bodies and office holders could result in benefits in respect of the ability to implement joint apprenticeship and career development programmes across entities.
56. Where legislation allows bodies to employ their own staff, there are no requirements placed on the bodies to act as a good employer. In contrast, New Zealand's Crown Entities Act 2004 requires such bodies to:
- operate a personnel policy that complies with the principle of being a good employer



- make such a policy available to its employees; and
- report on compliance with the policy in its annual report.

### **Areas for consideration**

- 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.
- A10** Introduce minimum good employer standards for independent bodies empowered to employ their own staff.

# Accountability arrangements

57. I have considered the following aspects of the arrangements in place to ensure appropriate accountability of independent bodies and office holders.
- Financial control including the application of the PFM.
  - Oversight by an Audit Committee or equivalent.
  - Annual reports and accounts.
  - Internal and external audit.

## Financial control including the application of the PFM

58. Despite the necessity for independence in the discharge of their statutory duties, it is important that independent bodies and office holders can demonstrate the highest standards of financial control.
59. Within the specific legislation for the 16 bodies and office holders considered in preparing this Thinkpiece:
- that for the Children’s Commissioner for Jersey, Competition Regulatory Authority, Data Protection Authority, Financial Services Commission, Gambling Commission, Jersey Care Commission and the Office of the Financial Services Ombudsman places an obligation on the body or office holder to keep proper accounts and records; and
  - that for the Police Complaints Authority requires the Minister to ‘cause’ that accounts and records will be kept.
60. The legislation for the remaining eight bodies or office holders is silent on this matter.
61. The legislation for five bodies (the Competition Regulatory Authority, Data Protection Authority, Financial Services Commission, Gambling Commission and Office of the Financial Services Ombudsman) imposes more specific provisions relating to:
- borrowing; and
  - compliance with guidance that may be issued by the relevant Minister or the Minister for Treasury and Resources in investing surplus funds. No such guidance is however in existence.

62. Within the States of Jersey, the PFM contains directions and information in relation to the proper administration of the Public Finances (Jersey) Law 2019 and the public finances of Jersey. The PFM is a comprehensive document and applies to:
- the Office of the Comptroller and Auditor General, as a non-ministerial department. The PFM contains a specific chapter that applies to the Office of the Comptroller and Auditor General, making adaptations reflecting its circumstances
  - the Office of the Official Analyst as an 'other body' under the Public Finances (Jersey) Law 2019; and
  - smaller independent bodies and office holders whose expenditure is directly met through Government of Jersey departments. These are the Children's Commissioner for Jersey, the Director of Civil Aviation, the Independent Prison Monitoring Board, the Jersey Appointments Commission, the Police Authority and the Police Complaints Authority.
63. In practice it is also applied to other bodies through funding agreements, for example:
- the funding agreement for the Jersey Care Commission requires compliance with the PFM; and
  - the funding agreement for the Competition Regulatory Authority requires compliance with the PFM 'in so far as practicable'.
64. For bodies and office holders not subject to the PFM, it is their responsibility to put in place and document systems of financial control. The extent to which such systems are documented varies.
65. In my view, financial accountability is promoted by prescribing minimum standards of financial control for all independent bodies and office holders. Such prescription could be secured by way of unambiguous application of the PFM, with such adaptations as necessary, to all the independent bodies and office holders covered by this Thinkpiece.

### **Area for consideration**

- A11** Explicitly apply the PFM, with suitable adaptations, to all the independent bodies and office holders covered by this Thinkpiece.

## Oversight by an Audit Committee or equivalent

66. Audit Committees perform a valuable role in providing independent oversight of financial reporting, internal control and risk management.
67. Arrangements differ across bodies and office holders covered by this Thinkpiece:
- the Boards for the Competition Regulatory Authority, Data Protection Authority and Financial Services Commission have established Audit Committees which meet three or four times a year
  - the Gambling Commission has taken a conscious decision, given the size of its Board, to discharge the functions of an Audit Committee through its Board
  - the Children’s Commissioner for Jersey has a specific statutory duty to appoint an Audit and Risk Advisory Panel charged with reviewing use of resources, management of risk and governance of the Office. It meets four times a year
  - the use of resources by and the governance arrangements of the Office of the Comptroller and Auditor General are subject to oversight by a Board of Governance comprising the Comptroller and Auditor General and three independent members appointed by the States Assembly. It meets three times a year; but
  - there are no stand-alone Audit Committees or equivalents for the remaining ten bodies and office holders considered for this Thinkpiece. To the extent that they are funded through a revenue head of expenditure in the Government Plan they are potentially subject to oversight by the Government of Jersey Risk and Audit Committee but, given the relative scale of their activities, it would be rare that they received specific attention. However, to the extent that they use Government of Jersey systems, the Risk and Audit Committee would consider matters relevant to such bodies.
68. In my view, governance would be enhanced by specification of minimum standards for the responsibilities of an Audit Committee or similar body, its composition, frequency of meeting and reporting responsibilities. Such a specification could be included in the PFM if its application were to be extended.
69. I am satisfied that in respect of the smaller bodies and office holders covered by this Thinkpiece, establishing a separate Audit Committee may be disproportionate to the benefits arising. However, there could be opportunities for the remit of an Audit Committee or similar body to cover more than one of the independent bodies and officer holders.

## Area for consideration

- A12** Document minimum standards for the responsibilities of an Audit Committee or similar body for all independent bodies and office holders.

## Annual reports and accounts

70. Annual reports and accounts are key means by which entities are accountable for their performance, governance and finances. Annual reports and accounts are of greatest value when:
- they are prepared on a consistent basis, reflecting best professional practice; and
  - they are published in a timely fashion.
71. I review and report annually on the extent to which the annual reports and accounts of the States, bodies established by the States and bodies controlled by the States reflect best practice.

### Annual reports

72. Legislation requires the preparation of annual reports by 15 of the 16 independent bodies and office holders within the scope of this Thinkpiece. The consultation on a new legislative framework for statistics in Jersey puts forward that the proposed Statistical Advisory Council, that would replace the Statistics Users Group, would also have a statutory duty to prepare an annual report.
73. However, the current statutory framework does not consistently promote high quality annual reporting.
- For eight of the independent bodies or office holders required to prepare annual reports (the Charity Commissioner, the Competition Regulatory Authority, the Comptroller and Auditor General, the Data Protection Authority, the Financial Services Commission, the Jersey Care Commission, the Office of the Financial Services Ombudsman and the Police Complaints Authority) there is no specification of the content of the annual report beyond a requirement to report on 'activities', 'operations' or 'functions'. In the case of the Office of the Financial Services Ombudsman, the Minister may give directions as to the form and content of the annual report but no such directions have been given.
  - For five of the independent bodies or office holders required to prepare annual reports (the Children's Commissioner for Jersey, the Gambling Commission, the Independent Prison Monitoring Board, the Official Analyst and the Police Authority) there are additional reporting requirements specified in legislation. Some are highly specific to the individual body or office holder, such as certain matters in respect of Codes of Practice in the context of the Gambling Commission. Others are of more general application, such as the requirement for the Official Analyst to report on why work undertaken during the year is in the public interest.

- For two of the independent bodies or office holders required to prepare annual reports (the Director of Civil Aviation and the Jersey Appointments Commission) there is a requirement for them to include in the annual report further matters specified by the Minister or in Directions.
74. In no case is there a requirement to prepare the annual report in accordance with recognised best practice as reflected in my publications on *Annual Reporting*. In my first report on *Annual Reporting* (August 2020) I recommended the adoption of a consistent set of minimum requirements for the annual reports of other States controlled and States established entities. I reinforced this recommendation in my further reports on *Annual Reporting* in November 2021 and November 2022.
  75. The draft legislation for the Public Appointments Commission requires preparation of an Accountability Report, one of the components of recognised best practice, but does not refer to other components.
  76. The Official Analyst (Jersey) Law 2022 introduces a requirement for the annual report of the Official Analyst to comply with the requirements of the PFM in so far as they relate to 'Other States Bodies'. This is a helpful and flexible approach that could be applied to a range of other independent bodies and office holders. However, no such requirements have yet been included in the PFM.
  77. Annual reporting is a developing area and including detailed requirements in legislation creates a danger that legislation rapidly becomes out of date. In other jurisdictions, legislation often requires preparation of annual reports in accordance with directions which facilitate annual updates. In many jurisdictions, including the UK, there are common requirements for the minimum contents of annual reports.

## **Annual accounts**

78. Annual accounts are one component of the means by which bodies are held to account publicly for their use of resources.
79. Only nine of the 16 bodies considered in this Thinkpiece have a statutory duty to prepare annual accounts: the Children's Commissioner for Jersey, the Competition Regulatory Authority, the Comptroller and Auditor General, the Data Protection Authority, the Financial Services Commission, the Gambling Commission, the Jersey Care Commission, the Office of the Financial Services Ombudsman and the Official Analyst.
80. Proposed legislation would impose such a duty on the Public Appointments Commission.
81. For the nine bodies that have a statutory duty to prepare annual accounts, there are differences in the requirements imposed on them (see Exhibit 7).

## Exhibit 7: Requirements for preparation of annual accounts

'Generally accepted accounting principles' (5)	'Generally accepted accounting principles' and additional specified requirements (1)
Competition Regulatory Authority Data Protection Authority Financial Services Commission Jersey Care Commission Office of the Financial Services Ombudsman	Gambling Commission
No requirements relating to basis of preparation or content of annual accounts (2)	Accounts of office holder included in the accounts of the States of Jersey (1)
Children's Commissioner for Jersey Comptroller and Auditor General	Official Analyst

*Note: in the case of the Office of the Financial Services Ombudsman, the Minister may give directions on the form and content of the annual accounts. No such directions have been given.*

*Source: Jersey Audit Office analysis*

82. I further note that:

- there are multiple 'generally accepted accounting principles' so the term is not specific and does not promote the preparation of accounts on a consistent basis. In many jurisdictions legislation requires annual accounts to be prepared in accordance with a specified framework. In the UK many public bodies are required to prepare their annual accounts in accordance with the Financial Reporting Manual issued by H M Treasury. Whilst there is a Jersey Financial Reporting Manual, which is based on the H M Treasury Financial Reporting Manual, it only applies to the preparation of the accounts of the States of Jersey; and
- for many bodies there is no requirement to prepare annual accounts. I accept that, for bodies whose financial results are included within the States of Jersey Accounts, there is an argument that preparation of a full set of annual accounts in accordance with 'generally accepted accounting principles' might be disproportionate. However, I am concerned that the absence of any requirement in relation to annual accounts reduces accountability. In this context I welcome the inclusion in the Official Analyst (Jersey) Law 2022 of a requirement to publish the accounts of the office holder as included in the annual accounts of the States of Jersey.



83. I also note that in one case the statutory requirement in relation to the preparation of annual accounts is not being fully complied with. The Regulation of Care (Jersey) Law 2014 requires the annual accounts of the Jersey Care Commission to be prepared in accordance with ‘generally accepted accounting principles’. However, the form of accounts prepared – a single statement of comprehensive net expenditure and a comparison of financial performance against budget – is insufficient to comply with any of the different generally accepted accounting principles.

### Timing of submission and publication of annual reports and accounts

84. The later that information about performance, governance and financial performance is published after the year to which it relates, the less valuable it is. In most cases legislation imposes a statutory date by which annual reports and accounts are to be submitted to the Minister (to be laid before the States Assembly) or to be laid before the States Assembly. However, even though all have a 31 December year-end, the statutory timescales vary significantly (see Exhibit 8).

### Exhibit 8: Statutory timescales for submission of annual reports and accounts to the Minister/laying before the States Assembly

As soon as practicable (2)	31 March (3)	30 April (5)
Official Analyst Police Complaints Authority	Director of Civil Aviation Independent Prison Monitoring Board Police Authority	Charity Commissioner Competition Regulatory Authority Data Protection Authority Jersey Appointments Commission Office of the Financial Services Ombudsman
30 June (2)	31 July (2)	Not specified (1)
Children’s Commissioner for Jersey Jersey Care Commission	Financial Services Commission Gambling Commission	Comptroller and Auditor General

Note 1: The dates above relate only to the annual report where there is no requirement to prepare annual accounts.

Note 2: Legislation variously provides dates by which annual reports and accounts are to be submitted to the Minister or to be laid before the States Assembly. Where both dates are specified the earlier date is given in this Exhibit.

Source: Jersey Audit Office analysis of legislation

85. I am concerned that:

- there is no clear rationale for the different statutory timescales for submission or publication. None of the statutory timescales aligns with the statutory timescale for submission of the annual accounts of the States of Jersey – 31 May; and
- the statutory timescales are inconsistently formulated. In some cases they relate to the date of submission to the Minister (who in turn is responsible for submission to the States Assembly) and in other cases they relate to the date of submission to the States Assembly (and therefore publication). In most cases Ministers are required to submit annual reports and accounts to the States as soon as practicable after receipt.

86. In the case of the Office of the Financial Services Ombudsman submission to the States Assembly is required within two months of receipt. This extended timetable reflects the pan-Channel Islands nature of the Office and the need to align laying and publication in Jersey with that in Guernsey.

### **Areas for consideration**

- A13** Specify minimum mandatory content of annual reports for independent bodies and office holders.
- A14** Introduce standardised requirements for the timing of annual reports of independent bodies and office holders.
- 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.

## Internal and external audit

87. Internal and external audit have important roles in the governance and accountability of organisations.
- Internal audit provides assurance to management about the operation of risk management, governance and internal control procedures.
  - External audit provides assurance to wider stakeholders about the financial position and performance that an organisation reports in its financial statements.

### Internal audit

88. Entities falling within the States of Jersey (other than the Office of the Comptroller and Auditor General) are subject to internal audit by the Chief Internal Auditor of the States of Jersey. As a result:
- where they rely on States-wide systems and processes, those will be subject to periodic internal audit review; and
  - they may be subject to specific periodic internal audit reviews based on an assessment of risk.
89. In practice certain bodies constituted outside the States of Jersey, such as the Jersey Care Commission, are also subject to internal audit coverage by the Chief Internal Auditor.
90. Two independent bodies or office holders are subject to internal audit by another provider and nine are not subject to any internal audit coverage. The exclusion of independent bodies and office holders from internal audit coverage is not obviously related to the scale of their activities.
91. There are no central standards or guidance on the circumstances in which internal audit would be appropriate or the scope of its coverage.
92. In my view, there should be a structured approach to determining whether independent bodies sitting outside the States of Jersey are subject to internal audit, taking into account:
- the cost of such provision
  - the expenditure of the body; and
  - risk factors relevant to the body.

## External audit

93. Most but not all of the nine independent bodies and office holders required to prepare and publish annual accounts are required to have a separate external audit of those accounts (see Exhibit 9).

### Exhibit 9: Requirements for external audit of the annual accounts of independent bodies and office holders

Required (7)	Optional (1)	No separate external audit required (1)
Competition Regulatory Authority Comptroller and Auditor General Data Protection Authority Financial Services Commission Gambling Commission Jersey Care Commission Office of the Financial Services Ombudsman	Children's Commissioner for Jersey	Official Analyst*

\* The financial results of the Official Analyst are included in the accounts of the States of Jersey. Under Article 12 of the Comptroller and Auditor General (Jersey) Law 2014 those accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General. Under Article 9 of the Official Analyst (Jersey) Law 2022, the annual report of the Official Analyst must include the accounts of the Official Analyst included in the accounts of the States of Jersey.

Source: Jersey Audit Office analysis of legislation

94. As I explained in *Public Audit in Jersey: A Thinkpiece* (January 2021), it is important that assurance is provided over annual accounts. However, I understand that there is a cost/benefit decision about whether to require an external audit and that there may be scope for requiring another form of assurance engagement, providing lower assurance at lower cost, for some smaller entities.
95. In *Public Audit in Jersey: A Thinkpiece* (January 2021), I suggested a threshold of annual expenditure of £100,000, below which an independent audit could be replaced by an independent examination. Were this threshold to be adopted, I anticipate that an independent examination requirement would be applied to the Independent Prison Monitoring Board and the Police Complaints Authority.

96. I can see no clear rationale for the Children’s Commissioner for Jersey to be able to choose whether or not the annual accounts of the Office are subject to external audit.
97. One of the fundamental principles of public audit is the independent appointment of external auditors. In most cases legislation provides that external auditors are appointed by the Comptroller and Auditor General. However, as I highlighted in *Public Audit in Jersey: A Thinkpiece* (January 2021), there are exceptions.
98. I remain concerned that this principle of independent appointment of auditors is not consistently applied. In the case of:
- the Children’s Commissioner for Jersey, any appointment is made by the Children’s Commissioner themselves
  - the Office of the Financial Services Ombudsman, the auditor is appointed by the Board of the Office of the Financial Services Ombudsman. I understand that there are potential complications in this case as the accounts of the Office are prepared on a pan-Channel Islands basis; and
  - the Jersey Care Commission, the auditor is appointed by the Minister.
99. I am further concerned that, in the case of the Jersey Care Commission, the published annual accounts do not contain an independent auditor’s report. I consider that inclusion of the income and expenditure of the Jersey Care Commission in the audited accounts of the States of Jersey may not meet the statutory requirement for an audit of the accounts of the Commission. The statutory responsibility for the appointment of the auditor of the Jersey Care Commission rests with the Minister for Treasury and Resources. To the best of my knowledge no such appointment has been made.
100. Moreover, the annual expenditure of the Commission is greater than the £100,000 threshold below which I suggested in *Public Audit in Jersey - A Thinkpiece* (January 2021) that an independent examination in place of an external audit would be appropriate.
101. I am not convinced that the inclusion of the results of a body within the accounts of the States of Jersey that are themselves subject to external audit provides sufficient assurance over the accounts of such bodies. External auditors plan and perform their audits to provide reasonable assurance that accounts are not materially misstated. The total income and expenditure of such bodies could be immaterial in the context of the income and expenditure of the States of Jersey and it is entirely possible that no audit procedures would be performed in respect of such bodies by the external auditor of the States of Jersey.

102. I recognise that there are costs associated with undertaking a separate audit or independent examination and the costs of provision of independent assurance must be weighed against the benefits. There may be scope for reducing costs by providing for the auditor appointed by the Comptroller and Auditor General to audit the accounts of the States of Jersey, to undertake some form of assurance engagement short of an independent audit in respect of independent bodies and office holders whose financial results are included within the accounts of the States of Jersey.
103. In deciding how to proceed it is important to undertake an impact assessment, including evaluating the potential impact on costs of different arrangements for independent assurance. In my initial view cost increases (arising from imposing a mandatory assurance requirement for some bodies to which it does not currently apply) might be offset by some cost reductions (arising from where a requirement for an independent audit is replaced with a requirement for some other form of assurance engagement).

### **Areas for consideration**

- A16** Introduce a presumption in favour of internal audit provision for independent bodies and office holders unless there is a clearly documented case that the costs would outweigh the benefits.
- 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.

# Provision of support services

104. The Government of Jersey operates various support services that are used to different extents by the different independent bodies and office holders covered by this Thinkpiece (see Exhibit 10).

## Exhibit 10: Use of Government of Jersey support services

	Finance	Information Technology	Estates	Human Resources
Charity Commissioner	Partial			Full
Children's Commissioner for Jersey	Full			Full
Competition Regulatory Authority	Partial			
Comptroller and Auditor General	Partial	Partial		Partial
Data Protection Authority				
Financial Services Commission				
Gambling Commission				
Independent Prison Monitoring Board	Full	Full	Full	Full
Jersey Appointments Commission				
Jersey Care Commission	Full	Partial	Full	Full
Office of the Financial Services Ombudsman				
Official Analyst	Full	Full	Full	Full
Police Authority	Full	Full	Full	Full

	<b>Finance</b>	<b>Information Technology</b>	<b>Estates</b>	<b>Human Resources</b>
Police Complaints Authority	Full	Partial	Partial	Partial
<b>Overall use of Government of Jersey support services</b>	<b>Full: 6 Partial: 4 None: 4</b>	<b>Full: 3 Partial: 3 None: 8</b>	<b>Full: 4 Partial: 1 None: 9</b>	<b>Full: 6 Partial: 2 None: 6</b>

Source: Jersey Audit Office analysis of survey responses from the 14 independent bodies responding to the survey as detailed in Appendix Two

105. I consider that provision of support services by the Government of Jersey does not of itself impinge on the independence of independent bodies and office holders. However, clear documentation of the scope and nature of services provided enhances clarity about the respective roles of the independent body or office holder and the Government of Jersey. Such clear documentation is sometimes in place, as in the case of the Jersey Care Commission, but practice is not consistent.
106. In my view such documentation, specifying the services to be provided, those not to be provided and the standards for the provision of services, allows:
- the specific needs of independent bodies and office holders to be agreed and recorded; and
  - independent bodies and office holders to have an objective basis for holding Government of Jersey departments to account for the provision of services to them.
107. There are potential inefficiencies in the current arrangements and pattern of support services for independent bodies and office holders. In many instances, support services are duplicated across small entities and there are opportunities for greater sharing of support services.
108. In addition to sharing support services, there are also opportunities for independent bodies and office holders to consider shared accommodation solutions in order to reduce overall costs and enhance efficiencies in operations.
109. The Regulators Forum is a voluntary forum for representatives from a number of the independent bodies and office holders considered in this Thinkpiece, established to share issues of common concern and best practice. It is currently exploring a number of opportunities for closer working between organisations.



## Areas for consideration

- A18** Document the services and standards for the provision of services by the Government of Jersey to independent bodies and office holders.
- A19** Independent bodies and office holders should continue to work collectively to explore opportunities to share support services and, in some cases, accommodation.

# The policy framework

110. In *Governance - A Thinkpiece* (December 2019), my predecessor promoted:
- the adoption of clear principles for the governance and accountability of bodies and officers responsible for activities where an element of independence from government is required; and
  - a systematic review of arrangements for governance and accountability of such bodies in light of those principles.
111. However, the current arrangements for the governance and accountability of the independent bodies and office holders covered by this review are fragmented. Legislation is individual to the various bodies and office holders without a clear justification for differences. There is no clear or consistent rationale for identifying what arrangements should apply to what bodies. Some elements of best practice reflected in the legislative frameworks for some bodies are absent for others.
112. In some areas, such as the content of annual reports and accounts and the internal controls that should apply to independent bodies and office holders, policy frameworks are typically missing.
113. The challenges of securing good governance and accountability while preserving the necessary independence of bodies and office holders performing activities of a regulatory, audit, oversight or challenge nature is not unique to Jersey. It is instructive to consider how other jurisdictions have addressed these challenges.
114. In some jurisdictions, much of what is in place in individual legislation for individual bodies and office holders, is contained in a single piece of legislation of general application with scope for adaptation where appropriate. For example:
- in Australia, the Public Governance, Performance and Accountability Act 2013 provides a framework for a wide range of public sector entities covering, for example, planning and budgeting, annual reporting, annual accounts, external audit, audit committees and financial controls; and
  - in New Zealand, the Crown Entities Act 2004, provides a similar framework for a wide range of public bodies, including coverage of appointments, terms of office, staffing, planning and reporting.
115. Below legislation, many jurisdictions establish common frameworks unambiguously governing a significant number of public sector entities. For example:

- the Scottish Public Finance Manual, while similar in scope to the Jersey PFM clearly applies not only to entities within the Scottish Administration but also to Non-Departmental Public Bodies; and
  - H M Treasury’s Audit and Risk Assurance Committee Handbook is explicitly stated to be applicable to a wide range of Arm’s Length Bodies.
116. Despite the currently fragmented approach, consultations leading to recently enacted legislation and proposals for legislative change demonstrate consideration of some of the fundamental principles underlying the establishment and operation of independent bodies and office holders. For example:
- the Official Analyst (Jersey) Law 2022 amended the Public Finances (Jersey) Law 2019 to establish a new category of ‘other bodies’ with separate revenue heads of expenditure in the Government Plan. Initially only the Office of the Official Analyst falls within this category but this creates the potential for other independent bodies or office holders to be treated in the same way; and
  - both the Official Analyst (Jersey) Law 2022 and the proposals for legislation to establish a Public Appointments Commission include provision for States of Jersey employees to be treated as if they were employees of the independent body or office holder.
117. I welcome these developments. However, in my view there is scope for developing a more consistent framework that would:
- be based on clear principles
  - be common across independent bodies and office holders or groups of bodies and office holders in the absence of good reasons for differences
  - be easier to maintain in light of development; and
  - promote consistent high-quality governance and accountability.
118. I recognise that there are competing pressures on legislative time. In some of the areas identified in this Thinkpiece, such as the application of PFM provisions and the form and content of annual reports and accounts, the suggested changes could be secured by other means, such as the wording of framework agreements or memoranda of understanding.
119. This Thinkpiece has focussed on the governance and accountability of independent bodies and office holders undertaking activities of a regulatory, audit, oversight or challenge nature. However, there is a range of other independent bodies established by the States Assembly and many of the issues identified are likely to be of relevance to those bodies as well.

## Areas for consideration

- 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.
- 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.
- 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.

## Appendix One

### Independent Bodies and Office Holders covered by the Thinkpiece

Independent Body or Office Holder	Enactment establishing
Charity Commissioner	Article 3, Charities (Jersey) Law 2014
Children’s Commissioner for Jersey (officially the Commissioner for Children and Young People)	Article 3, Commissioner for Children and Young People (Jersey) Law 2019
Competition Regulatory Authority	Article 2, Competition Regulatory Authority (Jersey) Law 2001
Comptroller and Auditor General	Article 2, Comptroller and Auditor General (Jersey) Law 2014
Data Protection Authority	Article 2, Data Protection Authority (Jersey) Law 2018
Director of Civil Aviation	Article 2, Civil Aviation (Jersey) Law 2008
Financial Services Commission	Article 2, Financial Services Commission (Jersey) Law 1998
Gambling Commission	Article 2, Gambling Commission (Jersey) Law 2010
Independent Prison Monitoring Board	Regulation 2, Prison (Independent Prison Monitoring Board) (Jersey) Regulations 2017
Jersey Appointments Commission	Article 17, Employment of States of Jersey Employees (Jersey) Law 2005 <sup>1</sup>
Jersey Care Commission (officially the Health and Social Care Commission)	Article 35, Regulation of Care (Jersey) Law 2014
Office of the Financial Services Ombudsman	Article 2, Financial Services Ombudsman (Jersey) Law 2014
Official Analyst	Official Analyst (Jersey) Law 2022

<sup>1</sup> In 2021 the Government of Jersey consulted on proposals to replace the Jersey Appointments Commission with a new Public Appointments Commission. No legislation has yet been adopted by the States Assembly.

Independent Body or Office Holder	Enactment establishing
Police Authority	Article 4, States of Jersey Police Force Law 2012
Police Complaints Authority <sup>2</sup>	Article 2, Police (Complaints and Discipline) (Jersey) Law 1999
Statistics Users Group	Article 4, Statistics and Census (Jersey) Law 2018 <sup>3</sup>

<sup>2</sup> When the Police (Complaints and Conduct) (Jersey) Law 2022 comes into force, the Police Complaints Authority will be renamed the Police Complaints Commission, established under Article 7 of the 2022 Law.

<sup>3</sup> In 2021 the Government of Jersey proposed amendments to the Statistics and Census (Jersey) Law 2018. No amendments have yet been made.

## Appendix Two

### Approach adopted in preparing this Thinkpiece

The review included the following key elements:

- desk based research
- preparation, dispatch and review of the results of a questionnaire to independent bodies and office holders within the scope of this review
- supplementary enquiries of independent bodies and office holders; and
- interviews with key officers within the States of Jersey.

The desk-based research included analysis of:

- legislation
- annual reports and accounts; and
- funding agreements.

The following officers were interviewed as part of the review:

- Director General, Strategic Policy, Planning and Performance; and
- Head of Financial Governance.

The fieldwork was carried out by the Deputy Comptroller and Auditor General.

## Appendix Three

### Summary of Areas for Consideration

#### Strengthen operational independence

- A1** Clarify the legal nature of the following independent bodies and office holders, including in particular whether they have legal personality:
- Comptroller and Auditor General
  - Independent Prison Monitoring Board
  - Jersey Appointments Commission
  - Official Analyst
  - Police Authority; and
  - Statistics Users Group.
- 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.
- 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.
- A4** Consider the rationale for differences in the initial terms of office of Chairs of independent bodies.
- 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.
- A6** Ensure appropriate processes are in place in cases where the removal of members of independent bodies and of individual office holders is proposed.
- A7** Introduce a clear, understandable and objectively justifiable framework for funding of independent bodies and office holders by the:
- 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.

**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.

**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.

**A10** Introduce minimum good employer standards for independent bodies empowered to employ their own staff.

### **Enhance accountability**

**A11** Explicitly apply the PFM, with suitable adaptations, to all the independent bodies and office holders covered by this Thinkpiece.

**A12** Document minimum standards for the responsibilities of an Audit Committee or similar body for all independent bodies and office holders.

**A13** Specify minimum mandatory content of annual reports for independent bodies and office holders.

**A14** Introduce standardised requirements for the timing of annual reports of independent bodies and office holders.

**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.

**A16** Introduce a presumption in favour of internal audit provision for independent bodies and office holders unless there is a clearly documented case that the costs would outweigh the benefits.

**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.

## Review and consolidate support services

- A18** Document the services and standards for the provision of services by the Government of Jersey to independent bodies and office holders.
- A19** Independent bodies and office holders should continue to work collectively to explore opportunities to share support services and, in some cases, accommodation.

## The policy framework

- 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.
- 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.
- 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.



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