



BERMUDA

PUBLIC TREASURY (ADMINISTRATION AND PAYMENTS) ACT 1969

1969 : 666

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SCHEDULE

[preamble and words of enactment omitted]

Interpretation

- 1 In this Act, unless the context otherwise requires—
 - “appointed bank” means a bank appointed by the Minister pursuant to section 15;
 - “contingencies fund” means the fund established under section 10;
 - “the Department” means the Accountant-General’s Department established under section 4;

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“financial year” has the meaning assigned to it in section 8;

“the Minister” means the Minister of Finance; except that in relation to sections 32B, 32C, 32D and 32E, it means the Minister responsible for the Office of Project Management and Procurement;

“public money” includes—

- (a) taxes collected under the Taxes Management Act 1976 and other Taxes Acts (as defined in section 1 of the Taxes Management Act 1976);
- (b) fees payable for the performance of a function by a public authority under any enactment establishing the public authority and providing for the payment of fees for its functions, and includes fees payable under the Government Fees Act 1965; and
- (c) penalties payable under any enactment for the failure to submit returns or pay taxes or fees by a date specified in the enactment.

“statutory expenditure” means expenditure that is charged upon the Consolidated Fund by the Constitution [*title 2 item 1*] or by any other law;

“warrant” means a warrant under the hand of the Minister or the Governor issued pursuant to section 95 of the Constitution.

[Section 1 definition “the Minister” amended by BR 93 / 2015 para. 2 effective 27 November 2015; Section 1 definition “public money” inserted by 2020 : 31 s. 2 effective 15 July 2020]

Legislature has financial control and Minister of Finance has management of Government finances

2 The Minister shall so supervise the expenditure and finances of the Government as to ensure that a full account is made to the Legislature and its financial control is maintained and for such purposes shall, subject to the Constitution [*title 2 item 1*], this Act and any other enactment, have the management of the Consolidated Fund and the supervision, control and direction of all matters relating to the financial affairs of the Government which are not by law assigned to any other Minister.

Instructions of Minister to be obeyed

3 (1) Every person concerned in or responsible for the collection, receipt, custody, issue or payment of public monies, stores, stamps, investments, securities, or negotiable instruments, whether the property of the Government or in deposit with or entrusted to the Government or any public officer in his official capacity either alone or jointly with any public officer or any other person shall obey all instructions that may from time to time be issued by the Minister or by direction of the Minister in respect of the custody and handling of the same and accounting therefor.

(2) The Financial Secretary, the Accountant-General and any other public officer of the Department shall be entitled to inspect all offices and shall be given access thereto at all times and shall be given all available information he may require with regard to the monies and property specified in subsection (1), and to all documents and records in respect

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thereof, so far as may in any way be necessary in the opinion of the Minister for the purpose of ensuring compliance with section 2 and subsection (1) of this section.

Accountant-General's Department established

4 (1) The Consolidated Fund shall be administered by the Government Department called the Accountant-General's Department.

(2) The Department shall, subject to the general direction and control of the Minister, be under the supervision of a public officer who shall be known as the Accountant-General; and the Accountant-General shall have the powers and discharge the duties conferred or imposed upon the Accountant-General by or under this Act or any other provision of law.

(3) The Accountant-General shall exercise a general supervision in respect of the arrangements under which payments out of or into public funds are made by or to Government Departments; and the Accountant-General, subject to such general or special directions as may be given by the Minister in that behalf, may, subject as hereinafter provided, from time to time issue such instructions to Government Departments as he thinks expedient—

- (a) with respect generally to the control and management of public funds by Government Departments and for carrying any provision of this Act into effect;
- (b) with respect to the method by which payments are to be made into or out of public funds by Government Departments, and with respect to the conditions subject to which such payments are to be made;
- (c) with respect to the payment of public funds into the Consolidated Fund by Government Departments; and
- (d) with respect to accounting for public funds by Government Departments:

Provided that instructions issued as aforesaid shall not be inconsistent with any Act.

(4) In subsection (3) any reference to a Government Department shall be construed as including a reference to any other public authority.

Accountant-General to maintain books and records

5 The Accountant-General shall cause proper books or other records to be maintained in the Department and shall cause proper entries to be made in such books or records in respect of every payment made into or out of the Consolidated Fund.

Payment of moneys withdrawn from Consolidated Fund

6 (1) Where by virtue of a warrant monies have been withdrawn from the Consolidated Fund for statutory expenditure or for expenditure authorized by an Appropriation Law or by a supplementary estimate approved by resolution of the House of Assembly or by virtue of section 97 of the Constitution [*title 2 item 1*], then, subject to section 11 and without prejudice to any statutory provision specifying the manner in which

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particular payments out of the Consolidated Fund are to be made, the Accountant-General may, subject to any general or special directions as may be given by the Minister in that behalf pay out such portion of the monies so withdrawn for the purpose for which the expenditure was authorized as aforesaid, in such amounts and at such intervals as appear to him convenient:

Provided that no such payment for any particular purpose shall exceed the amount which the Constitution [*title 2 item 1*], law, Appropriation Law, supplementary estimate or resolution authorized for such purpose.

(2) Where monies have been lawfully withdrawn from the Consolidated Fund and the purpose for which such withdrawal was authorized was the payment to any society, organization or body of persons (not being a public authority), if it is made to appear to the Minister that such society, organization or other body of persons has ceased effectively to carry out in a proper manner the functions in respect of which the payment was authorized or required to be made, the Minister may by notice in writing direct the Accountant-General not to make the payment, or any part of the payment, or to make the payment or any part thereof subject to such conditions as the Minister may require to be imposed; and where any such direction as aforesaid is given by the Minister he shall lay a copy of the direction together with his reasons therefor before both Houses of the Legislature.

Moneys paid in error into Consolidated Fund

7 Where any monies have been paid in error into the Consolidated Fund the amount of such monies shall be a charge on the Consolidated Fund for the repayment thereof.

Financial year

8 The financial year in Bermuda shall, for the purposes of managing and accounting for public funds be the period of twelve months extending from the first day of April in any year to the thirty-first day of March in the year next following and accordingly, for the purposes of section 102(1) of the Constitution [*title 2 item 1*] the first day of April in any year is hereby prescribed as the beginning of the twelve months constituting the financial year.

Consolidated Fund to be managed on accrual basis

9 The accounts of the Consolidated Fund shall be managed on an accrual basis and, in respect of any financial year, there shall be included in the revenue and expenditure accounts all items of revenue which become due, and all items of expenditure which are incurred, in that year, without regard to the actual date of receipt or payment of any item.

Contingencies fund

10 (1) The Minister may establish a contingencies fund by withdrawing from the Consolidated Fund monies not exceeding in the aggregate twenty-four thousand dollars or such greater sum as the House of Assembly may by resolution approve.

(2) The Minister may make advances from the contingencies fund if he is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists.

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(3) When any advance is made from the contingencies fund supplementary estimate shall, as soon as practicable, be laid before the House of Assembly for the purpose of authorizing the replacement the sum so advanced.

Public Service Superannuation Fund

10A (1) The Minister shall establish a fund to be called the Public Service Superannuation Fund (in this section referred to as “the Fund”) into which he shall pay such sums of money as have been set aside in the Consolidated Fund for that purpose.

(2) The Minister shall pay into the Fund any amounts which may be authorized by the Legislature from time to time as Government’s contribution to the Fund.

(3) The moneys paid into the Fund shall be invested in accordance with the Public Funds Act 1954 [*title 15 item 1*] and the interest earned on such investments shall be paid into the Fund.

(4) There shall be paid into the Fund any amounts deducted by the Accountant General from the salaries of public officers or other employees in the public service as may be agreed with the representative associations of such public officers or other employees (as the case may be).

Unemployment Insurance Fund

10B (1) The Minister shall establish a fund to be called the Unemployment Insurance Fund (in this section referred to as “the Insurance Fund”) into which he shall pay such sums of money as have been set aside in the Consolidated Fund for that purpose.

(2) The Minister shall pay into the Insurance Fund any amounts which may be authorized by the Legislature from time to time as Government’s contribution to the Insurance Fund.

(3) The moneys paid into the Insurance Fund shall be invested in accordance with the Public Funds Act 1954 and the interest earned on such investments shall be paid into the Insurance Fund.

[Section 10B inserted by 2002:3 s.2 effective 18 March 2002]

Management of Unemployment Insurance Fund

10BA (1) The Minister may direct the Accountant General to pay out of the Unemployment Insurance Fund such sums of money to such persons or entities as the Minister directs, for the purpose of assisting unemployed persons.

(2) The Accountant General shall maintain a record of transactions of the Unemployment Insurance Fund and shall ensure that—

- (a) all monies received are properly brought to account; and
- (b) all payments out of the Fund are correctly made and properly authorised.

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(3) The financial year of the Unemployment Insurance Fund shall end on 31st March each year.

[Section 10BA inserted by 2011 : 33 s. 2 effective 10 August 2011]

Annual Report on Unemployment Insurance Fund

10BB (1) The Accountant General shall prepare and submit to the Minister, within six months after the end of the Unemployment Insurance Fund's financial year, an annual report on the operations of the Fund containing—

- (a) the financial statements of the Fund during the preceding financial year; and
- (b) such other information as the Minister may direct in writing.

(2) Within seven months after the end of the Unemployment Insurance Fund's financial year, the Minister shall send to the Auditor General a copy of the annual report of the Accountant General on the operations of the Fund.

(3) The Auditor General shall examine the annual report of the Accountant General and shall prepare a report in writing, on the annual report of the Accountant General, to the Minister, within three months of receiving the annual report from the Minister.

(4) The Minister shall cause copies of the annual report of the Accountant General, together with the report of the Auditor General to be laid before the Legislature as soon as practicable.

[Section 10BB inserted by 2011 : 33 s. 2 effective 10 August 2011]

Dissolution of Unemployment Insurance Fund

10BC (1) The Minister may dissolve the Unemployment Insurance Fund if the Minister determines that there is no object for which the Fund could lawfully be used.

(2) If the Unemployment Insurance Fund is dissolved under subsection (1), any monies in the Fund at the time of the dissolution shall be paid into and form part of the Consolidated Fund.

[Section 10BC inserted by 2011 : 33 s. 2 effective 10 August 2011]

Establishment of Government Reserves Fund

10C The Minister shall establish a Government Reserves Fund into which he—

- (a) shall pay money set aside in the Consolidated Fund arising from the termination of the relevant Agreements under the United States Bases (Termination of Agreements) Act 2002; and
- (b) may deposit bequests or donations to the Government of Bermuda that do not have any specified purpose

[Section 10C inserted by 2004:9 s.2 effective 26 March 2004; and substituted by 2005:11 s.2 effective 17 May 2005]

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Management of Government Reserves Fund

10D (1) The monies paid into the Fund shall be invested in accordance with the Public Funds Act 1954 and the interest and other income earned on such investments shall be paid into the Fund.

(2) The Minister may direct the Accountant General to pay out of this Fund such sums of money to such entities as the Minister directs.

(3) The Accountant General shall maintain a record of transactions of the Fund and shall ensure that—

(a) all monies received are properly brought to account; and

(b) all payments out of the Fund are correctly made and properly authorised.

(4) The financial year of the Fund shall be 1st April to 31st March of the following year.

[Section 10D inserted by 2005:11 s.2 effective 17 May 2005]

Annual report on Government Reserves Fund

10E (1) The Accountant General shall prepare and submit to the Minister, within six months after the end of the Fund's financial year an annual report on the operations of the Fund containing—

(a) the financial statements of the Fund during the preceding financial year; and

(b) such other information as the Minister may direct in writing.

(2) Within seven months after the end of the Fund's financial year the Minister shall send to the Auditor General a copy of the annual report of the Accountant General on the operations of the Fund.

(3) The Auditor General shall examine the annual report of the Accountant General and shall prepare a report in writing, on the annual report of the Accountant General, to the Minister, within three months of receiving the annual report from the Minister.

(4) The Minister shall cause copies of the annual report of the Accountant General, together with the report of the Auditor General to be laid before the Legislature as soon as practicable.

[Section 10E inserted by 2005:11 s.2 effective 17 May 2005]

Dissolution of Government Reserves Fund

10F (1) The Minister may dissolve the Fund if he determines that there is no object to which the Fund could lawfully be used.

(2) If the Fund is dissolved under subsection (1), any monies in the Fund at the time of the dissolution shall be paid into and form part of the Consolidated Fund.

[Section 10F inserted by 2005:11 s.2 effective 17 May 2005]

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Conditions of payments out of Consolidated Fund

11 (1) Where any expenditure is authorized and required by the Constitution [*title 2 item 1*], any law, Appropriation Law or supplementary estimate, then the following provisions of this section shall (without prejudice to any other statutory provision specifying the manner in which particular payments out of monies lawfully withdrawn from the Consolidated Fund are to be made) have effect with respect to the conditions to be fulfilled before any such payment is made.

(2) Except as otherwise expressly provided, where any expenditure is incurred by or on behalf of or in connection with the operation of any Government Department or other public authority, then the appropriate public officer of the Government Department or public authority shall cause the bill, invoice or other statement of account duly presented in respect of the transaction in question to be certified, and shall as soon as may be cause the bill, invoice or other statement of account certified as aforesaid to be transmitted to the Accountant-General.

(3) The Accountant-General, upon receiving any bill, invoice or statement of account, certified in accordance with subsection (2) and on being satisfied that he is authorized or required to make the payment, shall cause the appropriate payment to be made out of the monies lawfully withdrawn from the Consolidated Fund to the person or public authority in respect of whom the expenditure was incurred, and shall cause the appropriate entries to be made in the books or other records maintained in accordance with section 4.

(4) In this section “the appropriate public officer”—

- (a) in relation to a Government Department, means the Permanent Secretary or Head of the Department, or, where there is no Permanent Secretary or Head of that Department, then the senior Executive or Administrative Officer in that Department, or, in either case, such other public officer in that Government Department as the Minister may by notice in writing appoint; and
- (b) in relation to any other public authority, means the Chairman, President or other Minister or officer of the public authority for the time being exercising the functions of, or functions analogous to the functions of, Chairman or President of that authority, or such public officer exercising any functions in connection with the exercise of the functions of that public authority as the Minister may by notice in writing appoint.

(5) Nothing in the foregoing provisions shall have effect with respect to payments in relation to monies lawfully withdrawn from the Consolidated Fund upon the authority of a warrant under the hand of the Governor issued pursuant to section 95 (1) of the Constitution [*title 2 item 1*].

Virements

11A (1) Subject to subsection (2), a Permanent Secretary or a Head of Department may, after obtaining the approval of the Minister, transfer part of the appropriated budget

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provisions, between the Heads of Expenditure within a Ministry as identified by the Appropriation Act for that financial year.

(2) The total sum appropriated against a Ministry shall not be exceeded in the transfer referred to under subsection (1).

[Section 11A inserted by 2004:9 s.3 effective 26 March 2004]

Payments out of Consolidated Fund for salaries, special allowance, overtime and pensions

12 (1) This section shall have effect with respect to the payment out of the Consolidated Fund of sums—

- (a) in respect of salary and special allowances and overtime pay, payable to an established officer or to a non-established officer within the meaning of that Act or to a person appointed to act temporarily in any established or non-established office;
- (b) in respect of pension payable to any person under the Public Service Superannuation Act 1981 [*title 9 item 31*];
- (c) in respect of pension payable to any person under the Extra Revenue Officers (Pensions) Act 1946; and
- (d) in respect of any pension, annual grant or annuity payable to any person under any Act other than the Acts mentioned in the foregoing paragraphs of this subsection.

(2) The payment of the sums in respect of matters specified in subsection (1)(a) shall be made out of the Consolidated Fund to the person entitled to receive the payment at the rate appropriate in the circumstances as notified to the Accountant-General from time to time by the Secretary to the Cabinet.

(3) Except as otherwise expressly provided, the payment of sums in respect of the matters specified in subsection (1)(a), (b), (c) and (d) shall be made out of the Consolidated Fund to the person entitled to receive the payment, or to such other person as he may appoint to be his agent to receive any such payment on his behalf, on the last working day of every month, and, in case of broken periods of entitlement to any such payment as aforesaid, then proportionately for any period during that month during which there accrued any entitlement to such payment.

In this subsection “working day” means any day which is not a public holiday.

(4) Notwithstanding anything in the foregoing provisions of this section, where payment in respect of any of the matters specified in subsection (1) is made to any person in excess of the rate appropriate in the circumstances then (without prejudice to any other lawful remedy which may be taken by any person) the Accountant-General may withhold from the person to whom the overpayment was made the payment in whole or in part of any sums falling to be paid to that person out of public funds until the amount of the payments withheld equals the amount originally overpaid to that person, and, if such overpayment has not earlier been corrected by way of refund or otherwise, then such part

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of the amount withheld as is required to correct the original overpayment shall be appropriated to the credit of the vote out of which the original overpayment was made.

Payment out of Consolidated Fund of sums due on death

13 (1) If at the time of the death of any person there is payable to him any sum of money out of the Consolidated Fund, the Accountant-general shall, subject to subsections (2) and (3), pay the sum to the executor of or administrator of the estate of the deceased person upon production of the probate of the will or letters of administration of the estate of the deceased person, or to any other person on production of an order of the Court addressed to the Accountant-General and directing the payment to be made; and the receipt of any such executor, administrator or other person shall be a good discharge to the Accountant-General for the sum specified therein.

(2) Notwithstanding anything in subsection (1), where a person dies to whom, at the time of his death, a sum of money is payable out of the Consolidated Fund, and there is not produced to the Accountant-General within three months after the death—

- (a) a probate of the will of the deceased person; or
- (b) letters of administration of his estate; or
- (c) an order of the Court addressed to the Accountant-general relating to the disposition of the sum of money; or
- (d) notice in writing of the existence of a will of the deceased person and intention to prove such will; or
- (e) notice in writing of intention to take out letters of administration,

the sum of money may be dealt with in accordance with the succeeding provisions of this section.

(3) Where the sum of money exceeds twenty thousand dollars, the Minister, after notice of the intended payment has been three times published in the Gazette, may order that the sum of money be paid to the person or persons who would in the opinion of the Minister be entitled to the effects of the deceased person were letters of administration granted under the law for the time being regulating the distribution of the personal estate of a person dying intestate; and the receipt of any such person or persons to whom any payment is made as aforesaid shall be a good discharge to the Accountant-General for the sum specified therein.

(4) Where the sum of money is twenty thousand dollars or less, the Accountant-General, subject to the approval of the Minister, may pay or divide the sum of money to or among any of the persons hereinafter mentioned—

- (a) the widow or widower of the deceased person;
- (b) any person or persons who would in the opinion of the Accountant-General be entitled to the effects of the deceased person were letters of administration granted under the law for the time being regulating the estates of persons dying intestate;

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- (c) any person or persons who make out to the Accountant-General a claim based on legal, equitable or moral grounds;
- (d) without prejudice to the generality of paragraph (c), any person or persons who are creditors of the deceased person (including a person or persons who paid the funeral expenses), any person or persons who during the last illness of the deceased person waited on or nursed him or provided him with food or other necessities, and any person or persons who, but for illegitimacy, would have been eligible for payment under paragraph (b) ;
- (e) the appropriate officer or authority where the relatives of the deceased person reside outside Bermuda; and
- (f) any person or persons undertaking to apply the sum in or towards the maintenance or education of any or all of the children of the deceased person;

and the receipt of any such person or persons to whom any payment is made as aforesaid shall be a good discharge to the Accountant-General for the sum specified therein.

(5) Subsection (3) or subsection (4) (according to the amount of the sum of money) shall also have effect in any case where notice has been given as mentioned in subsection (2)(d) or (e), but no will is proved or (as the case may be) no letters of administration are taken out, and produced to the Accountant-General within six months after the death of the deceased person.

[Section 13 subsections (3) and (4) amended by 2003:3 s.2 effective 19 March 2003]

Administration of payments due to deceased persons where payee is under legal disability

14 (1) Without prejudice to anything in section 13, where any sum of money falls to be paid in pursuance of subsection (3) or subsection (4) of that section to an infant or other person under legal disability, the Minister may direct that the payment of the money or any part thereof is to be administered in the manner specified in subsection (2).

(2) In the circumstances mentioned in subsection (1) the Accountant-General, subject to the approval of the Minister—

- (a) may himself administer the payment of the money; or
- (b) may direct any willing person selected by him to be paid the amount of the money and to administer the payment thereof,

for the benefit of the infant or other person under legal disability to whom the sum falls to be paid.

(3) The receipt of any person (other than of the Accountant-General) who administers any payment under the foregoing provisions of this section shall be a good discharge to the Accountant-General for the sum specified therein.

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Minister may appoint bank in which Government account may be maintained

15 The Minister may in writing appoint an institution licensed as a bank under the Banks and Deposit Companies Act 1999, to be a bank in which an account on behalf of the Government may be maintained in Bermuda and such account shall thereafter be maintained in any bank so appointed.

[Section 15 amended by BR81/1999 effective 1 January 2000]

Minister may require bank to give security

16 The Minister if he thinks it expedient to do so, may from time to time by Order require any appointed bank to give such security as the Minister may consider adequate to secure the amount of public money on deposit in that bank at the time when the Order is made.

Bank statements

17 Each appointed bank shall prepare and furnish to the Accountant-General statements at such times and in such form as he may require of all sums deposited in and withdrawn from that bank on account of Government.

Money for change

18 The Accountant-General shall retain in the Department such sums of money as he considers necessary for giving change, and shall cause such advances to be made to officers of other departments as he considers necessary for that purpose.

Payments into Consolidated Fund

19 Any payment into the Consolidated Fund may lawfully be made—

- (a) by way of a cheque drawn on an appointed bank; or
- (b) by way of a cheque or other negotiable instrument drawn on any other bank (not being an appointed bank) or drawn on any other person, whether or not such other bank or person is in Bermuda, as may from time to time be authorized by the Accountant-General:

Provided that the Accountant-General may, as respects any cheque, require the cheque to be duly certified by the bank on which it is drawn in such manner as to render that bank liable in law for the payment of the amount of the cheque.

Authority for use of non-cash payment systems

19A (1) This section applies to payments to the Government in discharge of obligations owed to the Government by debtors of the Government, whether or not the obligations arise under a statutory provision.

(2) Where a payment to which this section applies is made under and in accordance with arrangements described in subsections (3) to (5), the payment shall be deemed in law to effect satisfaction of the obligation in question, notwithstanding that the money amount of the payment may be less than the nominal money amount due under the obligation.

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(3) Subject to subsection (5), the Accountant-General may make such arrangements with such persons as he thinks fit whereby payments to which this section applies may be made with the use of credit cards or vouchers or other methods or devices not involving the use of cheques or money in the first instance.

(4) Arrangements referred to in subsection (3) may include provision—

- (a) whereby the money obligation of a debtor is discharged by some person other than the debtor (“a third party”); and
- (b) whereby a third party is paid a commission or allowed a rebate in consideration of his participation in the arrangements.

(5) Arrangements shall not have effect for the purpose of subsections (3) and (4) unless the Minister certifies in writing that he is satisfied that it is in the public interest that the arrangements should be made.

[Section 19A inserted by 1991:19 effective 30 May 1991]

Moneys to be paid into appointed bank daily

20 All monies and cheques received into the Department during each day shall after retaining sufficient sums of money to meet any requirements arising under section 18, be paid as soon as practicable into an appointed bank and shall thereupon form part of the Consolidated Fund.

Payments in Bermuda by cheques drawn on behalf of Accountant-General

21 (1) All payments in Bermuda out of the monies lawfully withdrawn from the Consolidated Fund shall be made by way of cheques drawn on behalf of the Accountant-General on an appointed bank.

(2) Cheques as aforesaid—

- (a) shall be signed personally by the Accountant-General and by the Assistant Accountant-General, or by either of these officers and by the Accountant; or
- (b) shall be issued by means of any approved cheque-writing machine.

(3) In this section “approved cheque-writing machine” means a machine which issues and authenticates cheques by mechanical means, being a machine of a design and pattern approved by the Minister.

Minister may approve waiver or deferment of public money payments

22 (1) The Minister may, on application in writing by a public authority setting out the exceptional circumstances necessitating the request, waive or defer the payment of public money—

- (a) in whole or in part;
- (b) for a specified period, subject to subsection (5);
- (c) with respect to a specified person or class of persons.

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(2) No such waiver or deferment of payment of public money shall be granted unless the Minister—

- (a) has consulted the Minister responsible for the enactment under which the public money is prescribed;
- (b) is satisfied that there are exceptional circumstances justifying the waiver or deferment of payment in that particular case; and
- (c) has notified the Accountant-General in writing.

(3) The Minister may provide for the waiver or deferment of payment of public money—

- (a) in accordance with any or all of the provisions of paragraphs (a) to (c) of subsection (1);
- (b) with retrospective effect, subject to subsection (5); and
- (c) subject to such conditions as the Minister may deem appropriate to impose on the person benefitting from the waiver or deferment of payment granted.

(4) A public authority whose application for the waiver or deferment of payment of public money has been granted shall—

- (a) maintain proper books or records with respect to the waiver or deferment of payment of public money and provide such details of the value of the public money waived or deferred as the Accountant-General may direct; and
- (b) provide such other information relating to the public money waived or deferred as the Accountant-General may request.

(5) No application to waive or defer payment of public money shall be granted under this section for a period going beyond the financial year in which the public money is waived or deferred.

(6) Where a person benefitting from a waiver or deferment of payment of public money granted by the Minister under this section, which is subject to any condition and such person fails to comply with such condition, the Minister may—

- (a) determine to cancel the waiver or deferment of payment of public money granted for the entire period for which it was granted or for a portion of such period; and
- (b) require the public money due to have been paid during the period of the cancelled waiver or deferment of payment to be paid and, where necessary, be recovered before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 for the recovery of a debt or liquidated demand.

(7) In this section, “exceptional circumstances” include—

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- (a) a Proclamation of a State of Emergency under section 14 of the Bermuda Constitution Order 1968;
- (b) a declaration of a public health emergency by the Minister of Health under section 107A of the Public Health Act 1949;
- (c) hurricanes and other major adverse natural or weather-related events significantly impacting Bermuda negatively, whether directly or indirectly;
- (d) an event or occurrence significantly impacting a sector of the economy or community in Bermuda negatively, whether directly or indirectly, that could not reasonably have been foreseen;
- (e) a situation where a person has been selected to participate on behalf of Bermuda, or is required to represent Bermuda, at an international event;
- (f) such other event or circumstance that the Minister may deem, by notice published in the Gazette, to be an exceptional circumstance with respect to a particular case, after consulting the Minister and public officers connected with the case.

(8) The Minister shall, when tabling the financial statements of the Consolidated Fund at the end of the financial year, lay before each House of the Legislature a report on the public money waived or deferred under this section during that financial year.

[Section 22 repealed and replaced by 1999:24 s.2 effective 23 July 1999; Section 22 repealed and replaced by 2020 : 31 s. 3 effective 15 July 2020]

Right to set-off

22A (1) Where any public money is recoverable from any person and—

- (a) the Minister is satisfied that that person is entitled to recover moneys from a Government Department in respect of goods or services provided to that Department by or on his behalf; or
- (b) the Minister is satisfied that the person is entitled to receive a benefit from the Unemployment Insurance Fund for the purpose of assisting unemployed persons,

the Minister may, not earlier than sixty days after the date on which such public money first becomes recoverable, authorise the Accountant General to set-off so much of the money as the person is entitled to recover against the public money which is recoverable from him, as the Minister considers appropriate, in full or part settlement of the public money that is recoverable.

(2) Where pursuant to subsection (1), the Minister authorises a set-off in part settlement of any public money, nothing contained in that subsection shall be construed as prohibiting the recovery, as authorised by any law, of so much of the public money as remains recoverable.

[Section 22A inserted by 2001 : 8 s.2 effective 19 March 2001; Section 22A subsection (1) amended by 2021 : 34 s. 2 effective 2 August 2021]

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Advances between public funds

23 The Accountant-General, subject to such general or special directions as may from time to time be given by the Minister, may make such temporary advances from one public fund managed and administered by him to any other public fund and vice versa as appears to him expedient and economical.

Cheques drawn on Consolidated Fund remaining unpaid for six months

24 Where after payment has been duly made to any person out of the Consolidated Fund by way of a cheque drawn in accordance with section 21 that cheque is not paid within six months of the date on which the cheque was drawn, no payment shall thereafter be made upon that cheque and the amount of such cheque shall be appropriated to the general revenue of Bermuda:

Provided that the Minister may at any time, where he thinks it equitable and proper in the circumstances, direct the payment of the amount of any such cheque to any person after the elapse of the period of six months as aforesaid.

Government account with Crown Agents

25 The Accountant-General shall keep the general account of the Government with the Crown Agents, and shall from time to time make such remittances to the Crown Agents for the credit of the general account as are necessary or are in his opinion expedient.

Investment of balance with Crown Agents

26 (1) In any case where there is a balance in the general account of the Government with the Crown Agents standing to the credit of the Government, then the balance shall be subject to the management and control of, and may be invested by the Minister, subject to and in accordance with the Public Funds Act 1954 [*title 15 item 1*].

(2) Any sums earned by way of any such loans or deposits as aforesaid shall, subject to payment of the appropriate commission, if any, to the Crown Agents, be placed to the credit of the Government in the general account of the Government with the Crown Agents.

Minister may appoint committee to take account of public moneys where officer ceases effectively to discharge duties

27 (1) Where the Accountant-General or any other officer in the Department who has the charge or custody of public monies (otherwise than as respects the charge or custody of sums of money advanced under section 18 for giving change), ceases for any reason effectively to discharge the duties of the office by virtue of which he had the charge or custody of those public monies, the Minister may by notice in writing appoint a committee of three persons (including a chairman of the committee) to take proper account of the public monies which are in the charge or custody of that officer or were in his charge or custody at the time when he ceased effectively to discharge the duties of his office.

(2) An officer relinquishing or assuming the charge or custody of public monies, and a committee appointed under subsection (1) to take proper account of public monies, shall complete and sign such receipts or statements of accounts, and shall cause such

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receipts or statements of accounts to be delivered to such persons, as the Minister may from time to time direct.

(3) Any person having for the time being possession of any key of a receptacle or vault in which public monies are kept (other than the key to a vault in any appointed bank) shall upon demand deliver that key to a committee appointed under subsection (1).

(4) Where an account is maintained on behalf of the Government in an appointed bank, then in any such case the bank shall, upon demand by a committee appointed under subsection (1), furnish to the committee a certificate signed by an officer of the bank showing the balance in the bank to the credit of the Government at the close of business on the day last preceding the making of the demand.

(5) Every member of a committee appointed under subsection (1) shall be entitled to receive out of the Consolidated Fund the sum of two dollars and forty cents in respect of each day or part of a day during which that committee meets to take account of public monies, to be paid on the certificate of the chairman of the committee.

Powers of committees appointed to investigate accounts of Consolidated Fund

28 (1) Without prejudice to anything in section 27 any committee appointed by the Minister or by either House of the Legislature to investigate the accounts of the Consolidated Fund may inspect and take account of the public monies in the charge or custody of any officer of the Department.

(2) In any case where a committee is appointed by either House of the Legislature to investigate the accounts of the Consolidated Fund and the Legislature is dissolved while that committee remains undischarged, that committee may, notwithstanding such dissolution, continue to exercise its powers until duly discharged by the House of the Legislature which replaces the House by which the committee was appointed.

Minister may surcharge Government employee

29 (1) If it appears to the Minister that any person who is or was in the employment of the Government—

- (a) has failed to collect any monies owing to the Government for the collection of which he is or was responsible; or
- (b) is or was responsible for any improper payment of public monies or for any payment of monies which is not duly vouched; or
- (c) is or was responsible for any deficiency in, or for the destruction of, any public monies, stamps, securities, stores or other Government property;

and if a satisfactory explanation is not, within a period specified by him in writing, furnished to the Minister with regard to such failure to collect, improper payment, payment not duly vouched, deficiency or destruction, the Minister may surcharge against such person a sum equivalent to the amount not collected, payment, deficiency or loss or the value of the property destroyed as the case may be.

(2) The Minister shall cause the person surcharged to be given notice in writing thereof.

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(3) The amount of any surcharge made under this section shall, subject to section 30 be a debt due to the Government from the person against whom a surcharge is made and shall, without limit of amount, be recoverable by the Minister from that person before a court of summary jurisdiction in the manner provided in the Magistrates Act 1948 [*title 8 item 15*], for the recovery of a debt or liquidated demand.

Minister may withdraw surcharge

30 The Minister may at any time in writing withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made and thereupon the amount of the surcharge shall cease to be a debt owed to the Government.

Appeal against surcharge

31 (1) Any person aggrieved by a surcharge made against him under section 29 may appeal to the Governor against such surcharge within a period of fourteen days after he has received notice of the surcharge:

Provided that the Governor may give leave to appeal after the expiration of such period of fourteen days.

(2) The Governor, after such further investigation as he thinks fit and after considering any representations made by or on behalf of the appellant, shall make an order confirming the surcharge or directing that the appellant be released in whole or in part from the surcharge as may appear just and reasonable and the Minister shall act in accordance with such order.

Deduction of surcharge

32 Without prejudice to the right of recovery under section 29(3), the Minister may direct that the amount of the surcharge shall be recovered by such equal monthly instalments as the Minister may specify by deductions from the emoluments of the person surcharged where such person is in receipt of emoluments from the Government:

Provided that such instalments shall not exceed one-sixth of the monthly emoluments of that person.

Accountant-General to prepare accounts

32A (1) The Accountant-General shall, within the statutory period after the last day of each financial year, sign and deliver to the Minister and to the Auditor accounts showing the financial position of the Consolidated Fund on the last day of that year.

(2) The above accounts shall include the following statements in respect of the Consolidated Fund—

- (a) a balance sheet;
- (b) a statement of income and expenditure;
- (c) a statement of retained earnings;
- (d) a statement of changes in financial position;

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- (e) any other statement that the accounting principles stated in the accounts call for if the Fund's financial position is to be fairly presented.

(2A) The Minister shall cause the accounts referred to in subsection (1) to be laid before both Houses of the Legislature.

(3) The expression "statutory period" in subsection (1) means four months or, if in relation to a particular financial year the Minister approves in circumstances explained to him by the Accountant-General affecting that year, six months.

[Section 32A inserted by 1991:19 effective 30 May 1991; subsection (1) amended and subsection (2A) inserted by 1999:24 s.3 effective 23 July 1999]

Establishment of the Office of Project Management and Procurement

32B (1) The Office of Project Management and Procurement is established for the following principal purposes—

- (a) to provide professional, qualified procurement expertise and advice to Government;
- (b) to ensure that there is no bias in the awarding of Government contracts;
- (c) to identify and apply performance measures to ensure that Government obtains value for money;
- (d) to ensure that best practices are adhered to in the oversight of capital projects;
- (e) to advise on, guide and support the development of, and adherence to, procurement regulations, policy and best practice.

(2) The Office shall consist of a public officer known as the Director of Project Management and Procurement, and such other staff as are required.

(3) The Director shall have the following functions—

- (a) oversight of all Government procurement, including contracts and all pre-contract negotiations, such as requests for proposal, invitations to tender and the obtaining of quotations and estimates;
- (b) oversight of all capital projects for Government;
- (c) handling of complaints relating to the awarding of Government contracts;
- (d) such other functions as may be conferred under any other enactment or by the Minister.

(4) The Director shall issue a Code of Practice for Project Management and Procurement to be followed by all public officers concerned with obtaining goods or services for Government.

(5) The Director shall take steps as he considers necessary to ensure that the Code of Practice for Project Management and Procurement is followed by all public officers.

(6) In this section and sections 32C to 32E—

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“capital project” includes any project, not funded out of capital, which the Director considers should be managed in accordance with the Code of Practice for Project Management and Procurement;

“Director” means the Director of Project Management and Procurement;

“Government” includes a public authority;

“procurement” means the provision of any goods or services to Government otherwise than by a public officer;

“public officer” includes a person employed by, or acting as an agent for, a public authority.

[Section 32B inserted by 2011 : 35 s. 2 effective 21 October 2011; subsection (1) amended by BR 93 / 2015 para. 2 effective 27 November 2015]

Access to documents and information

32C (1) For the purpose of carrying out his functions, the Director may require any public officer to produce for inspection any documents or information relating to procurement and capital projects, including any computer data in any form, and may make copies or extracts of such documents or information.

(2) The Director is entitled to be given any information and explanations that he may request from a public officer in the performance of his functions under this Act.

(3) Notwithstanding any other Act or any privilege under the law of evidence, the Director may obtain any documents or information relating to procurement and capital projects from a public officer, and no such documents or information may be withheld from the Director on any grounds.

(4) In this section, “Director” includes a person authorised in writing by the Director.

[Section 32C inserted by 2011 : 35 s. 2 effective 21 October 2011]

Confidentiality

32D All information furnished by a public officer to the Director shall at all times be treated by the Director and all staff of the Office of Project Management and Procurement as confidential, shall be used solely for the purpose of carrying out functions under this Act, and shall not be disclosed except for the purposes of this Act.

[Section 32D inserted by 2011 : 35 s. 2 effective 21 October 2011]

Annual report of Director

32E (1) The Director shall, within three months after the end of each calendar year, prepare a report about the operation of the Office of Project Management and Procurement during the preceding year, and deliver it to the Minister.

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(2) The Minister shall cause a copy of the annual report to be laid before both Houses of the Legislature.

[Section 32E inserted by 2011 : 35 s. 2 effective 21 October 2011]

Regulations

33 (1) The Minister may make such regulations as appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act; provided that before the Minister makes regulations in relation to the Office of Project Management and Procurement, he shall consult the Minister responsible for that Office.

(2) Without prejudice to the generality of subsection (1), the Minister shall make regulations—

- (a) containing any Financial Instructions or directions issued by the Minister under section 3;
- (b) containing the Code of Practice for Project Management and Procurement issued by the Director under section 32B;
- (c) providing for appeals;
- (d) creating offences and prescribing penalties for such offences (including if thought fit, imprisonment), but not exceeding the penalties fixed by section 33A(2); and
- (e) providing for savings and transitional matters.

(3) The negative resolution procedure shall apply to regulations made under this section.

[Section 33 deleted and substituted by 2011 : 35 s. 3 effective 21 October 2011; subsection (1) amended by BR 93 / 2015 para. 2 effective 27 November 2015; Section 33 subsections (2)(c), (d) and (e) inserted by 2020 : 31 s. 4 effective 24 March 2020]

Criminal offences

33A (1) A person who, without reasonable excuse—

- (a) fails to comply with any regulations made under section 33(2);
- (b) fails to produce documents or information or otherwise obstructs the Financial Secretary or the Accountant-General or any member of their staff in carrying out his functions under section 3 of this Act; or
- (c) fails to produce documents or information or otherwise obstructs the Director of Project Management and Procurement or any member of the Director's staff in carrying out his functions under section 32B of this Act,

commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

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(2) Any person who alters, erases, destroys or conceals any document or information with the intention of avoiding producing the document or information in accordance with section 3 or section 32B of this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(3) Any person involved in the awarding of a contract to which the Code of Practice for Project Management and Procurement applies, who fails to disclose to the Director of Project Management and Procurement that he has any interest (whether legal, beneficial, fiduciary, family or otherwise) in any of the persons bidding for the contract commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(4) A person who contravenes section 32D commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

[Section 33A inserted by 2011 : 35 s. 3 effective 21 October 2011]

Offences of collusion relating to government contracts

33B (1) In this section—

“appointed or elected official” means a Member of Parliament, a Senator, a person who is appointed or elected to any municipality, parish council or any other public authority, and includes a person who has held any such office at any time within the five years immediately preceding the commission of an offence under this section;

“contractor” means—

- (a) any person bidding for a government contract; and
- (b) where the person bidding is a company or partnership, any director, partner, officer, employee or associate acting on behalf of the company or partnership;

“government contract” means a contract to which the Code of Practice for Project Management and Procurement applies.

(2) An appointed or elected official who attempts to influence the awarding of a government contract commits an offence, regardless of whether or not he has any interest (whether legal, beneficial, fiduciary, family or otherwise) in any of the persons bidding for the contract.

(3) For the avoidance of doubt, an appointed or elected official who bids for a government contract does not commit an offence under subsection (2) solely by reason of that fact.

(4) If a contractor attempts to gain an unfair advantage when bidding for a government contract by obtaining, from a public officer or from an appointed or elected official, information which is not available to all persons bidding for that contract, the contractor and the public officer or the appointed or elected official commit an offence.

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(5) A person guilty of an offence under this section is liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(6) Where an offence committed against subsection (4) by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

[Section 33B inserted by 2012 : 25 s. 5 effective 3 July 2012; subsection (5) deleted and substituted by 2013 : 30 s. 25 effective 8 November 2013]

Time within which prosecutions may be instituted

33C Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.

[Section 33C inserted by 2012 : 25 s. 5 effective 3 July 2012]

Repeal and transitional

34 *[omitted]*

Consequential amendments

35 *[omitted]*

General amendments

36 *[omitted]*

Saving

37 Nothing in this Act shall derogate from or abridge any provision of any Act by or under which provision is made for the establishment and administration of a particular public fund.

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SCHEDULE

[omitted]

[Assent Date: 18 December 1969]

[Amended by:

1971 : 21
1971 : 83
1976 : 19
1977 : 35
1978 : 14
1991 : 19
1999 : 24
BR 81 / 1999
2001 : 8
2002 : 3
2003 : 3
2004 : 9
2005 : 11
2011 : 33
2011 : 35
2012 : 25
2013 : 30
BR 93 / 2015
2020 : 31
2021 : 34]