

## PUBLIC FINANCE (CONTROL AND AUDIT) ACT

## Principal Act

Act. No. 1977-09	<i>Commencement</i>	15.3.1977
	<i>Assent</i>	15.3.1977
Amending enactment	Relevant current provisions	Commencement date
LN. 1978/017	Sch. 1	
Act. 1978-21	ss. 10(1), 16	
LN. 1978/117	Sch. 1	
1980/103	Sch. 1	
Act. 1982-05	ss. 2, 6, 9-11, 12(1), 16(2), 18(2), 32(1), 42(1), 47(3), 55(2), 56(1), 57-58, 60-64, 65(1), 75(2), Sch. 1	
LN. 1987/176	s. 12(e)(vii)	1.1.1988
1988/054	s. 12(e)(viii)	21.4.1988
Act. 1988-23	s. 12(e)(viii)	1.12.1988
LN. 1988/131	s. 12(e)	1.12.1988
Act. 1989-06	ss. 6(2), 23(1)(a)-(b), (2)	2.3.1989
LN. 1989/047	Sch. 1	1.4.1989
Act. 1991-04	ss. 18, 20, 59	1.4.1990
LN. 1991/118	s. 12(e)(x)	1.4.1991
Act. 1999-38	s. 6(2)(b)-(c)	1.9.1991
LN. 1992/030	s. 12(e)(x)	1.1.1992
1992/062	s. 12(e)(xi)	1.4.1992
1993/163	s. 12(e)(xi)	1.4.1993
1993/169	s. 12(e)(xii)	1.4.1993
1993/171	s. 12(e)(xiii)	1.1.1994
1995/157	s. 75	1.1.1996
1997/045	s. 12(e), Sch.	24.4.1997
2005/164*	s. 12(e), Sch. 1	8.12.2005
Act. 2007-17	ss. 3, 4(1), 5(1)-(2), 7(1), 8(2)-(3), 9(2), 10(1)-(2), 12, 13(1)-(2), 16(2), 17(1)-(2), 21(1)-(2), 22(1), 28(1)- (2), 29, 30(1), 32(1), 33(2), 35, 37(1), 38, 41, 42(1), (3)-(4), 44(2)- (3), 45(1), 47(3)(d), 49, 50(1), 58, 65(1), 66-67, 68(1)-(2), 69, 71, 74(1), 75(3),	14.6.2007

\* *Corrigendum published see LN. 2007/118*

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Act. 2008-17	ss. 2, 7(1), 28(1), (3), 33(2), 41, 44(2)	13.11.2008
2011-02 <sup>1</sup>	ss. 17A-17D	1.4.2009
2009-51	ss. 76-82	1.12.2009
2011-02	ss. 18(3)-(4), 19(1), 20(d), 23(1)- (2), 52(1), 62-64, 70(1)-(2), 74(1), Sch. 3	10.2.2011
LN. 2011/062	Sch. 3	12.5.2011

**Transposing:**

Directive 2006/111/EC

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<sup>1</sup> 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.

**ARRANGEMENT OF SECTIONS.**

**PART I.—PRELIMINARY AND GENERAL.**

Section

1. Short title.
2. Interpretation.
3. Minister responsible for finance to have the management Consolidated Fund and Improvement and Development Fund.
4. Authorization of expenditure.

**PART II.—THE CONSOLIDATED FUND.**

5. Custody and investment of moneys accounted for in the Consolidated Fund.
6. Statutory payments.
7. Authorization of expenditure in advance of appropriation under section 70 of the Constitution.
8. Borrowing powers.
9. Guarantees.
10. Guarantees for supplier finance.
11. Payments under guarantees.
12. Advances.
13. Imprests.
14. Refunds, etc.
15. Erroneous receipts.
16. Limitation as to trusts.
17. Receivers of revenue.

**PART IIA – REVENUE OF PUBLIC UNDERTAKINGS**

- 17A. Revenue of certain public undertakings to be paid into Consolidated Fund.
- 17B. The Minister may by Legal Notice published in the Gazette add .....
- 17C. Subject to section 17D any revenue of a public undertaking .....
- 17D. If expenditure incurred by a public undertaking listed in .....

**PART III.—SPECIAL FUNDS.**

18. Special Funds.
19. Regulations for Special Funds.
20. Revenue of Special Funds.
21. Investment of moneys in Special Funds.
22. Accounts and balances of Special Funds.
23. Dissolution of Special Funds.

## PART IV.—THE IMPROVEMENT AND DEVELOPMENT FUND.

24. Interpretation.
25. The Fund not part of the Consolidated Fund.
26. Revenue of the Fund.
27. Use of the Fund.
28. Annual estimates of the Fund. .
29. Supplementary estimates.
30. authorization of expenditure in advance of appropriation.
31. Conditions attached to grants or loans.
32. Development warrant.
33. Re-allocation.
34. Accounts and audit.
35. Investment of moneys accounted for in the improvement and Development Fund.

## PART V.—DEPOSITS.

36. Deposits.
37. Investment of deposits.
38. Deposits may be used to finance advances.
39. Unclaimed deposits.
40. Accountant General to administer deposits.

## PART VI.—ESTIMATES AND SUPPLY.

41. Annual Estimates.
42. Controlling officers.
43. Disbursement of and accounting for expenditure on Consolidated Fund Services.
44. Contingencies Fund.
45. Re-allocation.

## PART VII.—ACCOUNTING OFFICERS AND ACCOUNTS.

46. Accountant General.
47. Powers and duties of Accountant General.
48. Duties of accounting officers.
49. Accounting officers not permitted to open bank accounts.
50. Overdrafts on public or official bank accounts.
51. All public moneys to be accounted for in the public accounts of Gibraltar.
52. Annual Accounts.
53. Annual accounts of Special Funds.
54. Valuation of assets, etc.

This version is out of date

## PART VIII.—THE PRINCIPAL AUDITOR.

- 55. Office of Principal Auditor.
- 56. Powers of Principal Auditor.
- 57. Nature of audit.
- 58. Notification of irregularities.
- 59. Delegation.

## PART IX.—EXAMINATION AND AUDIT OF THE ACCOUNTS OF CORPORATE AND SIMILAR BODIES.

- 60. Application of Part IX.
- 61. Power of Principal Auditor to audit.
- 62. Reports on accounts of statutory and other bodies.
- 63. Observations of bodies corporate, etc. on reports of the Principal Auditor to be obtained.
- 64. Reports on accounts of statutory and other bodies to be laid before the Parliament.
- 65. Audit fees.

## PART X.—ABANDONMENT OF CLAIMS, WRITE-OFFS AND SURCHARGE. ,

- 66. Abandonment of claims and write-off.
- 67. Disposal of surplus stores to certain organizations.
- 68. Surcharge.
- 69. Notification of surcharge.
- 70. Appeal against surcharge.
- 71. Withdrawal of surcharge.
- 72. Recovery of surcharge.
- 73. Surcharge to be a debt to the Government.

## PART XI.—REGULATIONS.

- 74. Regulations by the Minister responsible for finance.
- 75. Public procurement.

## PART XII—FINANCIAL RELATIONS BETWEEN THE GOVERNMENT AND PUBLIC UNDERTAKINGS

- 76. Interpretation of Part.
- 77. Transparency of financial relations.
- 78. Application of section 77.
- 79. Maintenance of separate accounts.
- 80. Exemptions.

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81. Supply of information to the European Commission concerning the information referred to in section 77.
82. Public undertakings in the manufacturing sector.

**SCHEDULE 1.**

Special Funds.

**SCHEDULE 2.**

Purposes for which the improvement and Development Fund may be applied.

**SCHEDULE 3.**

This version is out of date

AN ACT TO PROVIDE FOR THE MANAGEMENT AND CONTROL OF THE PUBLIC FINANCES OF GIBRALTAR, FOR FINANCIAL AND ACCOUNTING PROCEDURES, FOR THE AUDIT OF PUBLIC ACCOUNT AND THE ACCOUNTS OF CERTAIN STATUTORY AND OTHER CORPORATE BODIES AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

## PART I.—PRELIMINARY AND GENERAL.

### Short title.

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

### Interpretation.

2. In this Act, unless the context otherwise requires,—

“accounting officer” means any public officer who is concerned or entrusted with or responsible for—

- (i) the collection, receipt, custody, issue or payment of public moneys;
- (ii) the receipt, custody, issue, sale, transfer or disposal of, or the accounting for, any stamps, securities, stores or any other Government property of whatsoever kind;
- (iii) any monetary or financial responsibilities connected with or arising from his official duty,

and includes a receiver of revenue and a controlling officer appointed in accordance respectively with section 17 or 42;

“appropriation law” means the law enacted in respect of each financial year to provide for the issue from the Consolidated Fund and from the Improvement and Development Fund of the sums necessary to meet expenditure (other than expenditure charged upon the Consolidated Fund by the Constitution or any other law) in that year and includes any supplementary appropriation law;

“Consolidated Fund” means the Consolidated Fund Established by section 67 of the Constitution;

“Consolidated Fund Services” means the services of the Government of Gibraltar the expenditure on which is charged on or payable out of

the Consolidated Fund under the Constitution or any other law other than an appropriation law but including this Act;

“Improvement and Development Fund” means the special fund designated the Improvement and Development Fund in Schedule I;

“public moneys” means all revenue, grants, loans, trust and other moneys raised or received by or on account of the Government and all stamps, bonds or debentures and other securities whatsoever held by or on account of the Government and includes moneys received or held whether on trust or otherwise, and whether temporarily or otherwise, by any public officer in his official capacity either alone or jointly with any other person, whether a public officer or not, for purposes other than the purposes of the Government;

“public stores” means all chattels of whatsoever nature the property of or in the possession or under the control of the Government;

“revenue” means all tolls, taxes, imposts, rates, duties, fines, fees, penalties, rents and dues and all other receipts of the Government from whatsoever source arising’

“written law” means any written law for the time being in force in Gibraltar.

**Minister responsible for finance to have the management of Consolidated Fund and Improvement and Development Fund.**

3. The Minister responsible for finance shall so supervise the finances of the Government as to ensure that a full account thereof is made to the Parliament and for such purposes shall, subject to the provisions of the Constitution and of this Act, have the management of the Consolidated Fund and the Improvement and Development Fund and the control and direction of all matters relating to the financial affairs of the Government.

**Authorisation of expenditure.**

4.(1) On the coming into force of an appropriation law the Financial Secretary shall by general warrant under his hand authorize the Accountant General –

- (i) to pay out of the Consolidated Fund such sums as may be required to meet expenditure chargeable upon the Consolidated Fund under such law; and



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- (ii) subject to the provisions of Part IV to pay out of the Improvement and Development Fund such sums as may be required to meet expenditure chargeable upon the improvement and Development Fund under such law:

Provided that it shall be within the discretion of the Minister responsible for finance to limit or suspend at any time any expenditure so chargeable under an appropriation law if in his opinion the public interest so requires.

(2) Every appropriation by the Parliament of public moneys for the service of a financial year and every general warrant issued under this section shall lapse and cease to be of any effect at the close of that year.

## **PART II.—THE CONSOLIDATED FUND.**

### **Custody and investment of moneys accounted for in the Consolidated Fund.**

5.(1) All sums accounted for in the Consolidated Fund shall be kept with such bank or banks as the Financial Secretary shall from time to time direct or with the Crown Agents.

(2) The Financial Secretary may authorize the investment of moneys forming part of the Consolidated Fund—

- (a) with any bank either at call or subject to notice not exceeding twelve months or with the Crown Agents;
- (b) in any of the investments authorized by any written law for the investment of trust funds;
- (c) in any joint fund maintained by the Crown Agents;
- (d) as otherwise authorized by any written law or by resolution of the Parliament, and such investments, together with any interest received therefrom, shall form part of the Consolidated Fund.

### **Statutory payments.**

6.(1) The Accountant General shall pay out of the Consolidated Fund such sums coming in course of payment during a financial year as are required to meet expenditure charged upon the Fund by the Constitution or by any other written law.

(2) The sums payable by Government as an employer—

- (a) in pursuance of the provisions of any Act;
- (b) in respect of the transfer value of the pension rights of the former public officers;
- (c) in respect of the pension rights of any former public officer, frozen as if there had been no qualifying period for the grant of a pension under Regulation 4(1) and (3) of the Pensions Act by virtue of an agreement between the Government and the officer when that officer left the Government service, and augmented by corresponding increases in the Index of Retail Prices—
  - (i) on his retirement from his subsequent employment as from the age of 55 years; or
  - (ii) on retirement from that employment at any time on medical grounds; or
  - (iii) on death occurring before that officer reaches the age of retirement under the Pensions Act.

shall be a charge upon the Consolidated Fund.

**Authorisation of expenditure in advance of appropriation under section 70 of the Constitution.**

7.(1) Where the Minister responsible for finance authorizes the withdrawal of moneys from the Consolidated Fund under the provisions of section 70 of the Constitution the sum or sums so authorized and withdrawn in respect of any service of the Government shall not exceed one third of the sum specified for such service in the Estimates presented for the current financial year, or, if the estimates have not been presented, one third of the sums provided therefor in the appropriation law for the financial year immediately preceding such current year.

(2) Any sums withdrawn from the Consolidated Fund under the provisions of subsection (1) shall be set off against the amount authorized by the appropriation law for the current financial year upon the coming into operation of such law.

**Borrowing powers.**

8.(1) Except as is otherwise provided in this section the Government shall not borrow money except in accordance with the provisions of a written law.

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(2) The Government acting by the Financial Secretary with the consent of the Minister responsible for finance may borrow by means of advances from a bank or from the Crown Agents such sum or sums as he may require to meet expenditure which lawfully may be defrayed for the service of a financial year:

Provided that the total of any such sum or sums so borrowed in any financial year shall not exceed five per cent of the total sum appropriated by law out of the Consolidated Fund in that year.

(3) The power to borrow money conferred by any general or specific law and the power to borrow conferred on the Government acting by the Financial Secretary with the consent of the Minister responsible for finance by subsection (2) may be exercised by means of a fluctuating overdraft.

(4) Repayment of the principal sum of and payment of all interest and other charges on all money borrowed under this section is hereby charged upon and shall be paid out of the Consolidated Fund without further appropriation than this Act.

(5) A statement giving details of any sum or sums borrowed under the powers conferred by subsection (2) shall be laid before the Parliament as soon as may be practicable after the end of each quarter of the financial year.

## **Guarantees.**

9.(1) No guarantee involving a financial liability shall bind the Government unless such guarantee is given –

- (a) in accordance with the provisions of any law; or
- (b) in accordance with subsection (2).

(2) Where he has been authorized to do so by a resolution of the Parliament, the Minister responsible for finance may in writing in the name of and on behalf of the Government give a guarantee to any person or persons, involving a financial liability, and a guarantee so given shall be binding on the Government.

## **Guarantees for supplier finance.**

10.(1) The Financial Secretary, for the purpose of any agreement for the Government's obtaining any goods or services wholly or partly on supplier finance terms or on extended payment terms in respect of any service included in the Estimates presented for the current financial year, may in writing, in the name of and on behalf of the Government, give to any person

or persons a guarantee for the repayment of that credit, and a guarantee so given shall be binding on the Government.

(2) Where the Minister responsible for finance gives any guarantee under subsection (1), he shall lay on the table of the Parliament a copy of the agreement in respect of which it has been given, and a copy of the guarantee, at the earliest opportunity after it has been given.

#### **Payments under guarantees.**

11. All money that becomes payable by the Government under any guarantee given under section 9 or section 10 is hereby charged upon and shall be paid out of the Consolidated Fund without further appropriation than this Act.

#### **Advances.**

12. Subject to the provisions of this section, the Financial Secretary may, by advance warrant under his hand, authorize the Accountant General to make disbursements of moneys forming part of the Consolidated Fund or of other public moneys for the purpose of making advances—

- (a) on behalf of, and recoverable from, other Governments, administrations, public corporations or institutions;
- (b) to meet expenditure authorized by any loan Act in anticipation of the receipt of any installment of the loan authorized by such Act;
- (c) in accordance with any specific agreement, to agents appointed by the Government to perform functions on its behalf;
- (d) to public officers for such purposes and on such terms and conditions as may be prescribed from time to time by General Orders or Financial Regulations or in such circumstances as the Financial Secretary may approve;
- (e) to, or on account of —
  - (i) the Improvement and Development Fund
  - (ii) the Short Term Benefits Fund
  - (iii) the Closed Long-Term Benefits Fund
  - (iv) the Open Long-Term Benefits Fund

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- (v) any other Special Fund where such advances are recoverable before the close of the financial year in which the advance is made.
- (f) to the Director of Labour and Social Security for use by him in such cases as may be prescribed by Financial Regulations.

## **Imprests.**

13.(1) The Financial Secretary may by imprest warrant under his hand authorize the Accountant General to issue moneys from the Consolidated Fund by way of imprests to public officers for any purpose specified in General Orders or Financial Regulations.

(2) Every public officer to whom an imprest has been issued shall account for and retire such imprest not later than the last business day of the financial year in which it was issued unless the imprest warrant otherwise requires or unless the Financial Secretary otherwise directs.

(3) Where any public officer to whom an imprest has been issued fails to account for and retire such imprest as provided by subsection (2), the Accountant General shall forthwith recover the amount of the imprest by deduction from the salary or other emoluments of such public officer.

## **Refunds, etc.**

14. Where any written law provides for the payment of any refund, rebate or drawback in respect of money paid to the Government the amount of such refund, rebate or drawback as the case may be shall where such money has been paid into the Consolidated Fund, be charged on that Fund without appropriation.

## **Erroneous receipts.**

15. Where any moneys have been received in error in the Consolidated Fund the Accountant General may authorize the repayment from the Fund of such moneys.

## **Limitation as to trusts.**

16.(1) Nothing in this Act shall extend to abridge or alter the terms of any trust or shall be construed as authorizing the making of any regulations or the giving of any directions or instructions requiring any person to obey such regulations, directions or instructions in relation to moneys held on trust which contravene or are inconsistent with the terms of such trust.

(2) Except as otherwise provided in any written law, no public officer shall accept appointment in his official capacity as a trustee without the written authority of the Financial Secretary and any appointment contrary to this section shall be void.

**Receivers of revenue.**

17.(1) The Financial Secretary shall appoint in respect of each item of revenue for any financial year a receiver of revenue for the collection of and, subject to the provisions of this Act and any regulations made or instructions issued thereunder, for the accounting for all moneys received for the credit of such item.

(2) A public officer designated by the title of his office in the annual estimates of revenue for any financial year to be the receiver of revenue in respect of any item of revenue shall be deemed for the purpose of subsection (1) to have been appointed by the Financial Secretary and such designation shall constitute sufficient notification of the appointment.

**PART IIA – 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.

**PART III.—SPECIAL FUNDS,**

**Special Funds.**

18.(1) The funds specified in Schedule 1 shall be special funds.

(2) Every sinking fund provided for in a written law authorizing the Government to borrow any money shall be a special fund.

(3) The Minister responsible for finance may by notice in the Gazette—

- (a) declare any fund established under any written law to be a special fund; and
- (b) establish such other special funds as he may consider necessary and expedient,

and upon publication of any such notice any special fund specified therein shall be added to Schedule 1.

(4) The Minister responsible for finance may in any notice declaring or establishing a special fund, or, in a subsequent notice, direct that such special fund shall be a fund to which advances may be made under section 12(1) and such fund shall be included in paragraph (e) of that subsection.

**Regulations for Special Funds.**

19.(1) The Minister responsible for finance may make regulations for the purposes for which a special fund may be used, for the manner in which such fund shall be administered and for the appointment of a controlling officer to control and account for such fund.

(2) Any regulations made under subsection (1) shall—

- (a) in the case of a special fund established under any written law be in addition to and not in conflict with the provisions of the law establishing such fund; and
- (b) in the case of a special fund consisting in whole or in part of moneys arising from any gift, trust or bequest be in addition to and not inconsistent with the wishes, expressed or implied, of the donor or testator as the case may be.

(3) The provisions of this section shall not apply to the improvement and Development fund.

**Revenues of Special Funds.**

20. Notwithstanding the provisions of any other Act, the revenue of a special fund established under any written law or under the provisions of section 18(3)(b) shall, in addition to any monies which may accumulate thereto pursuant to such law, consist of—

- (a) any monies appropriated thereto by the Parliament;
- (b) any interest or dividend which may accrue from any deposit or investment of monies forming part of such fund;
- (c) any monies being revenue or other monies raised or received or arising from the operation of the undertaking to which the fund relates;
- (d) any monies declared by the Minister responsible for finance to form part of such fund; and
- (e) any monies transferred to the fund from any other special fund.

**Investment of moneys in Special Funds.**

21.(1) Subject to the provisions of this Act and any other written law the Financial Secretary may authorize the investment of moneys standing to the credit of a special fund, and not for the time being required for the purposes of that fund, in like manner to that permitted by section 5(2) in respect of the Consolidated Fund.

(2) The Financial Secretary may, in respect of a special fund other than the Improvement and Development Fund, delegate to the Accountant General or to the Controlling Officer of that fund by writing under his hand the powers conferred upon him by subsection (1).

**Accounts and balances of Special Funds.**

22.(1) A special fund shall be kept in a separate account by the Accountant General or, where under any law or by virtue of regulations made under section 19 some other public officer is appointed by the controlling officer, by that other public officer:

Provided that it shall be lawful for the Accountant General with the consent of the Financial Secretary to keep the account on behalf of such other public officer.



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(2) A special fund shall not form part of the Consolidated Fund and neither the receipts nor accruals of a special fund nor any balance of moneys standing to the credit of a special fund at the close of a financial year shall be paid into the Consolidated Fund but shall be retained in that fund for the purposes of such fund.

## **Dissolution of Special Funds.**

23.(1) Subject to the provisions of section 16 if—

- (a) the moneys in a special fund are exhausted and no legal provision exists whereby any further moneys may be paid into the fund; or
- (b) the purposes for which a special fund was established are fulfilled or cease to exist and in the opinion of the Minister responsible for finance there is no likelihood that any purposes for which such fund could be lawfully used will arise in future,

the Governor may, by notice, dissolve such fund.

(2) Any money or other assets remaining in a special fund dissolved under subsection (1)(b) shall as the Minister responsible for finance may direct into or transferred to the Consolidated Fund or into or to a Special Fund established by or in pursuance of this Act.

## **PART IV.—THE IMPROVEMENT AND DEVELOPMENT FUND.**

### **Interpretation.**

24. In this Part—

“development project” means any one of the purposes or any combination of the purposes specified in Schedule 2;

“the Fund” means the special fund designated as the improvement and Development fund in schedule 1.

### **The Fund not part of the Consolidated Fund.**

25. The Fund shall not form part of the Consolidated Fund and shall be kept in a separate account by the Accountant General.

### **Revenue of the Fund.**

26. There shall be paid into the Fund and the Fund shall consist of—

- (a) all such moneys as may from time to time be appropriated by written law out of the Consolidated Fund for the purposes of the Fund.
- (b) all moneys received from time to time by way of grants and loans from Her Majesty's Government in the United Kingdom in aid of a development project;
- (c) all moneys received from any other Government or from any international organization, or from any institution, body or person for a development project or generally for the purposes of the Fund;
- (d) all moneys received from the proceeds of loans raised by or on behalf of the Government for a development project or generally for the purposes of the Fund;
- (e) all moneys received from the proceeds of the sale of any land belonging to the Government; and
- (f) all moneys received by way of interest or dividend on any investment or loan of moneys belonging to the Fund.

**Use of the Fund.**

27. No provision shall be made for expenditure to be charged on the Fund other than for the purpose of a development project.

**Annual estimates of the Fund.**

28.(1) The Minister responsible for finance shall cause to be prepared and laid before the Parliament, before or not later than thirty days after the commencement of each financial year estimates of the revenue and expenditure of the Fund for that year and such estimates shall form part of the annual estimates of the Government to be laid before the Parliament in accordance with the provisions of section 69(1) of the Constitution.

(2) The estimates shall be in such form as the Minister responsible for finance may from time to time direct:

Provided that the estimates of expenditure shall—

- (a) conform with the requirements of proviso (b) to section 41; and

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- (b) show in respect of each development project for which provision is made therein—
  - (i) the total estimated cost of the project; and
  - (ii) the revised estimate of expenditure on the project in the preceding financial year and amount expended in previous financial years.

(3) The heads of expenditure contained in the estimates of the Fund for a financial year shall be included in the Appropriation Bill introduced in the Parliament in accordance with the provisions of section 69(2) of the Constitution to provide for the issue from the Fund of the sums necessary to meet that expenditure and for the appropriation of those sums for the purposes specified in the Bill.

### **Supplementary estimates.**

29. If in the course of any financial year it is found—

- (a) that the amount appropriated by the appropriation law for any development project in any head of expenditure is insufficient; or
- (b) that a need has arisen to proceed with a development project for which no amount has been appropriated by the appropriation law, the Minister responsible for finance shall cause a supplementary estimate substantially in the form prescribed by section 28 of the sums required to meet such deficiency or such need to be prepared and laid before the Parliament and the heads of expenditure shall be included in a supplementary Appropriation Bill to be introduced in the Parliament to provide for the appropriation of those sums.

### **Authorisation of expenditure in advance of appropriation.**

30.(1) If the appropriation law in respect of any financial year has not come into operation by the commencement of that financial year, the Minister responsible for finance shall by warrant under his hand authorize the withdrawal of moneys from the Fund for the purpose of meeting expenditure necessary to carry on the development projects of the Government until the expiration of four months from the commencement of that financial year or the coming into operation of the appropriation law whichever is the earlier:

Provided that no such withdrawal shall be authorized in respect of a development project, which is not specified in the estimates of the Fund

presented for the current financial year, or if the estimates have not been presented, in respect of a development project provided for in an appropriation law of the financial year immediately preceding such current year.

(2) The amount of any moneys so authorized and withdrawn from the Fund shall be set off against the expenditure authorized by the appropriation law for the current financial year on the coming into operation of such law.

**Conditions attached to grants or loans.**

31. Any conditions which may be attached to any grant or loan of moneys forming part of the Fund shall be observed and shall have effect in relation to the moneys so granted or loaned as if the same were prescribed by this Act.

**Development warrant.**

32.(1) Subject to the provisions of sections 27 and 31, and of this section, if in the course of any financial year the circumstances described in section 29 arise and in the opinion of the Minister responsible for finance expenditure on a development project is so urgent that it cannot without serious detriment to the public interest be deferred until adequate financial provision can be made for it by the Parliament—

- (a) in respect of a development project which has not been specified in the estimates of the Fund presented for any financial year, the Minister responsible for finance may by development warrant under his hand and in anticipation of the grant of an appropriation by the Parliament authorize an advance from the Fund not exceeding one hundred thousand pounds or the estimated total cost of the development project, whichever is the lesser amount; and
- (b) in respect of a development project which has been specified in the estimates of the Fund for any financial year, the Minister responsible for finance may by a development warrant under his hand and in anticipation of the grant of an appropriation by the Parliament authorize an advance from the Fund not exceeding—
  - (i) thirty thousand pounds; or
  - (ii) ten per cent of the estimated total cost of the development as shown in the estimates of the Fund presented for the current financial year; or

- (iii) the balance required to complete expenditure of the estimated total cost of the development project as shown in the estimates of the Fund presented for the current financial year—

whichever is the greatest amount.

(2) Where any advance is made from the Fund under subsection (1) a supplementary estimate substantially in the form prescribed by section 28 of the sum required for the development project for the purpose of which the advance was made, shall be laid before the Parliament and an Appropriation Bill shall be introduced therein as soon as possible to provide for the appropriation of that sum.

(3) Upon the grant of an appropriation by the Parliament to provide for expenditure on the development project in respect of which the advance was made, the development warrant shall cease to have effect and the sum advanced shall be set off against the amount appropriated for that project.

**Re-allocation.**

33.(1) No surplus arising on any development project financed wholly or partly by moneys received by the Fund under section 26(b)(c) or (d) shall be applied in aid of any other development project unless—

- (a) in the case of the moneys specified in paragraph (b) of that section the prior consent of Her Majesty's Government in the United Kingdom has been obtained;
- (b) in the case of the moneys specified in paragraph (c) of that section the prior consent of the international organization, or the institution, body or person concerned as the case may be, has been obtained, or the moneys were received generally for the purposes of the Fund; or
- (c) in the case of moneys specified in paragraph (d) of that section, such moneys have been raised generally for the purposes of the fund.

(2) Subject to the provisions of subsection (1) the Minister responsible for finance, if it appears to him to be necessary to do so, may by means of a warrant under his hand re-allocate moneys between one development project and another of the same head of expenditure if he is satisfied that further provision is needed for the development project to which moneys are to be

re-allocated and that there is, or is likely to be, a surplus in respect of the development project from which the moneys are to be allocated.

(3) Any warrant issued in accordance with subsection (2) shall be laid before the Parliament at the earliest opportunity.

**Accounts and audit.**

34. The accounts of the Fund shall be audited, certified and reported on annually by the Principal Auditor

**Investment of moneys accounted for in the Improvement and Development Fund.**

35. Subject to—

- (a) any conditions which may from time to time be made by Her Majesty's Government in the United Kingdom in relation to moneys made available to the Government of Gibraltar by way of grants or loans in aid of development projects;
- (b) any conditions which may be attached by any other Government, institution, body or person to the grant or loan of moneys for the purpose of any development project or generally for the purposes of the Fund; and
- (c) such restrictions or limitations as may be imposed by any regulations made under the provisions of section 74,

the Financial Secretary may authorize the investment of moneys accounted for in the Fund and which are not required for immediate use for the purpose of a development project in like manner to that provided by section 5(2) in respect of the Consolidated Fund.

**PART V.—DEPOSITS.**

**Deposits.**

36. Any moneys not being moneys raised or received for the purposes of the Government, which may be deposited with the Accountant General or with any other public officer authorized by the Accountant General or by regulations made under this Act to receive the same (such moneys being hereinafter referred to as deposits), shall not form part of the Consolidated Fund and except as provided in this Part shall not be applied in any way for the purpose of the Government.

**Investment of deposits.**

37.(1) The Financial Secretary may authorize the investment of deposits in like manner to that permitted by section 5(2) in respect of the Consolidated Fund.

(2) Any interest or dividend received in respect of deposits invested in accordance with subsection (1) shall be paid into the Consolidated Fund.

(3) Section 54 shall apply to any investments made on account of deposits and, for the purpose only of any adjustment which may have to be effected in accordance therewith, such investments shall be regarded as being held for account of the Consolidated Fund.

**Deposits may be used to finance advances.**

38. The Financial Secretary may authorize the Accountant General to apply deposits towards the making of advances for any of the purposes specified in section 12;

Provided that deposits shall not be so applied where the advance in question is only repayable or recoverable whether in full or in part after the close of the financial year in which it is made.

**Unclaimed deposits.**

39. Any deposit which is unclaimed for five years shall be paid into the Consolidated Fund for the purposes of the Government:

Provided that if any person entitled thereto shall subsequently prove to the satisfaction of the Accountant General his claim to any such deposit, the Accountant General shall thereupon refund to such person his deposit out of the Consolidated Fund.

**Accountant General to administer deposits.**

40. Subject to the provisions of this Part, the Accountant General is hereby authorized to administer and, in appropriate cases, to refund deposits to the person or persons entitled to them.

**PART VI.—ESTIMATES AND SUPPLY.**

**Annual estimates.**

41. The estimates of the revenue and expenditure of the Government in respect of each financial year laid before the Parliament in accordance with

the provisions of section 69 of the Constitution shall be in such form as the Minister responsible for finance may from time to time determine:

Provided that—

- (a) the estimates of expenditure on the Consolidated Fund services shall show the sums to be issued from the Consolidated Fund to meet the expenditure that is charged upon the Fund by the Constitution or by any other written law and shall contain a reference to the relevant provisions of the Constitution or of such other law, as the case may be, authorizing the expenditure to be so charged;
- (b) the estimates of other expenditure required for the service of the financial year—
  - (i) shall be classified by heads of expenditure;
  - (ii) shall describe the ambit of each such head;
  - (iii) shall show the sum to be supplied for each such head by appropriation; and
  - (iv) shall designate in respect of each head the controlling officer appointed to control and account for expenditure of the sums appropriated for that head by the appropriation law.

#### **Controlling officers.**

42.(1) The Financial Secretary shall appoint in respect of each head of expenditure provided for any financial year in the annual estimates of the Government, a controlling officer to control that head subject to the provisions of this Act and of any Financial Regulations made or any directions given thereunder, and to account for the expenditure of the sums appropriated for that head.

(2) A controlling officer shall be the accounting officer in respect of, and shall be personally accountable for, all public moneys disbursed and all stores held, issued or received or used by or on account of the department or service for the head of expenditure for which he is the controlling officer.

(3) A controlling officer may, subject to the provisions of this Act and of any regulations made or instructions issued thereunder, and if so required by the Financial Secretary shall, define in writing under his hand the extent to which the powers and duties conferred or imposed upon him may be



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exercised or performed on his behalf by any accounting officer under his control, and may give such directions as may be necessary to secure the proper exercise and performance of such powers and duties:

Provided that no delegation under this subsection shall extend to abridge the personal accountability imposed on a controlling officer by subsection (2).

(4) A public officer designated by the title of his office in the annual estimates of expenditure for any financial year to be the controlling officer in respect of any head of expenditure pursuant to section 41(b)(iv) shall be deemed for the purpose of subsection (1) to have been appointed by the Financial Secretary and such designation shall constitute sufficient notification of the appointment.

## **Disbursement of and accounting for expenditure on Consolidated Fund Services.**

43. The disbursement of moneys provided for in the annual estimates of expenditure for any financial year to meet expenditure on the Consolidated Fund services shall be accounted for by the Accountant General.

## **Contingencies Fund.**

44.(1) The Contingencies Fund shall consist of moneys from time to time appropriated thereto and all moneys so appropriated shall be paid from the Consolidated Fund into the Contingencies Fund.

(2) The Minister responsible for finance shall apply the moneys in the Contingencies Fund in accordance with the provisions of section 71 of the Constitution.

(3) Every advance from the Contingencies Fund shall be authorized by means of a warrant under the hand of the Minister responsible for finance.

## **Re-allocation.**

45.(1) If in the opinion of the Minister responsible for finance the exigencies of the public service render it necessary or expedient to vary the sums assigned to any purpose within a head of expenditure or to make provision for a new purpose within such head, he may direct by means of a warrant that there shall be applied in aid of any purpose for which the sum assigned may be deficient or in aid of a new purpose a further sum out of any surplus arising, or likely to arise, on any sums assigned to any other purpose within that head:

Provided that any new purpose to which any sum is assigned shall be within the ambit of such head.

And provided further that the total authorized establishment of staff provided for in that head is not thereby exceeded.

(2) Any warrant issued under the provisions of this section shall be laid before the Parliament at the earliest opportunity.

#### **PART VII.—ACCOUNTING OFFICERS AND ACCOUNTS.**

##### **Accountant General.**

46. The Accountant General is hereby charged with the compilation, management and supervision of the accounts of the Government and with the conduct of the treasury.

##### **Powers and duties of Accountant General.**

47.(1) The Accountant General shall issue such instructions as may appear to him to be necessary, to be known as accounting instructions, for the advantage and safety of public moneys and public property and for the due and proper accounting therefor.

(2) Without prejudice to the generality of subsection (1), accounting instructions may provide for—

- (a) the collection, custody, issue, expenditure and management of all public moneys and the guidance of and compliance by all persons concerned therewith;
- (b) the effectual record, examination, inspection and departmental check of all receipts, payments and expenditure and the keeping of all necessary books and accounts;
- (c) the manner in which accounts are to be kept and the format of all books, returns and documents whatsoever required for the proper accounting for public moneys and public stores;
- (d) the proper accounting for the purchase, safe custody, issue, sale or other disposal or writing off of stores and other property of the Government and for the stock taking of such stores and property;
- (e) the custody, handling and proper accounting for stamps, securities and negotiable instruments whether the property of

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the Government or on deposit with or entrusted to the Government or to any public officer in his official capacity; and

- (f) the reporting of losses, by whatever means, of public moneys, stamps, accountable documents of whatever kind and public stores and the reporting of the destruction of or damage to any property of the Government.

(3) Without prejudice to the generality of section 46 the Accountant General shall—

- (a) ensure that all moneys received and paid by the Government are brought promptly and properly to account;
- (b) take all reasonable steps to satisfy himself as to the correctness of payment vouchers, and to insure that payment is refused on any voucher which is wrong or insufficient in content, or which contravenes accounting instructions, or which in his opinion is in any way unacceptable in support of a charge on public funds;
- (c) ensure, in so far as is practicable, that adequate provision is made for the safe custody of public moneys, stamps, securities and other accountable documents; and
- (d) report to the Financial Secretary in writing any apparent defect in departmental control of expenditure, revenue, cash, stamps, stores or other property of the Government and any persistent breach or non-observance of accounting instructions that may come or be brought to his notice.

(4) The Accountant General in the exercise of the powers and duties conferred upon him by this section shall be entitled –

- (a) to inspect any office, store or premises and shall be given access at all times thereto and shall be freely given all available information, documents and records he may require with regard to public moneys, public stores and other property of the Government; and
- (b) to check any public moneys, stamps, stores and securities for the purpose of satisfying himself that accounting instructions and any regulations made under this Act are being complied with.

(5) The Accountant General may delegate to any public officer under his control by writing under his hand any of the powers conferred upon him by subsection (4).

**Duties of accounting officers.**

48.(1) Every accounting officer shall be subject to the provisions of this Act and shall perform such duties as may be prescribed by or under this Act or any financial regulations made or any directions given thereunder.

(2) Every accounting officer shall comply with accounting instructions and shall keep such books and render such accounts and in such manner as may be required by such instructions.

**Accounting officers not permitted to open bank accounts.**

49. No accounting officer shall open any public or official account in respect of public moneys in any bank without the authority in writing of the Financial Secretary.

**Overdrafts on public or official bank accounts.**

50.(1) No bank shall permit an overdraft on any public or official account unless such overdraft has been authorized in writing by the Financial Secretary.

(2) If any bank permits an overdraft contrary to the provisions of subsection (1) no action shall lie to recover the whole or any part of such overdraft and no interest shall be chargeable on such overdraft.

**All public moneys to be accounted for in the public accounts of Gibraltar.**

51. All public moneys shall be accounted for in the public accounts of Gibraltar.

**Annual accounts.**

52.(1) The Accountant General shall within a period of nine months (or such longer period as the Minister responsible for finance shall allow) after the close of each financial year sign and transmit to the Principal Auditor accounts showing fully the financial position of the Government of Gibraltar at the end of such financial year.

(2) The accounts shall include—

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- (a) a statement of assets and liabilities;
- (b) an abstract statement of receipts and payments;
- (c) a comparative statement of actual and estimated revenue and expenditure respectively by heads and sub-heads;
- (d) a statement of unauthorized expenditure by heads;
- (e) a statement of balances on advance accounts from the Consolidated Fund analysed under the several categories specified in section 12;
- (f) a statement of the balances on deposit accounts;
- (g) a statement of outstanding loans made from the Consolidated Fund;
- (h) a statement of the public debt;
- (i) a statement of aggregate arrears of revenue by subheads;
- (j) a statement of the accounts of each special fund, other than the Improvement and Development Fund, showing in respect of each such fund the investments or other assets relating thereto;
- (k) a statement of losses of cash and stores written-off and claims abandoned;
- (l) a statement of unretired imprests;
- (m) in respect of the Improvement and Development Fund—
  - (i) a comparative statement of actual and estimated revenue by heads;
  - (ii) a comparative statement of actual and estimated expenditure by development projects;
  - (iii) a statement of unauthorized expenditure;
  - (iv) a statement of outstanding loans made from the Fund; and
- (n) such other statements as the Parliament may from time to time by resolution require.

**Annual accounts of special funds.**

53.(1) In this section—

“controlling officer” means any public officer, other than the Accountant General, appointed under any written law or by virtue of regulations made under section 19 to be the controlling officer of a special fund.

“period of account” means –

- (a) in relation to any fund declared to be a special fund under the provisions of section 18(3)(a) such period of account as may be provided in the written law establishing such fund or in any regulations relating thereto made under section 19;
- (b) in relation to any other fund declared to be a special fund under the provisions of section 18(3)(b) such period of account as may be provided in any trust instrument relating thereto or in any regulations made in connection therewith under section 19;
- (c) in relation to any special fund, in the absence of any provision - as aforesaid, the financial year;

“special fund” means any fund, other than the Improvement and Development Fund, specified in Schedule 1.

(2) Within a period of six months after the close of the period of account the controlling officer shall cause to be prepared and shall sign and transmit to the Principal Auditor an account, in such form as the Accountant General may from time to time require, of each special fund in respect of which he is the controlling officer and a copy of each such account so transmitted shall be transmitted to the Accountant General.

**Valuation of assets, etc.**

54.(1) At the close of each financial year the value of every security held on account of the Government in the Consolidated Fund and, subject to the provisions of subsection (3), in any special fund shall be adjusted to accord with the middle market price in London on the last working day of that year and any consequent increase or decrease of the value of such securities shall be carried to the credit or debit of the Consolidated Fund or appropriate special fund as the case may be.

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(2) Whenever during the course of a financial year and in order to take advantage of the state of the market, a security held for account of the Consolidated Fund or any special fund is sold for the purpose of re-investing the proceeds in another security, any adjustment which may be required as a result thereof shall be carried to the credit or debit of the Consolidated Fund or appropriate special fund as the case may be.

(3) Where in relation to any special fund the financial year is not the period of account the adjustment required by subsection (1) shall accord with the middle market price in London on the last working day of the period of account prescribed for such special fund and for the purposes of this subsection the expression “period of account” shall have the meaning ascribed to it in section 53(1) (a) and (b).

### **PART VIII.—THE PRINCIPAL AUDITOR.**

#### **Office of Principal Auditor.**

55.(1) The Principal Auditor shall not, while holding the office of Principal Auditor, hold any other office of profit under the Crown.

- (2) The Principal Auditor shall not be required to undertake—
- (a) any duties outside those pertaining to his office if in his opinion such duties are incompatible with the responsibilities and duties of that office; and
  - (b) any examination of accounts partaking of the nature of a pre-audit which involves the acceptance by him of responsibility which would in his opinion preclude him from full criticism of any accounting transaction after such transaction has been duly recorded.

#### **Powers of Principal Auditor.**

56. (1) In the performance of his functions under the Constitution and under this Act, the Principal Auditor—

- (a) shall have access to all accounts, books, cash, documents, securities, stamps, stores, vouchers or other Government property under the control or in possession of any public officer;
- (b) may call upon any public officer for any explanations and information which he may require in order to enable him to discharge his duties;

- (c) may authorize in writing any person publicly carrying on the profession of accountant to conduct on his behalf any inquiry, examination or audit and such person shall report thereon to the Principal Auditor in such manner as he may direct;
- (d) may without payment of fee, cause search to be made in and extracts to be taken from any book, document or record in any public office; and
- (e) may lay before the Attorney-General a case in writing as to any question of law and the Attorney-General shall give a written opinion upon such question.

(2) The Principal Auditor may authorize in writing any public officer, with the consent of the head of such officer's department, to exercise in that behalf the power conferred upon him by subsection (1) (a).

**Nature of audit.**

57. In the performance of his functions under the Constitution and under this Act, the Principal Auditor shall have such other powers as are reasonably necessary in order to satisfy himself whether or not—

- (a) all reasonable steps have been taken to secure the due collection of revenues and of all other public moneys due and owing to the Government and the provisions of the Constitution and of this Act and any regulations and instructions relating to such collection have been complied with;
- (b) all moneys which have been appropriated and disbursed have been applied for the purposes for which they were appropriated and the expenditure conforms with the authority which governs it;
- (c) public moneys other than those which have been appropriated have been dealt with in accordance with proper authority;
- (d) all reasonable precautions have been taken to safeguard the proper receipt, custody, issue and proper use of cash, stamps, securities and stores and the regulations and instructions relating thereto are sufficient and have been duly observed;
- (e) the regulations, directions and instructions in force relating to the issue and payment of public moneys are sufficient to secure



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effective control over expenditure and such regulations, directions and instructions have been duly observed by the public officers concerned therewith; and

- (f) the regulations, directions and instructions in force relating to the accounting for public moneys, stores and other Government property are adequate and such regulations and instructions have been duly observed by the public officers concerned therewith.

**Notification of irregularities.**

58. If at any time it appears to the Principal Auditor that irregularities have occurred in the receipt, custody or expenditure of public moneys or in the receipt, custody, issue, sale, disposal, transfer or delivery of any stamps, securities, stores, accountable documents or other property of the Government or in the accounting for the same, he may bring the matter to the notice of the Financial Secretary.

**Delegation.**

59. Anything, which under the authority of this Act is directed to be done by the Principal Auditor other than—

- (a) the certifying of and reporting on accounts; and
- (b) the exercise of the power conferred upon the Principal Auditor by section 56(1)(c),

may be done by any officer of his staff duly authorized by him.

**PART IX. –EXAMINATION AND AUDIT OF ACCOUNTS OF CORPORATE AND SIMILAR BODIES.**

**Application of Part IX.**

60.(1) This Part shall apply to every person or body—

- (a) that is in receipt of a contribution from any public moneys: or
- (b) in respect of whom the Government has given a guarantee to any person; or
- (c) whose operations may impose or create a liability on any public moneys—

not being a body corporate whose accounts the Principal Auditor is for the time being specifically required or empowered to audit and report on under any other law.

**Power of Principal Auditor to audit.**

61.(1) The Principal Auditor may audit and report on the accounts of any person or body to whom this Part applies.

(2) In the exercise of his powers under subsection (1), the Principal Auditor shall have, in relation to any person or body to whom this Part applies, the same powers as are conferred on him under sections 56 and 57 in relation to public offices, public moneys, stamps, securities, stores and other Government property.

**Reports on accounts of statutory and other bodies.**

62. Where in accordance with the provisions of this Part the Principal Auditor has, or by virtue of directions given by him under the provisions of section 57(c), caused to be examined, inquired into and audited the accounts of any person or body, he may

- (i) certify the accounts;
- (ii) prepare and sign a report on such audit if he considers such a report is necessary;
- (iii) transmit to the Minister responsible for finance all such certified accounts together with any report that he may have made; and
- (iv) transmit the report to the person or body which is the subject of the report.

**Observations on reports of the Principal Auditor to be obtained.**

63. On receipt of any report of the Principal Auditor under section 62 the Minister responsible for finance shall request the person or body for its comments, to be supplied within such time, being not less than 14 days from the date of request, as may be specified therein, on any matter to which the Principal Auditor has called attention in such report.

**Reports on accounts of statutory and other bodies to be laid before the Parliament.**

64. A copy of every account and of any report of the Principal Auditor thereon transmitted to the Minister responsible for finance in accordance with the provisions of section 62 together with the comments, if any, of the person or body and a copy of any document forming a part of or appended to any such report shall be laid before the Parliament.

**Audit fees.**

65.(1) Notwithstanding anything to the contrary contained in any written law, any person or body whose accounts are examined, inquired into or audited by the Principal Auditor under the provisions of section 61 shall in respect of such examination, inquiry into or audit pay such fee as the Principal Auditor may determine:

Provided that the Financial Secretary may, in any case in which it shall appear to him to be in the public interest that some lesser fee shall be paid or that no fee shall be charged, direct the Principal Auditor to levy such lesser fee or to make no charge as the case may be.

(2) Any fee charged under this section shall be paid into the Consolidated Fund.

**PART X. –ABANDONMENT OF CLAIMS, WRITE-OFFS AND SURCHARGE.**

**Abandonment of claims and write-off.**

66. The Financial Secretary shall have in respect of public moneys, stores and other movable property belonging to the Government or provided for the public service–

- (a) power to abandon irrecoverable amounts of revenue, debts or over-payments; and
- (b) power to write-off losses or deficiencies of public moneys and the value of lost, deficient, condemned, unserviceable, or obsolete stores.

**Disposal of surplus stores to certain organizations.**

67. The Financial Secretary shall have power to authorize the gift of serviceable stores which are surplus to Government requirements or are not required for Government purposes to institutions or organizations in Gibraltar established solely or principally for educational, scientific, cultural or charitable purposes.

**Surcharge.**

68.(1) Notwithstanding the provisions of any other written law if at any time it appears to the Financial Secretary that by reason of neglect of duty, carelessness or fault any person who is or was at the time of such neglect, carelessness or fault a public officer-

- (a) has failed to collect any moneys owing to the Government for the collection of which he is or was responsible;
- (b) is or was responsible for any improper payment of public moneys or for the payment of any moneys which were not duly vouched;
- (c) is or was responsible for any deficiency in or for any loss or destruction of or damage to any public moneys, stamps, securities, stores or other Government property; or
- (d) is or was responsible for any loss of or in jury to the property of any other person and as a result the Government is liable for the payment of damages or compensation,

he may after due investigation, call upon such public officer to show cause why he should not be surcharged the amount of the moneys not collected, improperly paid, not duly vouched, lost, destroyed or damaged or the value of the stores or other property lost, destroyed or damaged or the amount of damages or compensation paid as the case may be.

(2) If, within such period as the Financial Secretary may allow, an explanation satisfactory to him is not furnished by such public officer with regard to the failure to collect, improper payment, payment not duly vouched, deficiency, loss, destruction, damage or injury including damage or in jury for which the Government has paid damages or compensation as the case may be the Financial Secretary may surcharge that public officer such sum as he may determine:

Provided that-

- (i) in determining the sum to be surcharged the Financial Secretary shall take due account of the ability of the public officer to pay the surcharge without undue financial hardship; and
- (ii) the sum to be surcharged shall not in any case exceed-

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- (a) in relation to public moneys, the amount of any such moneys not collected, improperly paid, unvouched, deficient, destroyed, lost or damaged;
- (b) in relation to stores or other property the value of such stores or property lost, deficient, destroyed or damaged;
- (c) the cost actually incurred by the Government of repairing the in jury or by way of payment of damages or compensation;
- (d) in the case of a public officer, other than a public officer in industrial employment, one sixth of the gross annual pensionable emoluments or pension of such public officer, and in the case of a public officer in industrial employment eight weeks basic wages.

(3) For the purposes of this section and section 72 industrial employment means employment of which the terms and conditions are decided after negotiation in the Official Employers Joint Industrial Council.

### **Notification of surcharge.**

69. The Financial Secretary shall cause the public officer, the Accountant General, the Principal Auditor and the Head of Department of such public officer to be notified in writing of any surcharge made under section 68.

### **Appeal against surcharge.**

70.(1) A person who is aggrieved by any surcharge made against him under the provisions of section 68 may appeal to the Minister responsible for finance within a period of thirty days (or such longer period as the Minister responsible for finance may allow) from the date on which he is notified of the surcharge.

(2) The Minister responsible for finance, after making or directing to be made such investigations as he may deem to be necessary, may confirm the surcharge or direct that the public officer surcharged be released wholly or in part from the surcharge as may appear to him to be just and reasonable.

### **Withdrawal of surcharge.**

71. The Financial Secretary may at any time withdraw any surcharge imposed by him for any reason that he may think fit and in such event he shall notify in writing the public officer, the Accountant General, the

Principal Auditor and the head of department of such public officer of such withdrawal.

**Recovery of surcharge.**

72.(1) Subject to the provisions of this section the Accountant General shall cause the amount of any surcharge to be recovered from the public officer surcharged by equal instalments from the salary, wages, pension or other emoluments of such public officer:

Provided that—

- (a) in the case of a public officer not in industrial employment, the instalments shall be monthly and no one such instalment shall exceed one sixth of the officer's gross pensionable emoluments or pension for that month;
- (b) in the case of a public officer in industrial employment the instalments shall be weekly and no such instalment shall exceed one-eighth of such person's basic weekly wage;
- (c) the number of such instalments shall not exceed twelve in the case of a public officer not in industrial employment and not exceed sixty-four in the case of a public officer in industrial employment;
- (d) where the public officer surcharged is due to be paid any moneys by the Government other than by way of salary, wages or pension the Financial and Development Secretary may direct that the amount of any surcharge imposed on that public officer, be deducted from such moneys in whole or in part as he considers just and reasonable.

(2) No recoveries shall be made until after the expiration of the period allowed by section 70 for the lodging of an appeal and where the public officer surcharged appeals under the provisions of that section, no recoveries shall be made until and unless the amount of the surcharge has been confirmed or otherwise determined in accordance with that section.

**Surcharge to be a debt to the Government.**

73. The amount of any surcharge shall be a debt due to the Government from the public officer in respect of whom the surcharge is imposed and the provisions of section 72 shall be without prejudice to the right, which is hereby declared, of the Government to sue for such surcharge in any court of competent jurisdiction.

**PART XI.—REGULATIONS.**

**Regulations by the Minister responsible for finance.**

74.(1) The Minister responsible for finance may make regulations, to be called Financial Regulations, not inconsistent with the provisions of this Act, for the proper carrying out of the intent and purposes of this Act and without prejudice to the generality of this provision such regulations may provide for—

- (a) the preparation of estimates of revenue and expenditure;
- (b) the administration and management of the Improvement and Development Fund;
- (c) the authorization of rates of payment of public funds for specific purposes where such rates of payment are not provided for by law;
- (d) the duties of controlling officers.

(2) Regulations made under subsection (1) shall not have the force of law.

**Public procurement.**

75. (1) This section applies to the contracts of a public body in respect of which Community law relating to public procurement may from time to time apply.

(2) A body mentioned in sub-section (1) shall in respect of prescribed contracts comply with regulations made under sub-section (3).

(3) The Minister responsible for finance may make regulations for the purpose of transposing into the law of Gibraltar Community law in respect of public procurement and without prejudice to the generality of the foregoing may in particular make provision in respect of the following matters, that is to say—

- (a) the designation of the public bodies to which this section shall apply;
- (b) the proposed activities, including exceptions thereto, of a designated body to which this section shall apply;

- (c) the value of a contract of a designated body, in money or money's worth, below which this section shall not apply;
- (d) the manner in which a designated body may lay down technical specifications in respect of the activities to be carried out under a prescribed contract;
- (e) the procedures to be adopted by a designated body in the award of a prescribed contract;
- (f) the administrative procedures in relation to a prescribed contract to be followed by a designated body;
- (g) the contents of and the method and form of publication of notices in respect of a prescribed contract;
- (h) remedies and penalties in respect of the failure by a designated body to comply with the provisions of this section including the consequences in respect of any prescribed contract purportedly made other than in compliance with those provisions;
- (j) matters to be notified to the Commission;
- (k) any other matters necessary to satisfy an obligation of Community Law relating to public procurement.

(4) Regulations made under this section may make provision for different public bodies and for different classes of contract and may make different provisions in respect of each different body and different class of contract.

(5) In this section —

“designated body” means a public body designated in accordance with sub-section (3)(a);

“prescribed contract” means a contract to which this section applies by virtue of paragraphs (a), (b) and (c) of sub-section (3).

## **PART XII—FINANCIAL RELATIONS BETWEEN THE GOVERNMENT AND PUBLIC UNDERTAKINGS**

### **Interpretation of Part.**

76.(1) In this Part and unless the context otherwise requires—



“different activities” means, on the one hand, all products or services in respect of which a special or exclusive right is granted to an undertaking or all services of general economic interest with which an undertaking is entrusted and, on the other hand, each other separate product or service in respect of which the undertaking is active;

“exclusive rights” means rights that are granted by the Government to one undertaking in Gibraltar through any legislative, regulatory or administrative instrument, reserving it the right to provide a service or undertake an activity within Gibraltar;

“public authorities” means all public authorities;

“public undertakings” means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;

“public undertakings operating in the manufacturing sector” means all undertakings whose principal area of activity, defined as being at least 50% of total annual turnover, is in manufacturing. These undertakings are those whose operations fall under Section D — Manufacturing being subsection DA up to and including subsection DN of the NACE (Rev.1) classification, as published in the Official Journal of the European Communities with the following reference, OJ L 83, 3.4.1993, p. 1;

“special rights” means rights that are granted by Gibraltar law or by the Government to a limited number of undertakings, through any legislative, regulatory or administrative instrument, which—

- (a) limits to two or more the number of such undertakings authorised to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria;
- (b) designates, otherwise than according to such criteria, several competing undertakings, as being authorised to provide a service or undertake an activity; or
- (c) confers on any undertaking or undertakings, otherwise than according to such criteria, any legal or regulatory advantages which substantially affect the ability of any other undertaking

to provide the same service or to operate the same activity in Gibraltar under substantially equivalent conditions;

“undertaking required to maintain separate accounts” means any undertaking that enjoys a special or exclusive right granted in Gibraltar pursuant to Article 106(1) of the Treaty or is entrusted with the operation of a service of general economic interest pursuant to Article 106(2) of the Treaty, that receives public service compensation in any form whatsoever in relation to such service and that carries on other activities;

(2) For the purposes of the definition of “public undertakings” in subsection (1), a dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking—

- (a) hold the major part of the undertaking’s subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertakings; or
- (c) can appoint more than half of the members of the undertaking’s administrative, managerial or supervisory body.

#### **Transparency of financial relations.**

77.(1) The Financial Secretary shall take steps to ensure that financial relations between public authorities and public undertakings as defined in section 76 are transparent as provided in this Part, so that the following details emerge clearly, that is to say—

- (a) the public funds made available directly by public authorities to the public undertakings concerned;
- (b) the public funds made available by public authorities through the intermediary of public undertakings or financial institutions; and
- (c) the use to which these public funds are actually put.

(2) The Financial Secretary shall ensure that the financial and organisational structure of any undertaking required under any statutory provision to maintain separate accounts is correctly reflected in the separate accounts, so that the following emerge clearly, that is to say—

- (a) the costs and revenues associated with different activities; and

- (b) full details of the methods by which costs and revenues are assigned or allocated to different activities.

## **Application of section 77.**

78. The transparency referred to in section 77(1) shall apply in particular to the following aspects of financial relations between public authorities and public undertakings—

- (a) the setting-off of operating losses;
- (b) the provision of capital;
- (c) non-refundable grants, or loans on privileged terms;
- (d) the granting of financial advantages by forgoing profits or the recovery of sums due;
- (e) the forgoing of a normal return on public funds used; and
- (f) compensation for financial burdens imposed by the public authorities.

## **Maintenance of separate accounts.**

79.(1) To ensure the transparency referred to in section 77(2), the Financial Secretary shall ensure that for any undertaking required to maintain separate accounts—

- (a) the internal accounts corresponding to different activities are separate;
- (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and
- (c) the cost accounting principles according to which separate accounts are maintained are clearly established.

(2) Subsection (1) shall only apply to activities which are not otherwise covered by specific provisions laid down by the Union and shall not affect any obligations of the Government or undertakings arising from the Treaty or from such specific provisions.

## **Exemptions.**

80.(1) As far as the transparency referred to in section 77(1) is concerned, this Part shall not apply to financial relations between the public authorities and—

- (a) public undertakings, as regards services the supply of which is not liable to affect trade between Gibraltar and Member States to an appreciable extent;
- (b) the Gibraltar Savings Bank;
- (c) any public credit institutions, as regards deposits of public funds placed with them by public authorities on normal commercial terms; and
- (d) public undertakings whose total annual net turnover over the period of the two financial years preceding that in which the funds referred to in section 77(1) are made available or used has been less than EUR 40 million; save that in respect of the Gibraltar Savings Bank and any other public credit institution, the corresponding threshold shall be a balance sheet total of EUR 800 million.

(2) As far as the transparency referred to in section 77(2) is concerned, this Part shall not apply—

- (a) to undertakings, as regards services the supply of which is not liable to affect trade between Gibraltar and Member States to an appreciable extent;
- (b) to undertakings whose total annual net turnover over the period of the two financial years preceding any given year in which—
  - (i) it enjoys a special or exclusive right granted in Gibraltar pursuant to Article 106(1) of the Treaty; or
  - (ii) it is entrusted with the operation of a service of general economic interest pursuant to Article 106(2) of the Treaty,

is less than EUR 40 million; save that in respect of the Gibraltar Savings Bank and any other public credit institution, the corresponding threshold shall be a balance sheet total of EUR 800 million; and

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- (c) to undertakings which have been entrusted with the operation of services of general economic interest pursuant to Article 106(2) of the Treaty if the compensation they receive, in any form whatsoever, was fixed for an appropriate period following an open, transparent and non-discriminating procedure.

## **Supply of information to the European Commission concerning the information referred to in section 77.**

81.(1) Information concerning the financial relations referred to in section 77(1) shall be kept by the Financial Secretary at the disposal of the European Commission for five years from the end of the financial year in which the public funds were made available to the public undertakings concerned; where the same funds are used during a later financial year, the five-year time limit shall run from the end of that financial year.

(2) Information concerning the financial and organisational structure of undertakings referred to in section 77(2) shall be kept by the Financial Secretary at the disposal of the European Commission for five years from the end of the financial year to which the information refers.

(3) The Financial Secretary shall, where the European Commission considers it necessary so to request, ensure the supply to the European Commission of the information referred to in subsections (1) and (2), together with any necessary background information, notably the objectives pursued.

## **Public undertakings in the manufacturing sector.**

82.(1) The Financial Secretary shall ensure that, in relation to public undertakings operating in the manufacturing sector, the European Commission is supplied with the financial information set out in subsections (2) to (4) on an annual basis and within the timetable contained in subsection (8).

(2) The financial information required for each public undertaking operating in the manufacturing sector, and in accordance with subsection (5), shall be as follows—

- (a) the annual report and annual accounts, in accordance with the provision of the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act, including the balance sheet and profit/loss account, explanatory notes, together with accounting policies, statements by directors, segmental and activity reports; and

- (b) notices of shareholders' meetings and any other pertinent information.

(3) The reports required under subsection (2) shall be provided for each individual public undertaking separately, as well as for the holding or sub holding company which consolidates several public undertakings in so far as the consolidated sales of the holding or sub holding company lead to its being classified as "manufacturing".

(4) The following details, in so far as not disclosed in the annual report and annual accounts of each public undertaking, shall be provided in addition to the information referred to in subsections (2) and (3)–

- (a) the provision of any share capital or quasi-capital funds similar in nature to equity, specifying the terms of its or their provision (whether ordinary, preference, deferred or convertible shares and interest rates; the dividend or conversion rights attaching thereto);
- (b) non-refundable grants, or grants which are only refundable in certain circumstances;
- (c) the award to the undertaking of any loans, including overdrafts and advances on capital injections, with a specification of interest rates and the terms of the loan and its security, if any, given to the lender by the undertaking receiving the loan;
- (d) guarantees given to the undertaking by public authorities in respect of loan finance (specifying terms and any charges paid by undertaking for these guarantees);
- (e) dividends paid out and profits retained; and
- (f) any other forms of intervention by the Government, in particular, the forgoing of sums due to the Government by a public undertaking, including inter alia the repayment of loans, grants, payment of corporate or social taxes or any similar charges.

The share capital referred to in paragraph (a) shall include share capital contributed by the Government directly and any share capital received contributed by a public holding company or other public undertaking, including financial institutions, whether inside or outside the same group, to a given public undertaking. The relationship between the provider of the finance and the recipient shall always be specified.

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(5) The information required by subsections (2) to (4) shall be provided only in respect of public undertakings whose turnover for the most recent financial year was more than EUR 250 million.

(6) The information required by subsections (2) to (4) shall be supplied separately for each public undertaking including those located in Member States, and shall include, where appropriate, details of all intra- and inter-group transactions between different public undertakings, as well as transactions conducted directly between public undertakings and the Government.

(7) Where public undertakings split their activities into several legally distinct undertakings, one consolidated report may be submitted, reflecting the economic reality of a group of undertakings operating in the same or closely related sectors. Consolidated reports from diverse, and purely financial, holdings shall not be sufficient for the purposes of this section.

(8) The information required under subsections (2) to (4)–

- (a) shall be supplied to the European Commission on an annual basis; and
- (b) shall be provided within 15 working days of the date of publication of the annual report of the public undertaking concerned,

Provided that, in any case, and specifically for undertakings which do not publish an annual report, the required information shall be submitted not later than nine months following the end of the undertaking's financial year.

(9) In order to assess the number of companies covered by this reporting system, the Financial Secretary shall ensure that the European Commission is supplied with a list of the companies covered by this section and their turnover. The list is to be updated by 31 March of each year.

(10) The Financial Secretary shall ensure that the European Commission is furnished with any additional information that it deems necessary in order to complete a thorough appraisal of the data submitted.

## SCHEDULE 1

Section 18

## SPECIAL FUNDS

Administrator General's Account	(Administrator General's Act)
Closed Long-Term Benefits Fund	(Social Security (Closed Long-Term Benefits and Scheme) Act)
Employment Injuries Insurance Fund	(Social Security (Employment Injuries Insurance) Act)
Government Trusts Fund	(Public Finance (Control and Audit) Act)
Improvement and Development Fund	(Public Finance (Control and Audit) Act)
Note Security Fund	(Currency Notes Act)
Open Long-Term Benefits Fund	(Social Security (Open Long-Term Benefits Scheme) Act)
Savings Bank Fund	(Savings Bank Act)
Social Assistance Fund	(Public Finance (Control and Audit) Act)
Short Term Benefits Fund	(Social Security Insurance Act)
Supreme Court Fund	(Supreme Court Act)



**SCHEDULE 2.**

Section 24.

**PURPOSES FOR WHICH THE IMPROVEMENT AND DEVELOPMENT  
FUND MAY BE APPLIED.**

1. The construction, improvement, extension, enlargement and replacement of buildings and civil works and the provision, acquisition, improvement and replacement of other capital assets (including vehicles, vessels, machinery, instruments and equipment) required in respect of or in connection with—

- (a) housing and building projects;
- (b) public roads, harbours and other means of communications;
- (c) public offices and other public buildings;
- (d) official transportation;
- (e) telecommunications and broadcasting;
- (f) the production, distribution and supply of water, electricity and other forms of energy;
- (g) education, libraries, museums, laboratories and scientific research;
- (h) hospitals, clinics, dispensaries, quarantine stations and other medical and health institutions;
- (i) public health and sanitation;
- (j) fire control;
- (k) tourist and industrial development;
- (l) any other project, scheme or programme for economic or social development.

2. The acquisition of land or any right or interest in or over land.

3. The carrying on of any survey, research or investigation preparatory to the undertaking of any purpose referred to in paragraph 1 of this Schedule or for the formation or preparation of any scheme or plan for the

development, improvement, conservation or exploitation of the resources of Gibraltar.

4. The payment of any charges or expenses incidental to or arising from the carrying out of any of the purposes referred to in paragraphs 1, 2 and 3 of this Schedule.

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**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;
- (8) The Housing Works Agency.