

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,822 of 25th November, 2010**

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**B. 31/10**

**BILL**

**FOR**

**AN ACT** to amend the Public Finance (Control and Audit) Act to provide for the recurrent revenues of Government Agencies, Authorities and certain other entities to be paid into and thus constitute the revenue of the Consolidated Fund and that expenditure by such entities funded from these revenues be in future subject to appropriation and scrutiny by Parliament and related purposes:

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1.(1) This Act may be cited as the Public Finance (Control and Audit) (Amendment) Act 2011.

(2) This Act comes into operation on the day of publication.

**Insertion of new Part II A.**

2. The Public Finance (Control and Audit) Act (the Principal Act) is amended by inserting the following new Part after Part II—

**“PART II A – REVENUE OF PUBLIC UNDERTAKINGS**

**Revenue of certain public undertakings to be paid into  
Consolidated Fund.**

17A. Notwithstanding any provision of any other enactment to the contrary but subject to section 17C below the revenues of the

public undertakings listed in Schedule 3 shall constitute revenue of and be paid into the Consolidated Fund.

17B. The Minister may by Legal Notice published in the Gazette add public undertakings to and remove public undertakings from Schedule 3.

17C. Subject to section 17D any revenue of a public undertaking listed in Schedule 3 which has been paid to it from funds voted out of the Consolidated Fund shall not be deemed to constitute the revenue of the Consolidated Fund for any purpose.

17D. All expenditure incurred by a public undertaking listed in Schedule 3, including expenditure funded out of monies paid to it from funds voted from the Consolidated Fund and to which section 17C thus applies, shall require to be authorised by an appropriation law and the provisions of sections 68, 69 and 70 of the Constitution shall apply thereto *mutatis mutandis* as if the revenue and expenditure of such undertaking were the revenue and expenditure of Gibraltar.”.

**Sections 17A to 17D retrospective.**

3. Clause 2 inserting new sections 17A to 17D in the Principal Act shall be deemed to have come into operation on the 1<sup>st</sup> day of April 2009.

**Amendments to replace references to Governor by Minister.**

4. The Principal Act is amended by deleting the word “Governor” and inserting in its place the word “Minister responsible for finance” where the word “Governor” appears in the following places—

- (1) Section 18(3) and 18(4);
- (2) Section 19(1);
- (3) Section 20(d);
- (4) Section 23(1) and 23 (2);
- (5) Section 52(1);

- (6) Section 62;
- (7) Section 63;
- (8) Section 64;
- (9) Section 70(1) and 70 (2);

5. Section 74(1) of the Principal Act is amended by deleting the words “or any regulations made by the Governor under section 19”.

**Insertion of new Schedule 3.**

6. The Principal Act is amended by adding the following Schedule as Schedule 3 after Schedule 2–

**“SCHEDULE 3**

**Section 17A**

- (1) The Gibraltar Health Authority;
- (2) The Gibraltar Electricity Authority;
- (3) The Port Authority;
- (4) The Care Agency;
- (5) The Gibraltar Sports and Leisure Authority;
- (6) The Gibraltar Regulatory Authority;
- (7) The Gibraltar Development Corporation”.

**Transitional provisions.**

7. Any expenditure funded out of revenue to which clause 2 applies incurred prior to the commencement of this Act and the coming into operation of new sections 17A to 17D of the Principal Act, or to be incurred prior to the 1<sup>st</sup> of April 2011, for a use and in a manner that would have been lawful but for this Act shall be deemed to have been appropriated by Parliament to those uses and this Act shall constitute an appropriation law of

all such expenditure which shall thus be deemed to have been authorised and prescribed by this Act.

### **EXPLANATORY MEMORANDUM**

In his 2009 and 2010 Budget Speeches the Chief Minister said that as a further step in enhancing transparency and control of public finances, the Government would bring an amendment to the Public Finance (Control & Audit) Act so that revenue and expenditure of Government agencies and authorities are treated as Government revenue and expenditure for all legal purposes and brought formally under the Appropriation mechanism of Parliament.

This Bill does the above by providing in clause 2 for amendments to the aforesaid Act that constitute the revenue of such agencies and authorities to be the revenue of and thus be payable into the Consolidated Fund. This will require all payments to the agencies and authorities (including what is currently their direct revenue and which is thus outside parliamentary control) to be approved by Parliament on payment to them from the Consolidated Fund and all their subsequent expenditure funded out of that revenue will similarly require to be authorised by Parliament by an appropriation law as if it were revenue and expenditure of a Gibraltar Government department.

Some of the current revenue of these entities already comes from the Consolidated Fund and is thus already voted by Parliament. In order to avoid this revenue being said to constitute the revenue of and be paid into the Consolidated Fund (where it already is), it is excluded (by proposed new section 17C) from proposed new section 17A. However, when this revenue is paid from the Consolidated Fund to the entity in question and is subsequently spent by that entity, that expenditure by the entity will require appropriation by Parliament under proposed new section 17D.

In this way, Parliament achieves oversight and control of all revenue of these entities (when it has to vote all their income from the Consolidated Fund in the form of payments to the entities) and also gains detailed appropriation mechanism control of all expenditure by these entities.

The above provisions of the Bill are retrospective to include last year and thus requires the Accounts of Gibraltar for the year ended 30<sup>th</sup> March 2010

and this year's forecast outturns in next year's Budget to be drawn up on this basis for information and comparison purposes.

There is a transitional provision whereby this Act constitutes an Appropriation law in respect of expenditure up to the end of this financial year of revenue to which this Act applies provided that the expenditure was lawfully and properly incurred in accordance with the law and procedures applicable to it prior to the coming into effect of this Act. Accordingly, the enhanced Parliamentary oversight of public expenditure (based on the wider concept hitherto described by the Chief Minister in his Budget Speeches as "Overall" Government revenue and expenditure) comes into practical effect as from 1 April 2011.

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