

# Policy Report: A new legislative framework for statistics in Jersey

## Statistics Legislation Steering Group

### Section 1. Introduction

1. This paper should be read in conjunction with the Vision Paper of the Statistics Legislation Steering Group (“the Group”). It provides the rationale for the Group’s proposals which are set out in the Vision Paper and presents some of the key information which the Group has considered.
2. The Group was [established](#) by the Chief Minister in February 2021 to oversee the development of new policy and legislation to enhance and improve Jersey’s national statistical system (NSS). The Group is chaired by Deputy Kirsten Morel. The full membership of the Group, the guiding principles of its work and the approach it has taken in developing new policy and legislation can be found in its terms of reference.<sup>1</sup>
3. The Group has considered a large body of evidence including key guidance documents issued by international organisations, in particular the United Nations, statistical legislation and systems in other jurisdictions, and current practice and legislation in Jersey. The key documents produced by the UN which the Group has relied upon are the United Nations Generic Law on Official Statistics (GLOS), the United Nations Fundamental Principles of Official Statistics (FPOS), the UN Handbook on Management and Organisation of National Statistical Systems (UN Handbook) and the United Nations Guidance on Modernising Statistical Legislation (UNECE Guidance). A summary of the different statistical systems which the Group has considered can be found at Appendix 1.
4. The key statistical legislation in Jersey is the Statistics and Census (Jersey) Law 2018 (“the 2018 Law”). The Group has considered this legislation in detail and has noted areas in which the Law might be enhanced so that it conforms more closely to international best practice standards and maintains the public’s trust and confidence in the Island’s statistical system in the long term.
5. This paper sets out the issues and challenges which the Group intends its proposals to address and it provides the Group’s rationale. The paper addresses these matters in each of the following five key areas:
  - a. the governance of Statistics Jersey;
  - b. the identification and protection of Jersey’s official statistics;
  - c. the coordination of the NSS;
  - d. the role of a Statistical Advisory Council (SAC); and
  - e. data sharing.

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<sup>1</sup> The Group’s terms of reference were approved by the Chief Minister under Ministerial Decision MD-C-2021-0041 and published on 12 May 2021. This can be found online at: [Statistics Legislation Steering Group \(gov.je\)](https://www.gov.je/StatisticsLegislationSteeringGroup)

## Section 2. Governance of Statistics Jersey

### Vision

6. Proposed legislative amendments would:
  - a. guarantee the professional independence of the Chief Statistician;
  - b. provide the Chief Statistician with an unfettered right to comment on any aspect of statistics including their funding, use, accuracy, reliability, adequacy, erroneous interpretation and misuse;
  - c. secure adequate funding for Statistics Jersey which is commensurate with its responsibilities under the Law; and
  - d. ensure the Chief Statistician is accountable for the good governance of Statistics Jersey.

### Professional Independence

7. Article 2(4) of the 2018 Law provides that “Statistics Jersey has the right to act independently.” This also applies to the Chief Statistician as, under the 2018 Law, the Chief Statistician is appointed out of and with responsibility for managing Statistics Jersey.
8. The Group, however, had concerns that this provision alone does not go far enough to guarantee the independence of the Chief Statistician and of Statistics Jersey. The Group’s Vision is to meet the standards set out under the UNECE Guidance in relation to the requisite level of independence which statistical offices should have under legislation.

#### **UNECE Guidance, paragraph 41, page 14**

“Professional independence requires the following treatment in statistical legislation:

- Strong legal position of the NSO and other producers of official statistics.
- Appropriate administrative arrangements (transparent selection, appointment and dismissal procedures of the Chief Statistician that should be based on professional criteria only).
- The Chief Statistician should have the authority to take professional decisions (without any kind of interference), especially regarding the scope, content and frequency of data compiled, personnel management, management of the operations of the NSO, release of statistical information and press releases and direct communication with policy makers and authorities. The Chief Statistician should also be at the most senior official level in a country, they should be considered a peer by the Heads of other government departments and should be included in any regular meetings of such officials in order to promote and enforce decisions.
- Clear provisions in the legislation to ensure scientific standards and use of internationally agreed standards and methodologies.”

9. The 2018 Law does not prescribe an administrative structure for Statistics Jersey, beyond providing the Chief Statistician with responsibility for its management. The 2018 Law does not provide any requirements governing the appointment and removal of the Chief Statistician. As the Chief Statistician is an employee of the States of Jersey, the appointment of the Chief Statistician must fulfil the standard requirements for recruiting staff in the public sector, which is governed by the Employment of States of Jersey Employees (Jersey) Law 2005 (the “2005 Law”). The Group’s Vision addresses these matters by, firstly, proposing that the Chief Statistician should become a corporation sole and, secondly, proposing that the process for the recruitment, appointment, suspension and dismissal of the Chief Statistician should be set out under the Law.
  
10. The Group considered four options as to how to provide for the governance of Statistics Jersey and the Chief Statistician under legislation. In this context, the term governance model is used to refer to the way in which a public entity has been or could be established under Jersey Law. The four governance models considered are summarised in the table, below.

<b>Option Number</b>	<b>Model of Governance</b>	<b>Examples under Jersey Law</b>
1	The current model	Statistics Jersey and the Chief Statistician
2	Corporation sole	Chief of the States of Jersey Police, Charity Commissioner, Children’s Commissioner
3	Non-ministerial departments	The Law Officers’ Department, Viscounts Department
4	Body corporate/Arm’s length bodies	Jersey Care Commission, Data Protection Authority, Gambling Commission

11. It should be noted that under all four of the options considered, the corporate functions of Statistics Jersey, such as Human Resources, Information Technology and Estates Management as well as Finance, would sit within the Government. This is to reduce overhead costs and help provide value for money, as per the current arrangements for the Care Commission and the Charity Commissioner.
  
12. Having considered each option in detail, the Group determined that the corporation sole would be most suitable governance model. It accords with the UNECE Guidance because this governance model could allow the Chief Statistician to provide professional leadership to producers of official statistics across all public authorities, but also provide him or her with independence. Provided the requisite legislative amendments are made, it would entrench the legal position of the Chief Statistician and Statistics Jersey as the National Statistical Office (NSO), working in pursuance and support of the statutory functions of the Chief Statistician.
  
13. The legislation would provide for a statutory appointment and dismissal process of the Chief Statistician which, coupled with the corporation sole model would, provide the Chief Statistician with complete professional independence, enabling him or her to work independently of the Government of Jersey and the States Assembly when exercising the functions of his or her office, under the Law.

14. The Group wished to diverge from the current governance model because it does not, in its view, provide the Chief Statistician with sufficient independence.
15. The Group deemed it inappropriate to establish Statistics Jersey as a non-ministerial department because there was no constitutional imperative to do so. Existing non-ministerial departments, with the exception of the Office of the Official Analyst<sup>2</sup>, have this status because it would be inappropriate for Government ministers to hold responsibility for managing the budgets of the legislature, the judiciary and of its auditor (the Comptroller & Auditor General).
16. The Group decided against the body corporate structure because it would fetter the independence of the Chief Statistician by establishing a governance board which would hold certain key functions that the UNECE Guidance maintains should be held by the Chief Statistician. These functions include, for example, personnel management and the management of the operations of Statistics Jersey. As an ex-officio member of the Board, the Chief Statistician would not exercise control over the operations of Statistics Jersey. Instead, this control would be vested in the chair and the rest of the board.
17. The Chief Statistician would be employed by the States' Employment Board with provisions governing their recruitment, appointment, suspension and dismissal provided for in law. These will be based, in part, on provisions which apply to the Chief Officer of Police under the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017 (the "2017 Regulations").
18. The Group has determined that the Chief Minister should retain ministerial responsibility for matters in relation to the Chief Statistician because he or she does not have a particular ministerial portfolio. If, for example, the Minister for the Treasury were to hold these responsibilities, the Group believes that there is a risk that the production of economic statistics may be prioritised over other subjects.
19. The Group considers that it is appropriate for the Chief Minister to exercise ultimate authority over the recruitment and dismissal of the Chief Statistician. It is consistent for Government ministers to make appointments of this nature, as is the case with decisions over the recruitment and dismissal of various other statutory office holders. It is also consistent that, in appointing a new Chief Statistician, the Chief Minister would be legally required to consult the Statistical Advisory Council – the Minister for Home Affairs is similarly required to consult the Police Authority when appointing a new Chief of Police. The Chief Minister must also give prior notice to the SAC before the Chief Statistician is suspended or removed from office. This would reflect the requirement under Regulation 7(3) of the 2017 Regulations for the Minister for Home Affairs to provide notice to the Police Authority before the Chief of Police is suspended or dismissed.

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<sup>2</sup> Note: A new Official Analyst Law is currently being prepared which will provide for the independence of the Official Analyst and, thereby, remove their status as non-ministerial department.

20. The Group has not yet formed a view as to whether the appointment of the Chief Statistician should be time limited. The tenure of certain office holders, such as the Children’s Commissioner, is time limited while the tenure of the Chief of Police is not. In reaching a decision on whether to apply a time limit to the appointment of the Chief Statistician, there are a number of factors to consider, including the impact on sourcing high quality candidates from other jurisdictions, the impact on Jersey-based candidates and the Government’s population policy. The Group is continuing to consider this issue in the light of these and other factors.

## Public Comment

21. The responsibilities of the Chief Statistician are listed under Article 3(1) of the 2018 Law (see below).

### Article 3(1) of the 2018 Law

- (1) The Chief Statistician is responsible for –
- (a) the management of Statistics Jersey, all aspects of statistics produced by Statistics Jersey and the administration of this Law;
  - (b) on the advice of the Group, setting the policies and priorities of Statistics Jersey;
  - (c) advising the Group on the quality, relevance and integrity of official statistics;
  - (d) the statistical methodology and statistical standards used by Statistics Jersey and ensuring that the requirements of Article 11 and the Code are met;
  - (e) the manner in which data are collected, processed, documented and stored;
  - (f) the content of statistical releases and publications issued by Statistics Jersey;
  - (g) the form, timing and methods of dissemination of statistics compiled by Statistics Jersey;
  - (h) commenting on the quality and interpretation of any statistics produced by public authorities, other undertakings and individuals;
  - (i) on the advice of the Group, the discontinuance of any statistical report or the starting of a new one; and
  - (j) ensuring that a census of the population is taken as required by a decision of the States.

22. An area of concern which has been raised since the Law was adopted by the States Assembly relates to Article 3(1)(h) which provides that the Chief Statistician is responsible for “commenting on the quality and interpretation of any statistics produced by public authorities, other undertakings and individuals.” This provision appears to provide the Chief Statistician with the broad power to comment on the quality and interpretation of any statistics, whoever they have been produced by.
23. However, regardless of the policy intent behind the 2018 Law, it appears that the Chief Statistician is currently constrained in using this power by other provisions, in two ways:
- a. He or she can only make comments on the quality and interpretation of statistics which have been produced by bodies other than Statistics Jersey **to** public authorities – the Chief Statistician cannot make comments to the public. This is because the responsibilities of the Chief Statistician must be carried out within the functions specified for Statistics Jersey under Article 2 of the 2018 Law, as

Article 2(7) provides there will be a Chief Statistician who, along with other officers, will carry out the functions of Statistics Jersey. It follows, therefore, that as one of the functions of Statistics Jersey is to advise public authorities on statistics (under Article 2(3)(c) of the 2018 Law) the Chief Statistician is constrained in being permitted to provide advice to public authorities only.

- b. The Chief Statistician cannot speak publicly on political matters. This is because the Chief Statistician is an employee within the meaning of Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005 (the “2005 Law”) by virtue of Article 2(7) of the 2018 Law. Part 5 of the 2005 Law deals with the political activities of States employees. Article 38 of the 2005 Law provides that a politically ineligible employee shall not take part in any political matter. The interpretation of what constitutes taking part in a political matter can be found under Article 30(2) of the 2005 Law.

#### **Article 30(2) of the 2005 Law**

(2) In this Part, a reference to a States’ employee taking public part in a political matter includes, but is not limited to including, a reference to the employee –

- (a) speaking publicly on a political matter;
- (b) writing letters to newspapers, or writing pamphlets, leaflets or books, in relation to political matters;
- (c) standing for election as a Senator, Deputy or Connétable; or
- (d) publicly supporting any other person standing for election as a Senator, Deputy or Connétable,

but does not include –

- (i) taking part in any activities organized by a trade union; or
- (ii) expressing the legitimate interests of members of a trade union or trade unions, when acting as a representative of a trade union.

24. To address this issue, the Group proposes to clarify the Law to provide that the Chief Statistician would have an unfettered power to comment on any aspect of statistics including their funding, use, accuracy, reliability, adequacy, erroneous interpretation and misuse. The UNECE Guidance states that the right of the Chief Statistician to make comments of this nature is important to uphold public trust in the veracity of statistical outputs and to prevent the misuse of data both by governments and in wider society.<sup>3</sup>

## **Funding**

25. Under Article 7(1) of the 2018 Law, the Chief Minister “must ensure that Statistics Jersey is resourced and has the ability to carry out its functions under this Law free from political influence.”
26. The Group considers that, alongside the introduction of a new statutory governance model, a new statutory funding duty is required. This would place the duty on the States Assembly to provide adequate funding and resources to Statistics Jersey to enable the Chief Statistician to perform his or her statutory functions.

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<sup>3</sup> UNECE Guidance, paragraph 115, p.28

27. The Group has considered statutory funding duties which are in place in respect of other public authorities. The Commissioner for Children and Young People (Jersey) Law 2019 (the “2019 Law”) is the most recent example of a corporation sole being established in Jersey. The States is under a legal duty to fund the office of the Children’s Commissioner so that he or she can discharge their statutory functions properly and effectively (see paragraph 9 to the Schedule of the 2019 Law, below).

**Schedule, paragraph 9 Commissioner for Children and Young People (Jersey) Law 2019**

(1) The States must ensure that the Commissioner is provided with such financial and administrative resources, and other support, including staff, services, equipment and accommodation, so as to enable the Commissioner to discharge his or her functions under this Law, or under any other enactment, properly and effectively.

(2) To the extent that any States’ employee (within the meaning of the 2005 Law), while provided under sub-paragraph (1), performs a function under the direction of the Commissioner, the employee is to be treated as a member of the Commissioner’s staff for the purposes of this Law.

28. Thus, where the Commissioner performs a function which is underpinned by the Law, he or she must be funded to do so. The Children’s Commissioner is able to employ staff to support his or her work. She or he has control over who they employ and how they employ them, whether as employees or contractors. At the same time, she or he does not have the administrative burden of running a human resources function as, for these purposes, employees of the Commissioner are employees of the SEB.
29. The Data Protection Authority (Jersey) Law 2018 establishes the Data Protection Authority. Under this funding model, the Authority may charge fees. The Law also enables the Authority to be funded by direct grants from the States.

**Article 39 of the Data Protection Authority (Jersey) Law 2018**

(1) In respect of each financial year, the States may make a grant to the Authority from their annual income towards the Authority’s expenses in performing any of its functions.

(2) The amount of any grant referred to in paragraph (1) is determined by the Minister for Treasury and Resources on the recommendation of the Minister made after consultation with the Authority.

(3) In making that recommendation, the Minister must have regard to the actual financial position and the projected financial position of the Authority.

(4) In determining the amount of grant, the Minister for Treasury and Resources must have regard to the actual financial position and the projected financial position of the Authority.

30. The Group does not think it would be appropriate for Statistics Jersey to charge fees for its services or to receive direct grants. On balance, the Group favours a funding model which is similar to that of the Children’s Commissioner. This will ensure that Statistics Jersey is properly funded to perform the functions it is required to perform under the Law.

## **Accountability**

31. The 2018 Law does not impose a duty on either the Chief Statistician or Statistics Jersey to produce an annual report. This is not consistent with the statutory position of most entities which have been established by the States Assembly and nor is it consistent with principles of good governance. It is for these reasons that the Comptroller and Auditor General recommended that a requirement to produce an annual report should be imposed on Statistics Jersey in her report of August 2020.<sup>4</sup> The Group proposes to address this by imposing this duty under the Law.
32. The Group has also decided that it would be appropriate to require the Chief Statistician to produce a forward-looking 4-year plan for the output of the NSS. The UNECE Guidance notes the importance of statistical programmes in the effective strategic and operational management of the NSS.
33. Jersey’s multi-year statistical programme will be produced following the production of the Government of Jersey’s Common Strategic Policy. It will be a 4-year programme because this lines up with the 4-year term of the Government. The Chief Statistician would be required to prepare the plan as he or she has ultimate responsibility for coordinating the whole NSS which will include all public authorities which produce tier 1 statistics. It is important for the Statistical Advisory Council to provide input to the development of the 4-year plan to ensure that the plan satisfies existing and emerging user needs.

### **UNECE Guidance**

“Statistical programmes, including a multi-year statistical programme and an annual statistical programme, shall be established as key instruments for effective strategic and operational management and coordination of activities in the National Statistical System.

National statistical office shall be responsible for preparing the statistical programmes, in close consultation with users of statistics, respondents and administrative data providers. Other producers of official statistics shall be involved in the process and provide the national statistical office with the necessary inputs.”<sup>5</sup>

“A multi-year statistical programme shall be established for the National Statistical System to define the strategic development of official statistics of [country name], aiming at satisfying existing and emerging user needs.

A multi-year statistical programme shall provide a vision and priorities for the development of the National Statistical System for the next [select: five or other number] years and

<sup>4</sup> Office of the Comptroller and Auditor General, Annual Reporting: August 2020, Recommendation 6, p.23

<sup>5</sup> United Nations Economic Commission for Europe, Guidance on Modernising Statistical Legislation (ECE/CES/STAT/2018/3), 2018, paragraphs 72-74, p.42-43

establish the required deliveries and development actions, weighing them against the necessary resources.”<sup>6</sup>

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<sup>6</sup> Ibid p.43

## Section 3. Official Statistics

### Vision

34. Proposed legislative amendments would:
- a. bring the definition of Jersey's key, official statistics in line with international standards;
  - b. permit all public authorities to produce official statistics;
  - c. protect Jersey's most important statistical outputs and publications;
  - d. provide the Chief Statistician with responsibility for producing a Code of Practice and for assessing compliance with it;
  - e. enable the Chief Minister or Chief Statistician to authorise reviews of tier 1 statistics (see below for a definition), including by independent external experts; and
  - f. provide the Statistical Advisory Council with powers to request that the Chief Statistician or Chief Minister undertake reviews of particular tier 1 statistics.

### Definition of Official Statistics

35. Under Article 1 of the 2018 Law, official statistics are defined, "as those statistics listed in the publication schedule." The publication schedule is defined under the same Article as, "all the publications produced by Statistics Jersey and published by the [Statistics Users] Group in any year as meeting the standards set out in Article 11 and being compliant with the Code [of Practice]."
36. Under Article 5(1) of the 2018 Law the Statistics Users Group (the "SUG") "is independent of government and has the primary function of overseeing the quality, relevance and integrity of statistics compiled by or on behalf of a public authority." This introduces a secondary category of public authority statistics. Public authorities which produce statistics are under no legal obligations to do so in accordance with any particular statistical standards, including a code of practice.
37. The current legal definition of official statistics does not accord with the definition of official statistics under the GLOS and nor is it consistent with the UNECE Guidance. The key paragraphs from the UNECE Guidance in relation to official statistics are produced below.

#### UNECE Guidance

"72. In general, official statistics are statistical outputs produced by NSOs or other designated governmental bodies. However, it is also possible that not all statistics produced by the NSO are official, for instance experimental statistics. It may be possible in some countries that certain official statistics can be produced by non-governmental organizations under specific regulations. Usually, official statistics describe the economy, demography, environment, social and cultural situations in a particular country, and are produced within the scope of the statistical programme which guides the work of the NSS. Surprisingly, many countries do not have clear criteria for official statistics or a clear indication of whether the statistics published are official statistics or not.

73. In principle, the term “official statistics” bears a quality label in so far as official statistics are developed, produced and disseminated in accordance with internationally agreed statistical standards and recommendations, the Fundamental Principles of Official Statistics and the European Statistics Code of Practice

74. It is challenging to define criteria for identifying which statistics are official statistics. As it is again country specific, in some countries there has to be a legal base, other than the statistical programme, for the production of official statistics. Instead of listing all official statistics in the law, the legal framework should rather define the criteria for identifying official statistics and for identifying producers of official statistics as well as the procedure for deciding on the status of statistics and producers.”<sup>7</sup>

38. Under the GLOS definition, official statistics must describe, “on a representative basis the economic, demographic, social and environmental phenomena of [Jersey].”<sup>8</sup> Under the 2018 Law definition, any statistics – regardless of what they might describe – which are produced by Statistics Jersey and which appear in the publication schedule are official statistics. The current definition precludes key statistics in areas such as healthcare and education, which are produced by public authorities other than Statistics Jersey, from being regarded as official statistics.
39. The Law is also silent on the procedure for determining which of Statistics Jersey’s publications are to be included in the publication schedule as compliant with the Code of Practice. The fact that under the Law (although not in practice) it is the SUG, and not the Chief Statistician, who determines the content of the publication schedule does not comply with the UNECE Guidance.<sup>9</sup>
40. The Group, therefore, proposes to address these issues and to bring the legal definition of official statistics in Jersey into line with international standards.

### **Producers of Official Statistics**

41. The Group does not think that any key statistics, regardless of which public authority has produced them, should be precluded from being regarded as official statistics. Therefore the Group proposes to amend the Law so that all public authorities, as defined under Article 1 of the Freedom of Information (Jersey) Law 2011, will be capable of producing official statistics.

#### **Article 1 of the Freedom of Information (Jersey) Law 2011**

“public authority” means –

- (a) the States Assembly including the States Greffe;
- (b) a Minister;
- (c) a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly;

<sup>7</sup> Ibid, paragraphs 72-74, p.19.

<sup>8</sup> Article 1.2 of the Generic Law on Official Statistics

<sup>9</sup> UNECE Guidance, paragraph 53, p.16.

- (d) an administration of the States;
- (e) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;
- (f) the States of Jersey Police Force;
- (g) a parish;
- (h) to the extent not included in paragraph (a) to (g) above, any body (whether incorporated or unincorporated) –
  - (i) which is in receipt of funding at least half of which is from the States in one or more years,
  - (ii) which carries out statutory functions,
  - (iii) which is appointed, or whose officers are appointed, by a Minister,
  - (iv) which appears to the States to exercise functions of a public nature, or
  - (v) which provides any service under a contract made with any public authority described in paragraphs (a) to (g), the provision of such service being a function of that authority;

42. Statistics Jersey currently produces all of Jersey’s official statistics and yet some key statistical outputs are produced by public authorities, including Government departments. These include, for example, educational attainment statistics. In future, statistics should only be classified based on the importance of the phenomena which they describe and whether they have been produced in compliance with the Code of Practice.

### **Protection of Official Statistics**

43. The Group recognises that certain statistics will be regarded as important only for a short period of time. For example, statistics on Covid-19 vaccination rates have been important in 2021 to inform key public policy decisions but these are unlikely to retain such significance in the medium to long-term. Other statistics, however, will retain significance for the long-term and their production must be safeguarded into the future. For example, the Retail Prices Index (RPI) which measures inflation in Jersey. The Group proposes to mark statistics, such as RPI, out as tier 1 statistics so that it is clear and obvious which statistical outputs are Jersey’s most important and have been produced to the highest standard.
44. The Group considered the legal and practical steps taken by other jurisdictions to protect key official statistics. In particular, it examined approaches taken by New Zealand, the United Kingdom and the European Union. The Group favoured the approach taken by New Zealand both in its designation of key statistics as tier 1 statistics and in its further definition of the nature of tier 1 statistics. The Group proposes to apply this terminology and the test, which is set out below, in Jersey.

#### Statistics New Zealand, Tier 1 Statistics 2012

“Tier 1 statistics are the most important statistics, essential to understand how well New Zealand is performing. Tier 1 statistics:

- are essential to critical decision-making;
- are of high public interest;
- meet expectations of impartiality and statistical quality;

- require long-term data continuity;
- allow international comparability; and
- meet international statistical obligations”<sup>10</sup>

45. Tier 1 statistics will be protected under the Law with the intention that the production of these statistics will be prioritised. Legislative amendments would ensure that tier 1 statistics cannot be removed from the list of tier 1 statistics easily. This is to safeguard the production of Jersey’s most important statistics in the long-term. The 2018 Law does not provide explicit protections for official statistics in this way.
46. The UNECE Guidance makes it clear that, “the Chief Statistician should have full authority to decide on the content of the draft multi-year and annual statistical programmes.”<sup>11</sup> This means that, according to the UNECE Guidance, the Chief Statistician should ultimately decide whether statistics should appear on the annual statistical programme of tier 1 statistics.
47. In practice, providing the Chief Statistician with complete authority in this regard has its challenges. The need to uphold the professional independence of the Chief Statistician must be balanced with the principles of democratic accountability, which dictate that it would not be appropriate for an unelected official to hold the responsibility for determining the government’s entire statistical output and that this power is untrammelled, even by elected ministers. To provide the Chief Statistician with unrestrained powers to determine what are and are not official statistics may be as problematic as it would be to provide the power, unrestrained, to ministers.
48. There is, further, a practical impediment to providing the Chief Statistician with complete authority to determine the content of the list of official statistics in a decentralised statistical system, such as Jersey is currently. While the Chief Statistician may have control over the resources and the outputs of Statistics Jersey, he or she does not exercise control over the other producers of official statistics in, for example, government departments. The Chief Statistician may have the power to determine that a particular publication produced by a government department will be classified as official statistics but he or she would not have a corresponding power to ensure that the statistics are produced and that sufficient resources are provided to do so. Unless the government department agrees with the Chief Statistician that the publication should be classified as official statistics, it is difficult to envisage how the Chief Statistician could enforce these powers effectively. In political and governance terms that authority (in a democratic jurisdiction) resides with the minister for the department.
49. While there may be practical and principled impediments to providing the Chief Statistician with complete authority to determine the list of official statistics, there are no such issues in providing him or her with responsibility for publishing the list. There is a distinction between the role of determining the contents of the list of official statistics and the role of custodian of that list. There appears to be no more suitable

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<sup>10</sup> Statistics New Zealand, Tier 1 Statistics 2012 (see [tier1-statistics-2012-17sep13.xlsx \(stats.govt.nz\)](#))

<sup>11</sup> UNECE Guidance, paragraph 53, p.16.

candidate for the role of publishing the list and ensuring it is available to statistics users than the Chief Statistician.

#### **UNECE Guidance**

“The law could include two types of statistical programmes: a multi-year programme for strategic development and an annual programme with more specific activities for the year, depending on the national context. The Chief Statistician should have the full authority to decide on the content of the draft multi-year and annual statistical programmes and the implementation reports. This is because statistical programmes deal with many issues that have to do with the professional independence of the office and could include for instance references to selected data sources and timeframe of statistical production. However, the process should be done in consultation with other producers of official statistics, users of statistics, respondents and administrative data providers, and the law could require presenting the programmes to the Statistical Advisory Council for opinion. The approval process and authority to approve the statistical programme depends on each country. Some countries may have separate legal documents providing the legal basis of producing statistics. It would be important to note, however, that when approving statistical programmes, the authority cannot interfere with issues of professional independence.”<sup>12</sup>

50. It is for the aforementioned reasons that the Group’s proposals would enable anyone to nominate statistics for inclusion on the list of tier 1 statistics, including the Chief Statistician, Government ministers, States members and the Statistical Advisory Council. Following nomination, as custodian of the list of tier 1 statistics and the Code of Practice, it would be the role of the Chief Statistician to determine whether the statistical output should be elevated to tier 1 status, with the approval of the authority which produces the statistical output and in consultation with the SAC.

#### **Code of Practice**

51. The Group is clear that statistics in Jersey must be produced in conformity with professional standards which are underpinned by the Law. This is supported by the UNECE Guidance – see below.

#### **UNECE Guidance**

“Statistical legislation should define the key principles of official statistics based on the Fundamental Principles of Official Statistics, the European Statistics Code of Practice or national code of practice and the OECD Recommendations on Good Statistical Practice, as well as on key statistical standards agreed internationally. The countries can further elaborate these principles by developing a National Code of Good Statistical Practice among other instruments. Ethics cut across the statistical legislation, ranging from equal access to issues such as professional independence, efficient use of existing data, data protection, cost-effectiveness of statistical production, use of scientific methods, reducing burden on respondents as well as accuracy and relevance of statistics.”<sup>13</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid, paragraph 43, p.14

52. Currently, Article 11 of the 2018 Law, sets out the standards for official statistics. The Law provides the SUG with the function of publishing the Code of Practice for official statistics. Under Article 6(2) of the 2018 Law it is the SUG's role to monitor compliance with the Code of Practice for official statistics. At present, the SUG produces two codes of practice; one of which covers the production of official statistics and the other which covers the production of statistics by public authorities.<sup>14</sup> The Jersey Code of Practice for Statistics implies that public authorities should comply with all of the provisions of this very detailed code – but this appears unenforceable under the 2018 Law because there is no statutory duty on public authorities (other than Statistics Jersey) to comply with this Code of Practice.
53. Under Article 6(2) of the 2018 Law it is the SUG's role to monitor compliance with the Code of Practice for official statistics but under Article 2(3)(c), Statistics Jersey has a function to provide advice to other public authorities in relation to the Code.<sup>15</sup> This does not provide a power to Statistics Jersey to enforce the use of the Code by public authorities.
54. The Group proposes to make these aspects of the Law clearer. The Chief Statistician would be responsible for producing the Code of Practice and for reviewing potential tier 1 statistics against the Code because he or she has the relevant statistical knowledge and experience to do so.

## **Reviews of Tier 1 Statistics**

55. The Vision Paper also states that the Law would provide mechanisms to enable both the Chief Minister and Chief Statistician to authorise, and the Statistical Advisory Council to request, reviews of tier 1 statistics. The Group considers that this would be an effective mechanism to allow for external scrutiny of tier 1 statistics in a proportionate way.
56. The Group considered whether the Law should establish a body to regulate statistics. It found that very few countries have a statistical regulator - only the UK and Malta have been identified. In addition, international guidance does not state that a statistical regulator is appropriate or necessary. Given the relatively small scale of Jersey's National Statistical System by international standards, the Group considered that the costs of introducing a regulator far outweighed any benefits which might accrue for statistics users.

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<sup>14</sup> In practice the Jersey Code of Practice for Statistics is largely copied from the UK Statistics Authority Code: <https://code.statisticsauthority.gov.uk/wp-content/uploads/2018/02/Code-of-Practice-for-Statistics.pdf>

<sup>15</sup> Article 2(3)(c) of the 2018 Law states that it is a function of Statistics Jersey "to advise public authorities on the gathering, compiling, analysis and utilisation of statistics, the production of statistical reports and whether or not they comply with the Code and with statistical standard."

## Section 4. Coordination of the National Statistical System

### Vision

57. Proposed legislative amendments would:
- a. formalise the establishment of Jersey's NSS, comprising the producers of tier 1 statistics across public authorities;
  - b. provide the Chief Statistician with the powers to establish a committee of producers of official statistics; and
  - c. provide the Chief Statistician with professional leadership of statisticians and analysts across public authorities, including responsibility for their career and professional development.

### Definition of the NSS

58. Jersey currently has a decentralised NSS, as key statistics (though not currently official statistics) are produced by several public authorities. The Group does not think that legislation should impose a change on current practice in this area. Instead, the legislation should, as far as possible, promote better coordination across the existing decentralised NSS and enable the sharing of knowledge and skills to improve the quality of all statistics which are produced by public authorities.
59. The UNECE Guidance states that the producers of official statistics constitute the National Statistical System (NSS). The Group therefore proposes that Jersey's NSS will be defined as consisting of those public authorities holding responsibility for producing statistical outputs and publications which feature on the list of tier 1 statistics.

#### UNECE Guidance

"80. The NSS is a legal and institutional framework within which different stakeholders execute their rights and obligations. The purpose of the statistical law is to provide clear criteria as to who could belong to the NSS. Having clear borders of the NSS is a precondition for good governance of statistical production and for the functioning of the common elements of statistical legislation proposed in this guidance. Lithuania describes its procedures and criteria for the identification of other producers of official statistics in a case example (see case study 5, annex II). The NSSs are country specific and their governance differs a great deal, as discussed in chapter 7. Nevertheless, typically an NSS consists of an NSO and other institutions that produce official statistics. The different advisory, consultative or governing authorities with a particular role to facilitate statistical production are usually not part of the NSS.

81. The statistical law should include provisions on who in principle can be part of the NSS, what criteria are required for becoming a producer of official statistics and who decides on the inclusion of institutions in the NSS. Finland and the United Kingdom provided case examples of their practices with the criteria and procedures for identifying official statistics and their producers (see case studies 4 and 5, annex II). A listing of members of the NSS should be avoided in the law, as this only increases inflexibility and

the need to revise the legislation frequently. Such a list should be maintained elsewhere, for instance as part of the statistical programme. Clarity is needed to ensure that the producers of official statistics do consider themselves part of the NSS and fulfil the rights and responsibilities stipulated in the legal framework. Forming the NSS of professionally independent entities only that have the production of statistics as their main task, provides the basis for a consistent and well-functioning NSS in which the exchange of individual data among producers of official statistics could be possible.”<sup>16</sup>

## **Role of the Chief Statistician in the NSS**

60. The Group intends to provide the Chief Statistician with powers to establish a committee of producers of statistics to coordinate the production of statistics across the NSS. This would also be a forum which could be used to share information on professional practice and to increase standards of statistical production across all public authorities. The UNECE Guidance advises that a committee of this nature should be established with a particular focus on preparing the statistical work programme.

### **UNECE Guidance**

“51. Legislation should provide for a clear coordination mandate for the NSO, as far as appropriate within the policy settings of the public sector of the relevant jurisdiction, by defining the tasks and authority of the NSO and the Chief Statistician in the coordination of statistical activities of the NSS. This role of the NSO could be further facilitated by establishing a Coordination Committee of statistical production in the law. This committee would be composed of Heads of producers of official statistics to provide a platform for joint work.”<sup>17</sup>

“67. Whether or not the NSO has an autonomous standing, it would be useful to have a Coordination Committee of Producers included in the statistical law to ensure the coordination of work in the NSS. The body could prepare the annual statistical work programme, the multi-annual programme, report on the implementation of the programmes, monitor and advance statistical activities, carry out quality assurance and promote the use of common standards across the NSS, channel training and discuss development needs.”<sup>18</sup>

61. The Group proposes to enable the Chief Statistician to invite those working in public authorities which do not have responsibility for publishing tier 1 statistics, and which are not, therefore, part of the NSS. This is a way of involving statistics producers from outside the NSS in discussions and programmes aimed at improving professional practice across all public authorities. The New Zealand Statistics Act 1975 enables the Chief Statistician to set up committees to further provisions of the law or for general educational purposes. The intention is to enable Jersey’s Chief Statistician to perform similar functions but in a more structured way under the Law.

<sup>16</sup> UNECE Guidance, paragraphs 80-81, pp.20-21.

<sup>17</sup> Ibid, paragraph 52, p.16.

<sup>18</sup> Ibid, paragraph 67, p. 18.

## **Article 10 New Zealand Statistics Act 1975**

### 10 Meetings of statisticians and users of statistics

(1) The Statistician shall, at least every 5 years, convene a meeting of users of official statistics to review user needs for such statistics.

(2) The Statistician may also hold other meetings, and set up committees, of statisticians, suppliers or users of statistics, and other interested parties, either to further the provisions of this Act or for general educational purposes, at his own initiative or on sufficient request.

62. The producers committee will be a key tool to enable the Chief Statistician to manage the NSS effectively. The Chief Statistician will not hold the same direct authority over statisticians and analysts working in other public authorities, outside Statistics Jersey. This is necessary in a decentralised statistical system because those producers of statistics in other public authorities must work in accordance with the remit which is set by senior managers and ministers for the authority in which they work. For example, the Chief Statistician cannot and, arguably, should not be able to control the allocation of a particular government department's spending on the production of statistics relative to its spending on front line services.
63. Where, in a decentralised system, it is important that the Chief Statistician can have real authority is over the professional practice of statisticians working across all public authorities. The Law would be amended to provide the Chief Statistician with the role of professional head of statisticians and analysts and, in support of this, the right of statisticians and analysts to discuss professional statistical standards and methodologies with the Chief Statistician in relation to their work will be protected.
64. The right of the Chief Statistician to speak freely in public regarding the erroneous interpretation and misuse of statistics is a power which would bolster this professional leadership role. For example, if the Chief Statistician has concerns about statistics which have been produced by another public authority, he or she will be able to raise this with the most senior officers in that authority, ministers and/or the public as he or she sees fit.

## Section 5. Statistical Advisory Council

### Vision

65. Proposed legislative amendments would:
- a. establish a Statistical Advisory Council to gather and present the views of the public and statistics users;
  - b. provide a neutral forum for the public and statistics users to interact with the Chief Statistician, Statistics Jersey and other producers of statistics in public authorities on the quality, relevance and integrity of official statistics;
  - c. empower the Statistical Advisory Council to raise and to publish concerns in relation to the production, quality, relevance and integrity of official statistics;
  - d. give the Statistical Advisory Council the power to prepare an annual report which the Chief Minister must provide to the States Assembly; and
  - e. include a statutory duty on the Chief Minister to provide adequate funding for the Statistical Advisory Council.

### Background

66. The UNECE Guidance is clear that statistical legislation should require having a Statistical Advisory Council – see below.

#### UNECE Guidance

“44. Most statistical offices have well established mechanisms for user representation, for instance a Statistical Advisory Council to advise the office in the programming of statistical work. In addition, other consultations may be carried out related to the planning of statistical work or to gather feedback on user satisfaction. In principle, the Statistical Advisory Council has a dual advisory role both towards the NSS and the government and other users. A strong Statistical Advisory Council ensures that the views of users are taken into account when setting priorities in the statistical programme. The supervision provided by the Statistical Advisory Council is important to reduce dependence from political bodies, e.g. the parliament or ministers to which the NSO reports.

45. Statistical legislation should require having a Statistical Advisory Council composed of users of statistics with advisory competences, as appropriate in the national jurisdiction. Such a body would act as a custodian of the principles of official statistics, ensure the relevance of official statistics and promote transparency and accountability of the NSS. The law may also recognize the possibility to set up other advisory bodies with members from within and outside of the NSS in support of strategic and methodological activities in official statistics.

46. The tasks of the Statistical Advisory Council should be roughly defined in the law, so that the members of the Statistical Advisory Council are aware of their important task to represent users of statistics broadly. For instance, the Statistical Advisory Council should provide its opinion on the programmes and their implementation that represent users' views. This opinion should be taken into account when the final decision is taken by the responsible body to approve the statistical programme.”<sup>19</sup>

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<sup>19</sup> Ibid, paragraphs 44-46, p.14.

67. The 2018 Law established the Statistics Users Group (SUG) in legislation. Under Article 5(1) of the Law the SUG “is independent of government and has the primary function of overseeing the quality, relevance and integrity of statistics compiled by or on behalf of a public authority.”
68. The Group proposes to retain a body which is independent of the Government of Jersey and which would represent the views of the public and statistics users. The SUG would be superseded by the Jersey Statistical Advisory Council. The title of the new body both maintains consistent terminology with the United Nations (as well as other jurisdictions such as Australia, Canada and Tonga) and reflects the broad advisory remit which the Council would have. This remit is set out under the Group’s Vision Paper and reflects the UNECE Guidance’s requirements that a Statistical Advisory Council should be able to represent users of statistics broadly.
69. The Law would ensure that the Statistical Advisory Council must be consulted when key decisions are made. These include fundamental decisions such as which statistical outputs should be classified as tier 1 statistics and on the appointment of the Chief Statistician. As well as providing certain key specific advisory functions under the Law, the Group proposes to enable the Statistical Advisory Council to be able to represent users’ views freely and openly by issuing public comment on any statistics which are produced by public authorities and which describe on a representative basis the economic, demographic, social and environmental phenomena of Jersey. It will also be able to seek formal reviews of tier 1 statistics.
70. In support of this wide-ranging brief and to uphold the Statistical Advisory Council’s independence, the Group proposes to amend the Law so that it would produce an annual report which the Chief Minister must provide to the States Assembly.

## Section 6. Data Access and Sharing

### Vision

71. Proposed legislative amendments would:
  - a. enable Statistics Jersey to request data for statistical and research purposes from public authorities;
  - b. impose a duty on the producers of official statistics to maintain the security and confidentiality of data; and
  - c. allow approved researchers to access anonymised microdata for statistical and research purposes for the public good.

### Background

72. Article 14 of the 2018 Law already allows the Chief Statistician to require information from undertakings, including public authorities, for statistical purposes. This would potentially be broadened out to ensure that information may be requested for research purposes as well so that there are no limits on this power. The Law provides no sanction for a failure to share information with the Chief Statistician. This will be reviewed to ensure the current provisions are sufficiently effective.
73. Article 16 of the 2018 Law as well as the Data Protection (Jersey) Law 2018 places obligations on the Chief Statistician to treat information confidentially. As the Group proposes to enable other public authorities to produce official statistics, it is important that these authorities will be subject to the same requirements. The Law will be reviewed to ensure that that is the case.
74. The 2018 Law does not currently allow information to be disclosed to approved individuals for statistical and research purposes. The Group intends to provide the Chief Statistician with the ability to set up a scheme which would allow researchers to access data held by Statistics Jersey, provided that data is anonymised and the research is being conducted for the public good.
75. This would be a similar process to established arrangements run by national statistics offices in other jurisdictions. For example, similar provisions exist under Part 5, Chapter 5 of the Digital Economy Act 2017. The Law would not require the Chief Statistician to allow researchers to access data in this way – it is recognised that it could prove to be a distraction from the work of Statistics Jersey which may divert resources away from other work. This is why this would be a discretionary power. It is important, however, that the Law does not preclude researchers from being able to access data in cases when it would be reasonable for them to have such access.

## Appendix 1 – Summary of Jurisdictions Considered

Country	Name of NSO	Legal Basis	Ministerial responsibility etc.	No. of other producers of statistics identified	Release Calendar
Australia	Australian Bureau of Statistics	Australian Bureau of Statistics Act 1975 Census and Statistics Act 1905	Australian Statistician reports to the Treasurer on administrative issues only	At least 7	ABS publishes an advance release calendar every week
Bahamas	Department of Statistics	Statistics Act 1973	DoS reports to Ministry of Finance	7	Advance release calendar – not clear how far in advance it goes
Barbados	Barbados Statistics Service	Statistics Act 1958	BSS reports to Ministry of Economic Affairs and Development	2 Identified	No advance release calendar
Canada	Statistics Canada	Statistics Act 1918 Statistics Act 1971	Stats Can reports to Minister of Industry	Marginal compared to Stats Can. 2 identified	Stats Can publishes a release calendar one year in advance
Estonia	Statistics Estonia	Official Statistics Act 2010	Statistics Estonia reports to the Ministry of Finance	Bank of Estonia and state agencies authorised by law may conduct official statistical surveys.	A Publication timetable with precise dates of releases is posted on the website.
France	INSEE	There is no Statistics Act  Decree no. 47-834 of 1947 established INSEE Various decrees to establish other functions	INSEE reports to the Economy Ministry	Over 28 other bodies identified who produce official statistics	Release calendar online (no info on how far in advance it goes)
Iceland	Statistics Iceland	Statistics Iceland and official statistics Act 2008	Statistics Iceland is professionally independent 'under the aegis of the Prime Minister'	3 identified	By 1 October Statistics Iceland publishes a release calendar for 15 months

Country	Name of NSO	Legal Basis	Ministerial responsibility etc.	No. of other producers of statistics identified	Release Calendar
Malta	National Statistics Office	Malta Statistics Authority Act 2000	The NSO reports to the Minister of Finance through the Malta Statistics Authority Board	2 identified	3 months ahead release calendar
Netherlands	Statistics Netherlands	Act of 2003 (amended 2004) governing Statistics Netherlands	Autonomous agency, Minister of Economic Affairs responsible for legislation and budget etc	Highly centralised system	Annually and weekly
New Zealand	Stats NZ	Statistics Act 1975	Reports to Minister of Statistics	Statistics produced by departments for health, education, welfare, crime, and justice	Six-month release calendar update on three-month rolling cycle
Norway	Statistics Norway	Statistics Act of 1989	Reports to Minister of Finance	Statistics Norway produces 85-90 percent of official statistics	Release calendar that reaches over 12 months ahead
Portugal	Statistics Portugal	General Foundation of the National Statistical System 2008	Reports to Minister of the Presidency	Appears to be some ministries – but not listed, plus Central Bank	Annual dissemination plan. Weekly confirmation of day of publication one week ahead
Singapore	Department of Statistics	Statistics Act 2010	Department of Statistics reports to the Ministry of Trade and Industry.	There appear to be many statistics produced by Gazetted Research and Statistics Units (RSUs) and Non-gazetted RSUs	An advance quarter-ahead release calendar for major statistical series (mostly monthly and quarterly) is published on the website
Tonga	Statistics Department	Statistics Act 2015	Reports to the Prime Minister	No other bodies identified	No release calendar
UK	Office for National Statistics	There is no Statistics Act	Reports to UK Statistics Authority and then to Public	Over 60 producers of official	ONS publishes a year-ahead release calendar

Country	Name of NSO	Legal Basis	Ministerial responsibility etc.	No. of other producers of statistics identified	Release Calendar
		UK Statistics Authority set up under the Statistics and Registration Services Act 2007	Administration and Constitutional Affairs (Select) Committee (PACAC) To Cabinet Office Minister for Parliamentary or law matters	statistics, which together constitute the Government Statistical Service (GSS)	on behalf of the Government Statistics Service.
USA	Office of Management and Budget	There is no Statistics Act  Office of Management and Budget statistical authority is in the Paperwork Reduction Act. Each Agency will have its own legal basis.	Chief Statistician reports to Administrator of the Office of Information and Regulatory Affairs	10 principal statistical agencies, plus others	Release calendar published in September for following year for 36 principal Federal economic indicators. There is no similar calendar for social statistics