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SADC PARLIAMENTARY FORUM



SADC PF MODEL LAW

PUBLIC FINANCIAL MANAGEMENT

EXPLANATORY NOTES ON THE MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT [1]

1.0 Rationale and Objectives [2]

It is considered necessary to prepare a Southern African Development Community (SADC) Model Law on Public Financial Management due to the existing legal and regulatory gaps in the current systems (see below).

The SADC Model Law on Public Financial Management will be adopted by the SADC Parliamentary Forum's Plenary Assembly and will serve as a benchmark and guiding legal instrument for national Parliaments to reinforce their domestic legal framework on public financial management. The Model Law will be incorporated by SADC Member States through amendments conducted to the Constitution, finance laws, regulations or the Standing Orders and Rules of the National Assembly, as may be necessary. [3]

The overarching objective of the SADC Model Law is to ensure that SADC national Parliaments are enabled to conduct their legislative, budgetary and oversight functions for public financial management in a way that is transparent, efficient and responsive to the needs of SADC citizens. [4]

Public financial management refers to the administration and supervision exercised over the finances of the State. It is a continual and ongoing activity. However, despite a general increase in economic growth perceived in 11 out of 15 SADC Member States over the period 2015-2018, there are major symptoms of economic frailty, excessive budget deficits, loss in purchasing power for citizens, and poor debt servicing across the SADC region. In 2018, Government debt in SADC as a percentage of GDP was the highest since the last 10 years. Additionally, in the period 2015-2018, reports of the Public Accounts Committees of more than

Drafting Note: The content of these Explanatory Notes has mainly been modelled on the Concept Note or the Explanatory Notes on the Model Law on Eradicating Child Marriage (the "ECM Notes"). The format of these notes as far as possible follows the format for the ECM Notes.

[2] Drafting Note: The "Rationale and Objectives" section in the ECM Notes is about 2.5 pages in length. This section has therefore been drafted to be of a similar length.

[3] Drafting Note: The content of this paragraph has been taken from paragraph 12 of the Concept Note.

[4] Drafting Note: The content of this paragraph has been taken from paragraph 13 of the Concept Note.

6 SADC countries indicated situations where public funds appropriated by Parliament may have been misused due to administrative lapses. [5]

This is reflective of root causes whereby Parliament as an institution is often unable to achieve its functions in public financial management efficiently, leading to: lack of prudential financial planning; lack of oversight in the procurement processes of the State; and possible wastages of public funds through corruptive practices.

There are several legal and regulatory gaps across the SADC region which undermine the functions of Parliament and therefore impede on sound public financial management. Those identified as currently existing across the SADC region are as follow:

- **Narrow ambit of reports under scrutiny**: In at least 5 SADC countries, the Public Accounts Committee examines only the report of the Director of Audit/Auditor General, and not the audit reports of other statutory bodies or public authorities.

- **Lack of enforcement powers of the Public Accounts Committee**: Moreover, in all SADC countries, it has been observed that Public Accounts Committees do not have sufficient enforcement powers pursuant to the examination of the report of the Director of Audit/Auditor General. In most cases, the report of the Public Accounts Committee is tabled in Parliament, without follow-up action.

- **Lack of enforcement for regulation of public sector debt**: In at least 4 SADC countries, there are laws or administrative guidelines on the management of public debt, with targets such as 50% of GDP, but without any penalty on Government if this debt target is not achieved. In more than 5 SADC countries, the laws and administrative guidelines on debt management and related targets as a percentage of GDP are unclear, if not inexistent. Moreover, the full details of existing public debt are often not disclosed in Parliament.

- **Lack of performance-based budget with clear Key Performance Indicators**: In nearly 6 SADC countries, the budget process is not related to clear performance indicators for Ministries and public departments. In other words, a performance-based budget will ensure that budgets are voted when Ministries/public departments comply with a set of pre-agreed performance indicators for the completed year in relation to set programmes.

- **Disconnect between international commitments and budgeting**: There is a general disconnect between commitments taken under treaties, declarations or covenants, and the actual budget passed in Parliament. For instance, it has been observed that SADC Member States' budgets mostly fail to reflect corrective action with regards to the following: the 90-90-90 targets to eradicate HIV/AIDS by 2030; the mainstreaming of gender through gender-based budgeting; and the implementation of Universal Health Coverage and the Sustainable Development Goals.

- **Misuse of supplementary budgets**: In at least 3 SADC countries, Supplementary budgets are passed in Parliament after the end of the financial year, and these budgets account for expenses which were made over and above the budget appropriated by Parliament for that year.

- **No limit on quantum of public contracts entered into by the Executive**: In at least 10 SADC countries, there is no limit on the quantum of public contracts which can be entered

[5] Drafting Note: The content of this paragraph and those that follow, up to and including the final bullet point "No limit on quantum of public contracts", has been taken from paragraphs 1 – 11 of the Concept Note.

into by the Executive. This in effect means that, over the democratic tenure of Government (usually a 5-year term), the Executive is legitimately entitled to pass any contract irrespective of whether the policy was included in the electoral manifesto, or whether the contract will involve debt servicing on the long term, that is beyond 5 years.

The SADC Model Law is intended to trigger policy reforms and development or revision of substantive laws in SADC Member States as:

- it is a regional process shifting focus from national requirements to regional practice;
- it continues efforts already begun at national level and provides a well-researched model establishing a regional standard, against which efforts in Member States can be measured, that has been approved by Member States at a high level having, though not binding in itself, a binding effect on Member States; and
- it is dynamic as it makes it possible or easy to transpose or transplant its contents without much effort as it describes and explains its adopting or adapting process.

Member States should use this Model Law to develop their national laws as it creates a robust and uniform legal framework relating to public financial management.[6]

The SADC Model Law will assist policy makers and legislative drafters to address all the relevant areas in need of legislative reform without usurping the authority of national legislatures to determine the context, extent, style and form of their national laws. The following key users of the Model Law have been borne in mind when developing this Model Law:

- policy makers, when developing policies and strategies relating to better public financial management;
- legislative drafters, when drafting national laws on improving public financial management;
- lawmakers, when enacting legislation on improving public financial management;
- judicial officers, when interpreting the laws on, and related to, public financial management;
- researchers, when doing research on public financial management; and
- administrators, when applying and implementing the laws on and related to public financial management.

Most Parliaments of SADC Member States have constitutional competence to initiate through Members of Parliament or the Executive legislation for enactment by Parliament following set procedures as contained in national laws and standing orders or rules of the National Assembly. However, for the purposes of the SADC Model Law it is important that a close working relationship with the Executive is established to ease the process of successfully enacting the national legislation on this matter.[7]

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6 Drafting Note: The content of this paragraph and bulleted list is taken from page v of the ECM Notes. It is a work in progress and is to be expanded on.

7 Drafting Note: The content of these paragraphs and bulleted list is taken from page vi of the ECM Notes with some amendments to reflect the content of this Model Law. It is a work in progress and is to be expanded on.

The improvement of public financial management is of absolute importance if the SADC Parliamentary Forum (SADC PF) is to achieve their legislative intent. In December 2019 at its 46th Plenary Assembly, SADC PF unanimously approved a review of public financial management in SADC and development of a Model Law that would address relevant concerns.[8]

There are a number of challenges capable of obstructing the improvement of public financial management in SADC Member States, but the intention is that in creating an adequate and well-drafted legal and institutional framework to govern public financial management across the SADC, Member States will be assisted in overcoming these challenges.[9]

2.0 Related Laws

There are various pieces of legislation in Member States that may have a direct external relationship with a law on improving public financial management that will need to be cross-referenced effectively in the Bill when drafting the national law. There may also be a need to pass consequential amendments to existing laws to ensure consistency and harmony of the law. This will prevent ambiguity of the law and assist in the holistic and correct interpretation of the law.

Laws that will influence or impact upon the implementation of the Model Law include:

- provisions of the Constitution relating to aspects of public financial management;
- laws relating to taxation;
- laws relating to the regulation of financial institutions;
- laws relating to the regulation of the public service; and
- criminal justice and penal law.

The Constitutions of Member States also need to be taken into account when considering the content of national laws as the ultra/intra-vires rule will apply. The Bill of Rights and exercise of legislative power through the making of subsidiary legislation to operationalise the law must seriously be considered by Member States and the legislative drafter.[10]

3.0 Style and Form[11]

The Model Law has been drafted using the precedent set by the SADC Law on Eradicating Child Marriage with minor adjustments for ease of communication in legislation and to facilitate the drafting of national legislation by the legislative drafter. Further, guidance notes, in the form of footnotes, have been inserted into the Model Law to guide the legislative drafter on specific issues.[12]

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8 Drafting Note: Although there is similar content to this in the preamble, this paragraph has been included to reflect that on page vi of the ECM Notes. It is a work in progress and is to be expanded on.

Drafting Note: The content of this paragraph is based on the content of the final paragraph in section 1.0 of the ECM Notes (page vii).

10 Drafting Note: The content of section 2.0 is taken from section 2.0 of the ECM Notes. It is a work in progress and will be expanded on.

11 Drafting Note: The content of section 3.0 is taken from section 4.0 of the ECM Notes.

12 Drafting Note: This paragraph highlights the fact that guidance notes in the form of footnotes (as opposed to in italics in brackets as per the Eradicating Child Marriage and Protecting Children Already in Marriage Model Law) have been inserted in the draft Model Law to assist the legislative drafters.

The Model Law, therefore, does not conform to individual Member States' form, style or structure of legislation, for example, it will not have a long title or short title. Member States will have to adapt the provisions of the law into appropriate national form, style and structure when adapting or adopting the contents of the Model Law as national laws.

The Model Law is formatted and structured using general conventional practices as reflected in previous SADC Model Laws. These conventional practices are designed to facilitate the communication of the extent of the law, Part or section of the law. The division of the Model Law into Parts enables similar or related provisions to be put together for comprehensibility but the Parts are supportive of each other thus making the Law a cohesive whole. The use of cross-referencing helps achieve the cohesiveness of the Law. These conventional practices have become quite uniform throughout the SADC Region, with only small variations.

4.0 Parts of the Model Law[13]

The Model Law addresses 15 main thematic areas, reflected in the Part headings, and sub-thematic areas, reflected in the sections and subsections, relation to the improvement of public financial management. The following are Parts of the Model Law:

- Preamble;
- Part 1 Preliminary Provisions;
- Part 2 Aims and Objectives
- Part 3 Authorities
- Part 4 Public Funds
- Part 5 Supply and Appropriation
- Part 6 Parliamentary Control
- Part 7 National Budget
- Part 8 Government Borrowing
- Part 9 Procurement and Use of Public Resources
- Part 10 Public Accounts
- Part 11 Financial Misconduct and Misuse
- Part 12 Cryptocurrencies
- Part 13 State Governments
- Part 14 Local Authorities
- Part 15 State-Owned Enterprises
- Part 16 Final Provisions

These Parts are based on well-researched best practices.

The following is a brief explanation of the key sections of the Parts and what role they play in the Model Law, why there is a need to have them in the Model Law and how a drafter can use the content to draft national legislation which conforms to the style, form and structure of national legislation.

4.1 Preamble

The preamble to the Model Law is meant to assist Member States to put in context the issues and concerns relating to public financial management.[14]

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13 Drafting Note: Section 4.0 reflects the content in section 5.0 of the ECM Notes. It is a work in progress and will be expanded.

14 Drafting Note: This sentence is taken from section 5.1 of the ECM Notes. Sections 4.1 onwards of these Explanatory Notes are a work in progress and will need to be completed if they are required.

4.2 Part 1: Preliminary Provisions

Part 1 makes provision about the structure of the Model Law, its scope and application, and interpretation of its provisions.

4.3 Part 2 Aims and Objectives

Part 2 makes provision about the aims and objectives of the Model Law and articulates principles and values for its implementation, as well as requiring the application of measurable benchmarks for performance assessment.

4.4 Part 3 Authorities

Part 3 identifies the core public authorities with responsibility for aspects of public financial management, and sets their key functions and responsibilities.

4.5 Part 4 Public Funds

Part 4 makes provision for the control of public funds, including the Consolidated Fund and special accounts and funds.

4.6 Part 5 Supply and Appropriation

Part 5 makes provision about the supply and appropriation process for the authorisation of the issue and application of sums from the Consolidated Fund, appropriations in aid and related matters.

4.7 Part 6 Parliamentary Control

Part 6 makes provision about Parliamentary control, including the functions of the Auditor General and the National Audit Office, and the role of the Public Accounts Committee.

4.8 Part 7 National Budget

Part 7 makes provision about the national budget including Parliamentary control of the budget process and mandatory budget documentation, as well as for variations and special measures.

4.9 Part 8 Government Borrowing

Part 8 makes provision about government borrowing, including classification of public debt, strategies and committees for the management of public debt, authorised borrowing, statements and schedules of public debt and a debt ceiling triggering enhanced scrutiny.

4.10 Part 9 Procurement and Use of Public Resources

Part 9 makes provision for the regulation of the procurement process in the public service, and the use of public resources.

4.11 Part 10 Public Accounts

Part 10 makes provision about public accounting, including articulating accounting principles, requiring resource accounting and whole of government accounts, and tax expenditure reporting.

4.12 Part 11 Financial Misconduct and Misuse

Part 11 creates offences of public financial misconduct and misuse of public funds, makes provision about financial maladministration and provides for enforcement.

4.13 Part 12 Crypto-currencies

Part 12 makes provision about cryptocurrencies and virtual assets, including regulatory principles and a virtual currency strategy.

4.14 Part 13 State Governments

Part 13 provides for the application of the Model Law to State Governments, with appropriate modifications.

4.15 Part 14 Local Authorities

Part 14 provides for the application of the Model Law to local authorities, with appropriate modifications.

4.15 Part 15 State-Owned Enterprises

Part 15 provides for the application of the Model Law to state-owned enterprises, with appropriate modifications.

4.16 Part 16 Final Provisions

Part 16 makes final provision, including provision about the publication and service of documents, the making of regulations for supplemental purposes and the issuing of guidance, as well as provision about Parliamentary scrutiny, transitional provision, repeals and revocations and extent and application.



MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT

PREAMBLE

(Please draft according to the style of drafting legislation in the national jurisdiction, for example replace this Preamble with an Explanatory Memorandum or Memorandum of objects and reasons)

We, the members of the Southern African Development Community Parliamentary Forum:

Conscious that public financial management, which refers to the administration and supervision exercised over the finances of the State, is a continual and ongoing activity, with the Executive and Parliament complementing each other through checks and balances to ensure that financial tasks conducted by Government or its agents are efficient, are for the purpose intended in accordance with budget lines, and are predicated on transactions which reflect value for money;

Noting that despite a general increase in economic growth perceived in 11 out of 15 Southern African Development Community ("SADC") Member States over the period 2015-2018, there are major symptoms of economic frailty, excessive budget deficits, loss in purchasing power for citizens, and poor debt servicing across the SADC region;

Noting in particular that in 2018, Government debt in SADC as a percentage of GDP was the highest for the previous 10 years as noted in the International Monetary Fund, Regional Economic Outlook Database for September 2019, albeit below 60%;

Noting additionally that in the period 2015-2018, reports of the Public Accounts Committees of more than 6 SADC countries indicate situations where public funds appropriated by Parliament may have been misused due to administrative lapses;

Concerned that this is reflective of root causes whereby Parliament as an institution is sometimes unable to achieve its functions in public financial management efficiently, leading to lack of prudential financial planning, lack of oversight in the procurement processes of the State, and possible wastages of public funds through corruptive practices;

Acknowledging that pursuant to the doctrine of separation of powers (as understood in international constitutional law) Parliament is the only institution which has sovereign authority to adopt the yearly public budget proposed by the Executive and to exercise oversight over proposed heads of expenditure at a Committee of Supply Stage or similar process in accordance with the Standing Orders and Rules of the National Assembly prior to their adoption by the National Assembly;

Noting that, in addition, most SADC Member States have subscribed to international commitments such as the implementation of the Sustainable Development Goals (SDGs) inclusive of Universal Health Coverage, and gender-related treaties such as the African Charter on Human and Peoples' Rights, and its corresponding Protocol on the Rights of Women in Africa (the Maputo Protocol), the International Covenant on Civil and Political Rights 1977 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1977 (ICESCR), and others, all of which international commitments need to be mainstreamed through the yearly budget appropriated by Parliament through the allocation of sufficient funds to ensure a progressive realisation of objectives and related targets;

Observing that since SADC countries apply a dualist doctrine (as recognised in international law) whereby treaties and covenants need to be domesticated by internal transposition processes through the Executive and the Legislature (Parliament) for them to have legal effect at the national level, international commitments taken need also be domesticated or incorporated through domestic legislation which is adopted by Parliament;

Observing, moreover, that Parliament ensures an oversight over enabling administrative processes which are conducted under authority of law to give effect to international commitments taken;

Observing that as a critical part of the role of Parliament in public financial management, the institution of Parliament interfaces with public financial management at several levels, including: oversight parliamentary questions by Parliamentarians (MPs) to interrogate executive action which involves use of public funds, for instance recruitment processes, building of infrastructure, creation of public institutions etc; taking cognisance of the Budget Speech read by the Minister of Finance which sets out the main economic, financial and fiscal measures for the incoming year, and taking stock of the Annexes to the Budget Speech which may contain further information on particular measures, the capital budget and information on economic variables such as public sector debt; adoption of the yearly budget through the Appropriation Act for the coming financial year, and adoption of the supplementary budget through a supplementary legislation after the end of the financial year; adoption of financial resolutions by Parliament immediately after reading of the Budget Speech for immediate changes in taxes and levies; debating on the Budget Speech and the economic, financial and fiscal measures contained therein; adoption of a Finance Act which is the legislation that gives legal effect to measures announced in the Budget, being the legislation that validates and subsumes financial resolutions made; examination of the Director of Audit or Auditor General's report on public expenses made by Government and public departments, through the Public Accounts Committee which is usually a Committee of Parliament; adoption of laws relating to sound financial management, such as revenue laws, legislation on financial reporting; laws on management of public debt, banking and non-banking financial services etc; review of regulations (secondary legislation) which are tabled in Parliament and which relate to public financial management; ensuring domestication of international commitments taken by Government, for instance the SDGs, UHC, or human rights treaties;

Noting in general that while this list of Parliamentary processes and mechanisms for scrutiny and oversight is non-exhaustive, there are also legal and regulatory gaps across the SADC region which undermine the above functions of Parliament and therefore impede on sound public financial management;

Concerned in particular about narrow ambit of reports under scrutiny of Public Accounts Committee, and that in at least 5 SADC countries, the Public Accounts Committee examines only the report of the Director of Audit or Auditor General, and not the audit reports of other statutory bodies or public authorities; this means that in case of mismanagement of public funds

from such statutory bodies, it is the board of that statutory body which is required to take action, and this audit report is not tabled in Parliament although Parliament may be allocating funds to that statutory body or public authority through the yearly budget; and that in some instances, Parliament is not empowered to consider the audit reports of statutory bodies, whereas in other cases, Parliament is empowered to do so but the reports are not tabled for consideration; that it is estimated that in at least 10 SADC countries, there are statutory bodies or public authorities which have a public element (that is which depend at least partly on public funds) but which fall outside the ambit of the supervisory authority of Parliament, exercised through the Public Accounts Committee;

Concerned in particular about the lack of enforcement powers of the Public Accounts Committee, noting that in all SADC countries it has been observed that Public Accounts Committees do not have sufficient enforcement powers pursuant to the examination of the report of the Director of Audit or Auditor General; and that in most cases, the report of the Public Accounts Committee is tabled in Parliament, without follow-up action;

Concerned in particular about the lack of enforcement for regulation of public sector debt, and that, in at least 4 SADC countries, there are laws or administrative guidelines on the management of public debt, with targets such as 50% of GDP, but without any penalty on Government if this debt target is not achieved; and that in more than 5 SADC countries, the laws and administrative guidelines on debt management and related targets as a percentage of GDP are unclear, if not inexistent; and noting moreover, the full details of existing public debt are often not disclosed in Parliament;

Concerned about the lack of performance-based budget with clear Key Performance Indicators ("KPIs"), noting that in some SADC countries, the budget process is not related to clear performance indicators for Ministries and public departments; without a performance-based budget which ensures that budgets are voted when Ministries or public departments comply with a set of pre-agreed performance indicators for the completed year in relation to set programmes; noting that KPIs can both be quantitative and qualitative, for instance number of complaints dealt with by a public authority, the number of children passing primary school examinations for a public school, or whether research of an agricultural department has yielded a constructive result; noting that if in some countries, KPIs do exist, there is little evidence that they are strictly adhered to; noting that performance-based budget established over the medium term (budget for next year and forecast for 2 additional years) with clear KPIs will promote predictability in the management of public finance and ensure proper financial planning by Government;

Concerned about disconnect between international commitments and budgeting, in the form of a general disconnect between commitments taken under treaties, declarations or covenants, and the actual budget passed in Parliament; noting, for instance, that it has been observed that SADC Member States' budgets mostly fail to reflect corrective action with regards to the following: the 90-90-90 targets to eradicate HIV / AIDS by 2030; the mainstreaming of gender through gender-based budgeting; the implementation of Universal Health Coverage and the Sustainable Development Goals; the implementation of regional strategies such as the SADC SRHR Regional Strategy (2019-2030) or the SADC Regional Strategy for HIV Prevention, Treatment and Care and SRHR among Key Populations (2018); implementation of regional objectives such Africa Agenda 2063, and provisions contained in human rights treaties such as those providing for the right to health and housing;

Concerned about the misuse of supplementary budgets, with in some SADC countries supplementary budgets being passed in Parliament after the end of the financial year to account for expenses which were made over and above the budget appropriated by Parliament for that year; acknowledging that whereas supplementary budgets are necessary due to new circumstances occasioned during the completed year (for instance draughts or cyclones), it

should not become a cause for improper financial planning; noting that it has often been observed that supplementary budgets are abusive in nature and relate to expenses which could have been anticipated through proper budget management;

Determined that SADC countries should be enabled to operate effective rule of law systems in accordance with public financial management is fully insulated from political considerations and protected from corruption of any kind;

Concerned that there is in some cases no limit on quantum of public contracts entered into by the Executive, with there being, in at least 10 SADC countries, no limit on the quantum of public contracts which can be entered into by the Executive, which means in effect that, over the democratic tenure of Government (usually a 5-year term), the Executive is legitimately entitled to pass any contract irrespective of whether the policy was included in the electoral manifesto, or whether the contract will involve debt servicing on the long term, that is beyond 5 years; and this unregulated prerogative to use public funds may lead to a situation where one Government binds the next beyond 5 years, therefore leading to a breach in democratic principles which are at the very foundation of the State; and that there is therefore a need for Parliament to exercise oversight and control over public contracts to ensure long-term sustainability in financial management;

Noting that the matters listed above set the parameters for the objectives of a SADC Model Law on Public Financial Management;

Determining that due to the existing legal and regulatory gaps, it is deemed necessary to prepare a SADC Model Law on Public Financial Management, to be adopted by the SADC Parliamentary Forum's Plenary Assembly, to serve as a benchmark and guiding legal instrument for national Parliaments to reinforce their domestic legal framework on public financial management; intending that the Model Law will be incorporated by SADC Member States through amendments conducted to the Constitution, finance laws, regulations or the Standing Orders and Rules of the National Assembly, as may be necessary;

Intending that the overarching objective of the SADC Model will be to ensure that SADC national parliaments are enabled to conduct their legislative, budgetary and oversight functions for public financial management to be transparent, efficient and responsive to the needs of SADC citizens;

Believing that the public financial management process should be predicated on the following principles:

The Transparency Principle: That information about the public financial management process should be made available to the public in a clear form and in a useful time frame (including fiscal transparency);

The Accountability and Participation Principle: That—

(a) Government and other public bodies should be accountable in their exercise of public financial management functions, and

(b) there should be formal and meaningful opportunities for the public – including members and representatives of marginalised and disadvantaged groups generally (having regard, in particular, to gender equality and women's empowerment and to the needs of persons with disabilities) – to engage in the national budget process and other aspects of public financial management in accordance with principles of participatory democracy;

The Oversight Principle: That oversight institutions including Parliament, the National Audit Office, and other bodies with regulatory functions in relation to public finance should have the resources, powers and processes to provide effective independent oversight of the Government's financial management;

The Responsibility Principle: That public officials and bodies exercising functions in connection with public financial management should have regard to their responsibility to exercise those functions in the public interest; and

The Sustainability Principle: That Government and other public bodies should aim to contribute to and protect the financial stability of the State;

Believing that the public financial management process should also be predicated on a requirement for public authorities with public financial management functions (including functions relating to issuing and maintaining regulations and guidance) to have regard to the public financial management principles in the exercise of their functions, as well as having regard to the following values underpinning the public financial management system:

Integrity;

Independence and impartiality;

Equity;

Professionalism; and

Transparency, accountability and responsiveness;

Proposing that the specific objectives and expected outcomes of the SADC Model Law will include the following: to provide for Parliament to pass Performance-based budgets which are related to programmes and corresponding KPIs; to ensure that all statutory bodies and public authorities file their annual audit report / audited financial statements to Parliament; to provide for the empowerment of Public Accounts Committees, so that they can review / examine all reports of statutory bodies/public authorities, in addition to the Report of the Director of Audit / Auditor General, and have qualified enforcement powers with regards to the recommendations made; in particular, empowering the Public Accounts Committee to report issues through its Secretariat to relevant authorities such as the anti-corruption agency, or the public services commission, and in case of such a report, it shall be mandatory for the recipient authority to report back on action taken; to provide that Parliament, through a dedicated Public Financial Parliamentary Committee, is empowered to monitor public debt, and call public officials for explanations in case the debt ceiling is exceeded (noting, moreover, that the Model Law will provide for legal provisions to govern the management of public debt towards a target of 50% of GDP, failing which officials of the relevant Ministry / public authority will be called to account); to ensure that supplementary budgets which appear to be abusive to a quorum of the Public Financial Parliamentary Committee, should be scrutinised in detail and reported upon to Parliament sitting in Plenary; to ensure that international commitments such as the SDGs, UHC or gender-based budgeting are mainstreamed by Ministries and public departments into the budget, and that related KPIs be developed accordingly (noting that there is an urgent need to ensure a progressive prioritisation of UHC with worldwide health concerns recently identified, such as the COVID-19 outbreak which is likely to upset financial markets and strain heavily the financing of public health care systems, and that unless there is efficient public financial management, SADC Member States are likely to take years to recover from unstable public finances and economic recession; to provide a framework whereby Parliament is called upon to ratify public contracts which exceed 3% of GDP by a qualified majority (eg three-quarters),

in case such public contracts do not appear in the electoral manifesto of the Government of the day.

Noting that the SADC Parliamentary Forum ("the Forum") at its 46th Plenary Assembly unanimously approved a review of public financial management in SADC and development of a Model Law that would address relevant concerns;

Knowing that model legislation builds on best practices and serves as a guide, yardstick and an advocacy tool for legislators, administrators, policy makers, civil society, adjudicators and other concerned stakeholders;

Noting that the Forum has developed previous Model Laws including the SADC Model Law on HIV in Southern Africa (2008), the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (2016), and the SADC Model Law on Elections (2018). A Model Law on the Prevention of Gender-based violence is currently under preparation;

Intending that the SADC Model Law on Public Financial Management will constitute the next Model Law to be developed by the Forum in collaboration with its Member Parliaments; and noting that the Forum has a high-level parliamentary committee called the Regional Parliamentary Model Laws Oversight Committee ("RPMLOC") which is an organ dedicated to the monitoring of the domestication of adopted Model Laws and related Forum policy; and

Noting that different Member States will wish to adopt and implement the SADC Model Law on Public Financial Management through different mechanisms reflecting different Parliamentary scrutiny and other practices, the status of existing laws about certain aspects of the matters addressed by the Model Law, different constitutional balances between primary and subordinate legislation and other factors relating to legislative and other choices and practices of different Member States, and in all respects reflecting and protecting the constitutional integrity and sovereignty of each SADC Member State;

Noting that each Member State will wish to integrate the provisions of the SADC Model Law with other domestic legislation, so as to ensure effective domestication and transposition (so that, for example, the financial misconduct offences of the SADC Model Law will be implemented by reference to the criminal law policy of each Member State as to penalties, the use of unaccounted wealth investigations, and other matters relevant to effective implementation):—

Adopt the following Model Law on the regulation of the management of public finances as a guide to legislative efforts on the matter and urge Member States to adopt measures and interventions, including the review of their laws, to implement provision for the regulation of the management of public finances, in accordance with this Model Law:

An Act to make provision for the regulation of the management of public finances in accordance with applicable principles including accountability, transparency and modernity.

[*Local Enactment Formula*]

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PART 1

PRELIMINARY

Introductory

Overview

1. This Act consists of—

(a) this Part, which sets out the scope and application of the Act and defines terms;

(b) Part 2, which sets the aims and objectives to be applied in the implementation of this Act;

(c) Part 3, which makes provision about the principal authorities with public financial responsibilities;

(d) Part 4, which makes provision about the Consolidated Fund and other accounts;

(e) Part 5, which makes provision about supply and appropriation;

(f) Part 6, which makes provision about Parliamentary control;

(g) Part 7, which makes provision about the national budget preparation and approval process;

(h) Part 8, which makes provision about government borrowing;

(i) Part 9, which makes provision about public procurement and the use of public resources;

(j) Part 10, which makes provision about public accounts;

(k) Part 11, which makes provision about financial misconduct and misuse;

(l) Part 12, which makes provision about cryptocurrencies;

(m) Part 13, which makes provision about the application of the Act to State Governments;

(n) Part 14, which makes provision about the application of the Act to local authorities;

(o) Part 15, which makes provision about the application of the Act to State-owned enterprises; and

(p) Part 16, which makes provision about offences, publication and service of documents, the making of supplementary provision, scrutiny of regulations, commencement and transitional provision, repeals, and extent and application.

Scope and application

Ministries

2. This Act applies to all Ministries.

Public authorities

3. This Act applies to all public authorities.

State Governments

4. Part {*State Governments*} makes provision about the application of this Act to State Governments (as defined by section {*State Governments: interpretation*}.

Local authorities

5. Part {*Local authorities*} makes provision about the application of this Act to local authorities (as defined by section {*Local authorities: interpretation*}).

State-owned enterprises

6. Part {*State-owned enterprises*} makes provision about the application of this Act to State-owned enterprises (as defined by section {*State-owned enterprises: interpretation*}).

Interpretation

General definitions

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

"audit" includes any other kind of financial review;

"country" includes territory;

"donor funds" includes donations, grants and loans made from or through, or coordinated by, international organisations;

"the Gazette" means [*the State Gazette*];

"the Government" is a reference to all Ministries;

"Government to Government assistance" has the meaning given by section {*Government to Government assistance*};

"illicit financial flows" includes money laundering, tax evasion, international bribery;

"law" means a provision of, or made under, this or any other Act;

"Ministry" includes any Government department;

"potential", in relation to liabilities or obligations, includes contingent;

"public authority" means[15]—

(i) a Ministry;

(ii) a Government official;

[15] Drafting Note: This definition sets out the broadest class of entities expected to be required to be included; but each jurisdiction will need to consider whether particular components require omission or modification in the context of the jurisdiction, whether to exclude statutory corporations without financial responsibilities or for other reasons.

(iii) any statutory corporation or any other body created by this Act or any other law if or in so far as it exercises statutory functions or other functions of a public nature;

(iv) the holder of any office or position created by this Act or any other law if or in so far as it exercises statutory functions or other functions of a public nature;

(v) a local authority (subject to, and to the extent provided for in and under, Part 13);

(vi) a state-owned enterprise (subject to, and to the extent provided for in and under, Part 14); and

(vii) an officer, servant or agent of an authority within paragraphs (iii) to (vi);

"prescribed" means prescribed by regulations made by the Minister;

"regulations" means regulations made by the Minister;

"Standing Orders", in relation to Parliament, includes any other relevant resolutions, practices and procedures of Parliament; and

"state-owned enterprise" has the meaning given by section {*state-owned enterprises: interpretation*}.

Index of defined terms

8. The Table shows expressions defined in this Act.

Expression	*Defining provision*
Accountant General	Section {*Accountant General*}
Accounting officer	Section {*Designation of accounting officers*}
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Expression	*Defining provision*
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Expression	*Defining provision*
State Government	Section {*State Governments: interpretation*}
State-owned enterprises	Section {*State-owned enterprises: definition*}
Trading account	Section 7
Unauthorised borrowing	Section {*Unauthorised borrowing*}
Virement Regulations	Section {*Virement*}

PART 2

AIMS AND OBJECTIVES

Purpose of Act

9. The purpose of this Act is to foster accountability, transparency, independence and modernity by providing for efficient and effective processes to be followed in relation to—

(a) the raising of public revenue;

(b) expenditure of public money and other public resources;

(c) accounting for receipts and expenditure of public money; and

(d) Parliamentary oversight of public resources.

Measurable outcomes

10.—(1) In exercising powers in relation to public financial management public officials shall aim—

(a) to optimise public revenue and expenditure, and to prevent unauthorised expenditure;

(b) to contribute to the prevention of illicit financial flows;

(c) to improve sustainability for future generations; and

(d) to make Parliamentary accountability and oversight as effective as possible.

(2) The Minister shall operate a scheme designed—

(a) to specify measurable benchmarks for testing success in achieving the outcomes listed in subsection (1); and

(b) to ensure that the benchmarks inform other reporting and recording functions under this Act.

(3) Benchmarks for the purpose of this section may (in particular) take the form of, or be incorporated in, Treasury instructions or guidance.

Public financial management principles

11.—(1) In this Act "the public financial management principles" are: [16]

(1) **The Transparency Principle**: That information about the public financial management process should be made available to the public in a clear form and in a useful time frame (including fiscal transparency).

(2) **The Accountability and Participation Principle:** That—

(a) Government and other public bodies should be accountable in their exercise of public financial management functions, and

(b) there should be formal and meaningful opportunities for the public – including members and representatives of marginalised and disadvantaged groups generally (having regard, in particular, to gender equality and women's empowerment and to the needs of persons with disabilities) – to engage in the national budget process and other aspects of public financial management in accordance with principles of participatory democracy.

(3) **The Oversight Principle:** That oversight institutions including Parliament, the National Audit Office, and other bodies with regulatory functions in relation to public finance should have the resources, powers and processes to provide effective independent oversight of the Government's financial management.

(4) **The Responsibility Principle:** That public officials and bodies exercising functions in connection with public financial management should have regard to their responsibility to exercise those functions in the public interest.

(5) **The Sustainability Principle:** That Government and other public bodies should aim to contribute to and protect the financial stability of the State.

(2) A public authority with functions under or by virtue of this Act (including functions relating to issuing and maintaining regulations and guidance) shall have regard to the public financial management principles in the exercise of those functions.

Values

12.—(1) In this Act the "public financial management values" are—

(a) integrity;

(b) independence and impartiality;

(c) equity;

(d) professionalism; and

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[16] Drafting Note: These principles are found, for example, in the Open Budget Survey (part of the International Budget Partnership's Open Budget Initiative) - https://www.internationalbudget.org/open-budget-survey/about - accessed 5 May 2021; and they are also reflected commonly in local legislation – see, for example, Zimbabwe's Public Finance Management Act s.3: "The object of this Act is to secure transparency, accountability and sound management of the revenues, expenditure, assets and liabilities of any entity specified in section 4(1)". The Responsibility Principle has been added at the request of the SADC PF Technical Working Group on the draft Model Law.

(e) transparency, accountability and responsiveness.

(2) An official of a public authority exercising functions under or by virtue of this Act shall aim to demonstrate the public financial management values in the performance of those functions.

Constitution

13. The provisions of this Act are to be applied subject to, and in accordance with, the provisions of [*relevant sections*] of the Constitution.

PART 3

AUTHORITIES

Minister and Secretary

Finance Minister

14.—(1) In this Act "the Minister" means the Minister responsible for finance.

(2) The Minister has the functions conferred by this Act (and by any other law).

Finance Secretary [17]

15.—(1) The permanent secretary of the Finance Ministry, or such other supervising officer as may be designated in writing by the Cabinet, is the Finance Secretary for the purposes of this Act.

(2) The Finance Secretary has—

(a) the general functions set out in section {*Finance Secretary: general functions*}, and

(b) the specific functions conferred by or by virtue of other provisions of this Act.

Finance Secretary: general functions [18]

16.—(1) The Finance Secretary is—

(a) the chief controlling officer of the Government in respect of financial matters, and

(b) the chief accounting officer for the Government, to whom all other accounting offices are responsible and accountable.

(2) In particular, the Finance Secretary is responsible for—

(a) managing the Government payroll and other payments;

(b) managing the Consolidated Fund (including overseeing the release of funds);

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[17] Drafting Note: This provision will be omitted or modified where equivalent or alternative provision is made by the Constitution.

[18] Drafting Note: This provision will be omitted or modified where equivalent or alternative provision is made by the Constitution.

(c) supervising the opening, maintenance and closing of accounting units in Ministries and other public authorities;

(d) overseeing financial management information systems in Ministries and other public authorities;

(e) overseeing the promulgation, adoption and implementation of one or more Government finance manuals;

(f) issuing authority on behalf of the Finance Ministry for the expenditure of public funds;

(g) preparing and managing annual consolidated statements of assets and liabilities as required by this Act;

(h) overseeing the preparation of the annual appropriation accounts as required by this Act;

(i) compiling and publishing financial statistics in accordance with international standards;

(j) implementing recommendations of the Public Accounts Committee;

(k) giving advice and guidance about financial management;

(l) instituting disciplinary action, where appropriate, against staff of public authorities in breach of this Act; and

(m) designing and implementing effective controls, risk management and governance systems in public bodies.

(3) The Minister may by regulations confirm additional functions of a general nature on the Finance Secretary.

(4) The Minister may require the Finance Secretary to perform additional functions relating to public financial management.

Inspections

17.—(1) The Finance Secretary shall inspect public financial management processes within Ministries and other public bodies.

(2) For the purposes of performing the inspection function under subsection (1) the Finance Secretary may—

(a) inspect and take copies of information held by any Ministry or other public body;

(b) interview Government officials and other public authorities;

(c) take appropriate enforcement action where a Government official or other public authority is not cooperating with requests or requirements imposed in pursuance of the inspection function;

(d) prohibit a Government official or other public authority from performing a specified function by reason of failure to comply with specified provisions of or under this Act;

(e) impose restrictions or conditions on the performance of a specified function by a Government official or other public authority in order to ensure compliance with specified provisions of or under this Act; and

(f) make provision for the performance of functions by persons other than those specified in or under this Act as a result of a prohibition, restriction or condition imposed under paragraph (d) or (e).

(3) In subsection (2)(a) "information" includes accounts, documents, books and other records in electronic or any other form.

(4) A power under this section may be delegated to any official authorised by the Finance Secretary.

(5) The Minister—

(a) shall make regulations about the exercise of functions under this section; and

(b) may issue guidance about the exercise of functions under this section (to which the Finance Secretary and other public authorities shall have regard).

Ministry

Finance Ministry

18.—(1) In this Act "the Finance Ministry" means the [Ministry of Finance]. [19]

(2) The Finance Ministry has the functions conferred by this Act (and by any other law).

(3) A function conferred by this Act on the Finance Ministry may be performed by—

(a) the Minister; or

(b) any official (including an official of a Ministry other than the Finance Ministry of Finance) authorised in writing by the Minister or the Secretary to act on behalf of the Finance Ministry of Finance.

General functions

19.—(1) The Finance Ministry is responsible for—

(a) performance of the functions conferred on it by this Act or any other law, and

(b) exercising general oversight of the Government's policies and arrangements in respect of—

(i) public finance;

(ii) fiscal and macroeconomic policy;

(iii) national budgeting;

(iv) risk management; and

(v) public investment.

[19] Drafting Note: In some jurisdictions this will be the Treasury; in some States the Constitution, or other local laws, will already make provision about Treasury / Finance Ministry establishment and functions in which case this model law will be adjusted appropriately in those States.

(2) In particular, the Finance Ministry is responsible for—

(a) promoting and coordinating the Government's national fiscal and macroeconomic policy;

(b) managing public funds in accordance with this Act (and any other relevant law);

(c) overseeing and managing the preparation of the national budget;

(d) managing and evaluating the national budget and other matters relating to national budgeting;

(e) monitoring the implementation by other Ministries during each financial year of the measures contained in the Budget documents for that year;

(f) managing the Consolidated Fund (including, but not limited to, overseeing the passage of money into and out of the Fund) in accordance with this Act (and any other relevant law);

(g) promoting and enforcing the public financial management principles and, in particular, facilitating transparent and effective management of revenue, expenditure, assets and liabilities of the Government and other public authorities;

(h) managing and monitoring public debt in accordance with this Act (and any other relevant law);

(i) managing and monitoring risk in relation to public finance;

(j) promoting good financial governance in Government and other public authorities;

(k) advising Government and other public authorities about financial management;

(l) formulating, coordinating, monitoring and evaluating policy in relation to public investments;

(m) overseeing and monitoring financial management systems in Government and other public authorities; and

(n) responding, or coordinating responses, to reports of the Public Accounts Committee.

(3) The Minister may by regulations confirm additional functions of a general nature on the Finance Ministry.

Ministry consent

20. The Minister may make regulations about the form in which consent of the Finance Ministry is—

(a) applied for;

(b) given; and

(c) recorded.

Accounting officers

Designation of accounting officer

21.—(1) The accounting officer of each Ministry is the official designated by or with the approval of Cabinet to carry out, in relation to that Ministry, the functions conferred by this Act on accounting officers.

(2) In default of specific designation under subsection (1), the accounting officer of each Ministry is—

(a) the Permanent Secretary, or

(b) such other official as may be designated by the Permanent Secretary.

(3) The accounting officer of each public authority other than a Ministry is—

(a) the Chief Executive Officer, or

(b) such other official as may be designated by the authority.

(4) Subsection (3) is subject to any provision of any other law which establishes or otherwise makes provision in respect of a public authority and which determines, or makes provision for determining, the accounting officer of the authority.

(5) The Minister may make regulations about the designation of accounting officers.

General functions

22.—(1) The accounting officer of a Ministry, acting within the relevant Minister's instructions, is responsible for the overall control and accounting of the Ministry's resources.

(2) The accounting officer of a Ministry shall comply with—

(a) all relevant provisions of this Act and any other law; and

(b) any instructions given by the Accountant General or the Finance Secretary (subject to paragraph (a)).

(3) The accounting officer of a Ministry shall establish and maintain adequate systems of governance and financial management in the Ministry to ensure that—

(a) the Ministry applies the public financial management principles;

(b) officials of the Ministry demonstrate application of the public financial management values;

(c) the Ministry conforms to standards expected by Parliament;

(d) the Ministry functions within the overall financial framework set by the Finance Ministry;

(e) effective, efficient and transparent systems of financial and risk management and internal control are maintained;

(f) resources are used and applied effectively, efficiently, economically and transparently;

(g) full financial records are maintained in accordance with any guidance given by the Finance Ministry;

(h) obligations in respect of tax, levies, duty, pension contributions and audit are fully complied with;

(i) all contractual and other financial obligations are settled in accordance with any relevant law, and in accordance with any guidance given by the Finance Ministry;

(j) money due to the Ministry is collected efficiently and effectively;

(k) the Ministry prevents so far as possible unauthorised, irregular, fruitless or wasteful expenditure, and losses arising from criminal conduct;

(l) any instances of activity described in paragraph (k) arising are reported in writing to the Finance Ministry without delay including full details in accordance with any guidance given by the Finance Ministry;

(m) officials who fail to comply with this Act or otherwise misuse public funds face effective disciplinary action or, where appropriate, criminal proceedings; and

(n) working capital is managed efficiently, effectively and economically.

(4) In performance of the duty under subsection (3)(c) and subject to and in accordance with any other relevant law, an accounting officer shall, in particular, take all reasonable steps to implement recommendations of the Public Accounts Committee—

(a) as effectively as possible, and

(b) without delay.

(5) This section applies to accounting officers of public authorities other than Ministries; and—

(a) a reference to the relevant Minister is a reference to the head of the authority;

(b) references to the Ministry are references to the authority (but references to the Finance Ministry remain as such); and

(c) the Minister may by regulations make provision modifying the application of this section in relation to accounting officers of public authorities other than Ministries.

Internal audit

23.—(1) The accounting officer of a public authority is responsible for implementing arrangements for internal audit.

(2) In exercising functions in respect of internal audit an accounting officer must aim to enhance and protect organisational value within the public authority by providing risk-based and objective assurance, advice and insight.

(3) In this section "internal audit" means an independent, objective assurance and consulting activity which is designed—

(a) to add value and improve the public authority's operations; and

(b) to help the public authority to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

(4) In particular, an internal audit system must be designed to—

(a) demonstrate integrity;

(b) demonstrate competence and due professional care;

(c) maintain objectivity and independence of undue influence;

(d) align with the strategies, objectives, and risks of the public authority;

(e) be appropriately positioned and adequately resourced;

(f) demonstrates quality and continuous improvement;

(g) communicate effectively;

(h) provide risk-based assurance;

(i) be insightful, proactive and future-focused; and

(j) promote organisational improvement.

(5) In exercising functions by virtue of this section internal auditors must aim—

(a) to exhibit the highest level of professional objectivity in gathering, evaluating and communicating information about the activity or process being examined;

(b) to make a balanced assessment of all the relevant circumstances without being unduly influenced in forming judgements;

(c) to avoid participating in any activity or relationship that may impair or be presumed to impair their unbiased assessment;

(d) must disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review;

(e) must respect the value and ownership of information they receive and not disclose information without appropriate authority unless there is a legal or professional obligation to do so; and

(f) must be prudent in the use and protection of information acquired in the course of their duties.

(6) An accounting officer may adopt, and publicise within the public authority, an internal audit charter which—

(a) defines the internal audit activity's purpose, authority and responsibility;

(b) establishes the internal audit activity's position within the public authority, including the nature of the accounting officer's functional reporting relationships within the public authority;

(c) authorises access to records, personnel and physical properties relevant to the performance of audit activities; and

(d) defines the scope of internal audit activities.

(7) The Minister may make regulations about internal audit in public authorities (including internal audit charters).

(8) Subject to regulations under subsection (7), the Finance Secretary may make arrangements for internal audit in public authorities (including internal audit charters).

(9) The Minister when making regulations about internal audit, and the Finance Secretary when making arrangements for internal audit, must have regard—

(a) to the importance of maintaining a professional, independent and objective internal audit service is a key element of good governance; and

(a) to any relevant International Standards for the Professional Practice of Internal Auditing.

Accountant General

Accountant General

24.—(1) The Accountant General shall be appointed in accordance with arrangements made by the Finance Secretary.

(2) The Accountant General has such functions in relation to accounts of public authorities as are conferred on the office—

(a) by or by virtue of a provision of this Act, or

(b) by written direction of the Minister or the Finance Secretary.

(3) Without prejudice to the generality of subsection (2), the Accountant General shall assist the Finance Secretary with the performance of functions under this Act relating to the accounts of public authorities.

Auditor General

Auditor General

25. Sections {*Auditor General …*} make provision about the Auditor General.

PART 4

PUBLIC FUNDS

Consolidated Fund

The Fund

26.—(1) An account is to be maintained by the Government at the Central Bank known as the Consolidated Fund (subject to subsection (2)).

(2) The Minister may by regulations make arrangements for banking institution other than the Central Bank to hold the Consolidated Fund.

Payments into Consolidated Fund

27.—(1) Receipts of money by any public authority shall be paid into the Consolidated Fund.

(2) Subsection (1) is subject to—

(a) section {Appropriations in aid}; and

(b) any other provision of this Act or of any other law permitting receipts to be retained for specified purposes.

(3) The Minister may make regulations about payment into the Consolidated Fund.

Payments out of Consolidated Fund

28.—(1) Expenditure of any public authority shall be paid out of the Consolidated Fund.

(2) Subsection (1) is subject to—

(a) regulations under this section; and

(b) any provision of this Act or of any other law providing for specified expenditure to be paid from any other source.

(3) No arrangements may be made for the imposition of a charge on the Consolidated Fund without the consent of the Finance Ministry (whether or not the approval of Parliament through supply procedures or legislation is also required).

(4) The Minister may make regulations—

(a) providing for exceptions to subsection (1), which may be general or specific, and absolute or subject to prescribed conditions as to amount or otherwise;

(b) about payments out of the Consolidated Fund.

Payments in by error

29.—(1) This section applies where money—

(a) is paid into the Consolidated Fund, and

(b) should not or need not have been paid into the Fund.

(2) The money may be paid out of the Fund in accordance with this section.

(3) The Auditor General shall on receipt of a requisition from the Finance Ministry grant a credit on the Consolidated Fund.

(4) A payment under this section shall be recorded in the daily account of the Consolidated Fund.

Other accounts

Retention accounts

30.—(1) The accounting officer of a Ministry or other public authority may maintain an account (a "retention account") with the Central Bank or any other bank for the purposes of depositing funds and defraying expenses.

(2) The Minister shall make regulations about retention accounts held by Ministries; and the regulations shall, in particular—

(a) specify circumstances in which, and purposes for which, a retention account may, or may not, be maintained;

(b) impose accounting or other conditions in respect of the maintenance of a retention account;

(c) impose limitations (by reference to amount, purpose or otherwise) on the maintenance of retention accounts;

(d) require reports to be produced in respect of retention accounts.

(3) In making regulations under this section the Minister shall have regard to the importance of preventing retention accounts from diluting or undermining the arrangements for the implementation of the public financial management principles.

(4) The Minister may make regulations about retention accounts held by public authorities other than Ministries; and the regulations may make provision of any kind specified in subsection (2).

Trading accounts

31.—(1) The Minister may make regulations permitting the maintenance by Ministries or other public authorities of trading accounts in respect of the provision of services and goods.

(2) The regulations may, in particular—

(a) specify the kinds of provision of services and goods in respect of which trading accounts may, or may not, be maintained;

(b) make provision for the transfer of money between trading accounts and the Consolidated Fund;

(c) make provision about accounting in respect of trading funds;

(d) make provision permitting, prohibiting or restricting borrowing in respect of trading accounts;

(e) impose specified conditions in connection with the maintenance of a trading account.

(3) In making regulations under this section the Minister shall have regard to the importance of preventing trading accounts from diluting or undermining the arrangements for the implementation of the public financial management principles.

Debt servicing account

32. —(1) The Minister may make arrangements for an account to service Government debt, in accordance with section {*Public debt: servicing account*}.

(2) In making arrangements under this section the Minister shall have regard to the importance of preventing the debt servicing account from diluting or undermining the arrangements for the implementation of the public financial management principles.

Special funds

33.—(1) The Minister may make arrangements for special revenue funds to accumulate proceeds from specified revenue sources for purposes restricted to specified matters.

(2) The Minister may make regulations about—

(a) the opening and maintenance of special funds;

(b) the treatment of special funds for specified purposes of this Act.

(3) Arrangements and regulations under this section may relate—

(a) to special funds generally; or

(b) to one or more specified special funds.

(4) In making arrangements for or regulations about special funds the Minister must have regard to—

(a) the need to use special funds for the purpose of maintaining and demonstrating accountability and transparency in tracking cash inflows and outflows for special purposes; and

(b) the importance of preventing special funds from diluting or undermining the arrangements for the implementation of the public financial management principles.

(5) In this section references to proceeds and cash include (without prejudice to the generality of those terms) references to donor funds.

Miscellaneous

Bank accounts

34. The Finance Secretary may make arrangements for the opening and maintenance of bank accounts by public authorities for purposes consistent with, and subject to regulation in accordance with, the provisions of this Act.

Gifts to the State

35.—(1) This section applies where a person proposes to make a gift to the State.

(2) In subsection (1) "gift" includes money and any other form of property.

(3) A Minister (other than the Minister of Finance) or any other public authority may not accept a gift to the State without the consent of the Finance Ministry.

(4) Subsection (3) does not apply to gifts of a prescribed kind.

(5) Regulations under subsection (2) may make provision by reference to the value of a gift or any other criteria.

PART 5

SUPPLY AND APPROPRIATION

Application of sums issued

36.—(1) This section applies where a Consolidated Fund Act or Appropriation Act authorises a sum to be—

(a) issued out of the Consolidated Fund, and

(b) applied to the service of a specified financial year.

(2) Every sum issued in pursuance of that Act shall be applied towards the service of that year.

Appropriation in aid

37.—(1) The Finance Ministry may, subject to any relevant limit set by an Appropriation Act, direct that resources may be applied as an appropriation in aid of resources authorised by Parliament to be used for the service of a particular year.

(2) An appropriation in aid direction may be given, in particular, in respect of—

(a) donor funds from international organisations;

(b) Government to Government assistance; and

(c) other funds, deriving from external sources, which appear to the Finance Ministry to be appropriate for processing as appropriations in aid.

(3) A direction under subsection (1) shall be—

(a) made by minute, and

(b) laid before Parliament.

(4) Subsections (5) and (6) apply where money is received in connection with an appropriation in aid which has been or is expected to be directed under subsection (1).

(5) Where the money is received in the year for the service of which the appropriation in aid is authorised—

(a) the appropriation in aid is authority for the money to be used in accordance with the Finance Ministry's direction, and

(b) in so far as it is not used for that purpose it shall be paid into the Consolidated Fund.

(6) Where the money is received in a year other than that for the service of which the appropriation in aid is or is to be authorised, it shall be—

(a) retained and applied as a use of resources authorised by Appropriation Act for the service of the year in which the money is received, or

(b) paid into the Consolidated Fund.

(7) Funds that are appropriated in aid are to be treated as forming part of the Consolidated Fund, in accordance with, and subject to any exceptions provided for by, regulations made by the Minister about the treatment of appropriations in aid as part of the Consolidated Fund.

(8) The Minister may make regulations about the procedure for—

(a) identifying funds as eligible for appropriation in aid;

(b) recording and accounting for appropriations in aid; and

(c) access to and disbursement of funds appropriated in aid.

PART 6

PARLIAMENTARY CONTROL

Introductory

Overview

38.—(1) This Part makes provision about Parliamentary control of the public financial management process.

(2) This Part supplements the provisions about Parliamentary control found in other provisions of this Act (including the provisions about the Budget process in Part 7).

Parliamentary engagement principle

39.—(1) The "Parliamentary engagement principle" is the principle that Parliament should use the full range of mechanisms available to it for the purpose of overseeing and controlling the public financial management process.

(2) The mechanisms referred to in subsection (1) include, in particular—

(a) Committee hearings and inquiries (including Committees including, or advised by, external experts);

(b) Plenary Questions and debates;

(c) Written and Oral Questions; and

(d) Ministerial Statements.

(3) Parliament, and any Committee of Parliament, may, in accordance with Standing Orders—

(a) establish sub-Committees and inquiries, including sub-Committees and inquiries having expert external membership and advice;

(b) require a public authority to prepare and submit work plans and implementation reports;

(c) require the Auditor General or other audit bodies to prepare and submit reports on actual or alleged financial irregularities;

(d) require public authorities to disclose commitments entered into;

(e) compel the attendance of witnesses and the giving of evidence or the submission of information or documents;

(f) deploy electronic systems for the detection and reporting of financial irregularities;

(g) evaluate and report on programmes and policies.

(4) In exercising their functions under this Act, or in respect of matters about which provision is made in this Act, the Parliamentary engagement principle shall be applied by—

(a) the Minister;

(b) the Auditor General; and

(c) the Speaker of Parliament.

Auditor General

Appointment [20]

40.—(1) A person is to be appointed as Auditor General by a Commission operating independently of Government[21].

(2) The members of the independent Commission are to be appointed in accordance with arrangements which are—

(a) approved by the Speaker (following consultation with the Leader of the House in Parliament and the Leader of the Opposition); and

(b) designed to comply with best international practice for the independence of Auditors General[22].

(3) In giving effect to arrangements for the appointment of the Auditor General the Commission may consult (without prejudice to the requirement for the Commission to operate independently of Government)—

(a) the Speaker;

(b) the Leader of the House in Parliament; and

(c) the Leader of the Opposition.

(4) The Commission may, in particular, make regulations about—

(a) qualifications and disqualifications for appointment as Auditor General;

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20 Drafting Note: This provision will be omitted or modified where the Constitution makes provision for the appointment of the Auditor General.

21 Drafting Note: A jurisdiction which has a standing Public Service Commission may prefer to vest this function in that Commission.

22 Drafting Note: International practice in this respect is reflected in, in particular, the Lima Declaration of Independence of Supreme Audit Institutions Guidelines on Auditing Precepts published by the International Organisation of Supreme Audit Institutions (INTOSAI) as well as the INTOSAI Mexico Declaration.

(b) timing and duration of appointments;

(c) the appointment of staff for the Auditor General;

(d) the provision of other resources for the Auditor General; and

(e) the dismissal of the Auditor General.

(5) Provision under subsection (4)(e) may not provide for dismissal of the Auditor General without a resolution of Parliament.

Status

41. Ministers and other public authorities shall act at all times in a manner that recognises and respects the status of the Auditor General as an officer who is—

(a) appointed to be accountable to Parliament, and

(b) independent of government.

Functions

42. The Auditor General shall perform the functions conferred on the office by this Act and any other law.

Practice and procedure

43.—(1) The Auditor General shall regulate the practice and procedure of the office.

(2) The Auditor General may make regulations about—

(a) the processes and rules to be applied in determining the course of proceedings of the Auditor General;

(b) the provision of information to the Auditor General;

(c) the making of reports by the Auditor General to the Government;

(d) the making of reports by the Auditor General to Parliament; and

(e) the exercise by the Auditor General of functions in relation to non-Government public authorities.

(3) Provision under subsection (2)(e) may not provide for the Auditor General to exercise functions in respect of a non-Government public authority without the authority's consent (without prejudice to any other law providing for the Auditor General to act in relation to the authority).

Access to information

44.—(1) This section applies for the purposes of an examination by the Auditor General of the accounts of a Ministry or other public authority.

(2) The Auditor General has a right of access at all reasonable times to any document or information relating to the Ministry's or authority's accounts.

(3) Any person who holds or has control of any of those documents or information shall give the Auditor General any assistance, information or explanation required.

Audits

45.—(1) In addition to specific functions conferred by this Act or otherwise by law, the Auditor General has the right to audit the accounts or other financial records or affairs of any public authority.

(2) The Auditor General shall lay before Parliament the report of any audit under this section.

(3) The accounting officer of a public authority, and any other official of a public authority, must cooperate with any audit under this section in respect of the authority.

(4) It is an offence for a person to fail to comply with subsection (3).

(5) [*Penalty* [23]]

National Audit Office

National Audit Office

46.—(1) The staff appointed by the Auditor General to assist in the performance of the Auditor General's functions are to be known as the National Audit Office ("NAO").

(2) The Auditor General may (subject to regulations made by the independent Commission under section {}) make regulations about—

(a) the appointment of the staff of the NAO;

(b) terms and conditions of service of the staff of the NAO; and

(c) the proceedings of the NAO.

Functions

General function

47. The general function of the Auditor General is to assist Parliament in scrutinising how public funds are used.

Annual report

48.—(1) As soon as is reasonably practicable after the end of each financial year, the Auditor General shall—

(a) consider the Government accounts for that year submitted to the Auditor General by the Minister in accordance with section {},

[23] Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

(b) return the accounts to the Minister together with a certificate signed by the Auditor General that the accounts have been examined, and

(c) submit to Parliament a report on the accuracy and adequacy of the certified accounts.

(2) The Auditor General shall—

(a) lay each report under this section before Parliament as soon as is reasonably practicable, and

(b) publish each report under this section as soon as reasonably practical.

Audits and opinions

49.—(1) The Auditor General may provide to Parliament—

(a) a financial audit of the accounts of all Ministries and public authorities; and

(b) a value for money report.

(2) In respect of a financial audit the Auditor General shall certify—

(a) whether the accounts provide a true and fair view—

i. taking into account all relevant economic events, and

ii. applying accounting standards correctly;

(b) as to regularity, whether expenditure and liabilities incurred were—

i. within the authority of each relevant Ministry and other public authority, and

ii. consistent with the intentions of Parliament.

(3) A value for money report must assess the economy, efficiency and effectiveness with which public resources have been deployed in specific areas.

(4) The accounting officer of a public authority, and any other official of a public authority, must cooperate with any audit or report under this section in respect of the authority.

(5) It is an offence for a person to fail to comply with subsection (4).

(6) [*Penalty* [24]]

Public Accounts Committee

Public Accounts Committee

24 Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

50.—(1) In this Act a reference to the Public Accounts Committee ("PAC") is a reference to any Committee of Parliament established with terms of reference that include performing the functions conferred by this Act on the PAC.

(2) The membership of the PAC is to be determined in accordance with the Standing Orders and other procedures of Parliament.

(3) The proceedings of the PAC shall be conducted in accordance with the Standing Orders and other procedures of Parliament; and subject to that, the PAC shall regulate its own procedures and proceedings.

(4) The Speaker shall take all reasonable steps to ensure that the Standing Orders and other procedures of Parliament enable the PAC to provide independent and effective scrutiny and oversight of Government.

(5) In particular, the Speaker shall aim to ensure that the PAC—

(a) is chaired by a Member who is not from the same party as Ministers;

(b) is not dominated by Members drawn from the same party as Ministers;

(c) determines its own budget (subject to Parliamentary approval) and appoints its own staff;

(d) maintains a published register of interests and guidance for addressing actual or perceived conflicts;

(e) incorporates in its membership appropriate representation of women;

(f) reflects in its membership the importance of other aspects of diversity (including appropriate representation of persons with disabilities and appropriate representation of marginalised and disadvantaged groups generally);

(g) includes financially literate persons among its membership or staff; and

(h) is constituted and resourced in a such a way as to be able and willing to perform the functions of—

i. monitoring the financial management effectiveness of the Government;

ii. highlighting deficiencies and irregularities in relation to public financial management;

iii. monitoring and supporting action to prevent illicit financial flows; and

iv. monitoring and publishing progress in relation to addressing other failures and concerns in respect of public financial management (including the application of provisions of Part 11).

(6) The provisions of this Part are subject to the Standing Orders and other procedures of Parliament relating to the operation of the PAC.

(7) The Speaker shall take all reasonable steps to ensure that—

(a) the Government is informed about best international practice relating to the operation of Public Accounts Committees, and

(b) Parliament publishes an account of, and implements, best international practice relating to liaison and cooperation with Public Accounts Committees.

Liaison with Auditor General

51.—(1) The Auditor General is responsible for reporting to Parliament through the PAC (in addition to reporting direct in accordance with the provisions of this Part).

(2) The Auditor General shall attend meetings of the Public Accounts Committee.

Auditor General's Reports

52.—(1) The PAC shall consider reports of the Auditor General, and publish—

(a) those reports;

(b) responses to those reports.

(2) In particular, the PAC shall consider recommendations and concerns identified in reports of the Auditor General, with a view to—

(a) monitoring implementation of recommendations and addressing concerns;

(b) publishing progress reports about implementation of recommendations and the effectiveness of action taken to address concerns; and

(c) making recommendations.

(3) The PAC may also initiate inquiries into the accounts, or any aspect of the accounts, of a Ministry or other public authority.

(4) A Ministry or other public authority shall comply with any requirement of the PAC to submit its accounts or any part of its accounts, or documents or information relating to its accounts or any part of its accounts, for the purposes of the exercise by the PAC of a function under subsection (1) or (2).

(5) The PAC shall take all reasonable steps to initiate debates in Parliament on reports of the Auditor General or of the PAC, as it considers appropriate.

(6) The PAC may also make any reports and referrals to law enforcement agencies (including anti-corruption agencies) that they think appropriate.

(7) The PAC may make regulations, or issue guidance, about the exercise of functions under this section.

(8) The regulations or guidance may make provision about the modification of the application of this section in relation to accounts of state-owned enterprises (as provided for by Part 2 of Schedule {*State-owned Enterprises: Application of Act*}.

Complaints portal

53.—(1) The PAC shall operate a system by which members of the public may make complaints to the PAC, or provide information, about any matter connected with public financial management.

(2) The system shall allow people to make complaints or provide information attributably or anonymously.

(3) The PAC shall consider complaints and information received through the system and take such action in the exercise of their functions as they consider appropriate.

(4) Where a complaint is made or information is provided attributably, the PAC shall inform the complainant or informant of what action has been taken in response.

(5) The PAC may make regulations about the operation of this section.

Enforcement powers

54.—(1) The PAC may require a person listed in subsection (2)—

(a) to report to the PAC, with such information or documents as may be specified in the requirement, in relation to any matter connected with public financial management;

(b) to give oral or written evidence to the PAC on any matter relating to its functions.

(2) Those persons are—

(a) the Finance Secretary;

(b) an accounting officer; and

(c) any public official with responsibility for any aspect or instance of public financial management.

(3) The PAC may, in accordance with Standing Orders, make arrangements for requiring persons not listed in subsection (2) to provide information or oral or written evidence to the PAC.

(4) A requirement under subsection (1) or (3) may be imposed, in accordance with Standing Orders, by any group of members of the PAC who together form at least one third of the total membership.

(4) A person on whom a requirement is imposed shall comply with it as soon as is reasonably practicable.

(5) It is an offence for a person on whom a requirement is imposed to fail to comply with it—

(a) as soon as is reasonably practicable,

(b) to the best of the person's ability, and

(c) in good faith.

(6) [*Penalty* [25]]

(7) The PAC may make regulations about the operation of this section.

Whistleblowing

[25] Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

55.—(1) The PAC shall make arrangements to ensure that public authorities and other persons with information about actual or possible financial irregularities are enabled to make disclosures to the PAC.

(2) Unless the Minister is satisfied that legislation already provides all necessary protection for persons making disclosures under this section (including protection from harassment, reprisals and employment-based or other detriment), the Minister shall make regulations—

(a) conferring protection on those persons; and

(b) applying whistleblower-protection legislation (with or without modification) to disclosures under this section.

(3) If the PAC requires the Minister to make regulations for the purpose of arrangements under subsection (1), the Minister shall make the regulations in the form specified in the PAC's requirement.

PART 7

NATIONAL BUDGET

Introduction

Purpose of Budget

56. In the exercise of their functions every public authority shall have regard to the importance of the Budget process and its use for—

(a) entrenching transparency and accountability within the public financial management system (including fiscal transparency);

(b) providing clear information for Parliament and the public about public expenditure; and

(c) enabling Parliament to provide effective control and oversight of public expenditure.

Parliamentary control

57.—(1) The Minister shall make arrangements to ensure that Parliament has an opportunity, in the course of the application of this Part—

(a) to approve or object to individual budgetary proposals of the Government;

(b) to require the implementation of specific recommendations arising from public expenditure scrutiny to be implemented in budgetary proposals for one or more specified future years; and

(c) to give or withhold approval to particular components of the public financial management systems.

(2) The arrangements under this section are to be made in accordance with Standing Orders.

(3) Before making arrangements in accordance with this section the Minister shall consult—

(a) the Speaker of Parliament; and

(b) members of Parliament representing the Opposition; and

(c) members of Parliament representing minority parties.

Annual appropriation

58.—(1) Parliament shall appropriate money for each financial year for the requirements of the State.

(2) The nature and method of the appropriation process for the purposes of this section are to be determined by Standing Orders of Parliament.

(3) The Minister may by regulations make provision about the appropriation process for the purposes of this section (and regulations under this subsection may impose functions on Ministers, accounting officers and Ministries, but may not impose functions on or otherwise interfere with the appropriation procedure of Parliament).

Virement

59.—(1) The Minister may make regulations ("Virement Regulations") authorising virement to such extent, and subject to such limitations and conditions, as may be prescribed.

(2) For the purposes of this section "virement" means the application of savings or underspend in respect of one item appropriated by Appropriation Act or otherwise in accordance with section {*Annual appropriation*} to cover excess expenditure in respect of another item.

(3) Virement Regulations may modify the definition in subsection (2) (which is subject to this subsection).

(4) Virement Regulations—

(a) shall set a limit for virements not exceeding 30% of the budgeted amount of an underspent item;

(b) shall provide as a condition of any virement that it is authorised by or on behalf of the Minister; and

(c) may permit delegation of the authorising function under paragraph (a) to accounting officers of the public authority effecting the virement in the case of virements between appropriation sub-heads (as defined in the Regulations).

Budget process

National annual budget

60.—(1) The Minister shall table the annual budget for a financial year in Parliament before the start of that financial year (subject to section {*Delayed budget*}).

(2) An annual budget shall comply with any prescribed provision as to format and content (in addition to complying with the provisions of this Part).

(3) Regulations under subsection (2) shall ensure that the annual budget —

(a) accounts for all expected expenditure on or behalf of the Government, disaggregated according to administrative and functional divisions;

(b) gives a true and fair view of expected Government expenditure (avoiding the use of extra-budget special funds, special purpose vehicles or other mechanisms that conceal the full intentions for Government expenditure from the Parliamentary budget scrutiny); and

(c) includes specified information relation to appropriations in aid.

(4) The Minister shall before the beginning of each financial year table before Parliament a statement setting out the proposed timetable for the budget process in respect of that year.

(5) Before settling a timetable under subsection (4) the Minister shall consult—

(a) the Public Accounts Committee; and

(b) any other Committee of Parliament that has expressed to the Minister a wish to be consulted.

(6) The Minister may make regulations about the timing and content of the statement under subsection (4).

(7) In making arrangements for the preparation and publication of the budget documents required by sections {*Departmental objectives*} to {*Public debt statement*} the Minister shall have regard, in particular, to the importance of ensuring—

(a) that each budget document is produced in a form that is comprehensive, clear, reliable, timely and sufficiently user-friendly to satisfy the requirements of the Transparency Principle, the Accountability and Participation Principle and the Parliamentary engagement principle; and

(b) in particular, that each budget document is prepared in a manner that enables the Government to be held to account generally, and specifically in relation to the interests of women, persons with disabilities, and marginalised and disadvantaged groups.

Estimates

61.—(1) The annual budget shall include estimates of the following matters in respect of the financial year to which it relates (in addition to any other prescribed estimates)—

(a) all revenue expected to be raised;

(b) all expenditure expected to be incurred (attributed to administrative and functional divisions [26]);

(c) interest, servicing charges, repayments and any other expenses in respect of Government borrowing;

(d) capital expenditure (attributed to prescribed divisions); and

(e) direct charges against the Consolidated Fund and standing appropriations.

(2) The Minister may by regulations make provision about matters to be included, or not to be included, in estimates under this section.

[26] Drafting Note: Budget estimate divisions are commonly grouped as votes; but in order to avoid the model law becoming prescriptive as to individual legislative procedures and processes, the model law uses a neutral terminology.

Budget debate

62.—(1) The Minister shall take all reasonable steps to ensure that arrangements are made for debate and votes in Parliament on the annual budget.

(2) Arrangements under subsection (1) may include provision for debate and votes in Committee (in addition to, or in place of, debate and votes in plenary).

(3) The Minister shall take all reasonable steps to ensure that arrangements made subsection (1) include an allocation of separate time to debate (in addition to debate on the estimates)—

(a) matters arising in respect of the SDG budget statement (under section {*Sustaimable development goals*});

(b) matters arising in respect of the international commitment statement (under section {*Other international commitments and projects*});

(c) matters arising in respect of the equality and diversity statement (under section {*Equality and diversity*}).

(4) In taking steps under subsection (3) the Minister shall have regard to the lengths of allocations of time given to other matters of fundamental importance, and ensure that allocations for budget debates—

(a) are commensurate with allocations for other matters of constitutional, political and economic significance; and

(b) provide appropriate mechanisms (whether or not in special or standing Committees) for—

i) ensuring that there is an appropriate balance between revenue, expenditure and Government borrowing;

ii) ensuring that debt levels and debt interest costs are reasonable and sustainable;

iii) ensuring that the cost of recurrent expenditure is not deferred to future generations;

iv) ensuring that arrangements are made for adequate provision for expenditure on infrastructure development, other capital expenditure and maintenance;

v) considering the short, medium and long-term implications of the fiscal framework, the division of revenue and the annual budget on the long-term growth potential of the economy and general development objectives;

vi) taking account of cyclical factors that may impact on the fiscal position; and

vii) taking account of overall public revenue and expenditure, including budgetary funds and potential liabilities.

(5) This section is subject to the Standing Orders and other procedures of Parliament (including procedures for the amendment of resolutions or legislation in connection with the annual budget).

Budget consultation

63.—(1) The Minister shall give guidance about opportunities for public consultation and other forms of involvement in relation to the annual budget.

(2) The guidance must make provision about interaction between Members of Parliament and their constituents in relation to issues related to the annual budget.

(3) Public authorities shall have regard to guidance under this section.

(4) In issuing guidance under this section the Minister—

(a) shall have regard to what appear to the Minister to be the principles of effective participatory democracy; and

(b) shall consult persons appearing to the Minister to represent the interests of citizens in the context of effective participatory democracy.

Accompanying documentation

Departmental objectives

64.—(1) When the annual budget is tabled in Parliament, the accounting officer for each Ministry shall submit to Parliament measurable objectives for each main division within the department's vote.

(2) The Finance Ministry may co-ordinate submissions under subsection (1) and table them as a single consolidated document.

(3) The objectives provided for under this section must relate to measurable benchmarks provided for in accordance with section 10.

Sustainable fiscal policy

65.—(1) The annual budget for a financial year shall be accompanied by a statement of fiscal sustainability.

(2) The statement of fiscal sustainability shall be made by the Minister.

(3) The statement of fiscal sustainability shall—

(a) set out the Government's strategy for fiscal sustainability (which shall, in particular, include maintenance of a fiscal balance over specified periods and maintenance of a sustainable levels of public debt);

(b) specify measurable fiscal objectives over specified periods; and

(c) demonstrate consistency of the strategy and objectives under paragraphs (a) and (b) with national, regional and international equivalents and best practice.

(4) The periods chosen for the purposes of subsection (3)(a) and (b) shall include periods appearing to the Minister to represent appropriate short-term, medium-term and long-term periods.

(5) The statement of fiscal sustainability shall, in particular, include—

(a) explanation of how the practice and procedure of tax incentives, as required or permitted by relevant fiscal laws, contributes to prudent fiscal policy and the maintenance of the balances specified in subsection (3)(a);

(b) explanation of how the practice and procedure of extra-statutory concessions, as required or permitted by relevant fiscal laws, contributes to prudent fiscal policy and the maintenance of the balances specified in subsection (3)(a); and

(c) a report on the operation of double tax avoidance treaties and an explanation of how they contribute to prudent fiscal policy.

Sustainable development

66.—(1) The annual budget for a financial year shall be accompanied by a sustainable development statement.

(2) The statement must, in particular, reflect commitments and obligations within—

(a) any applicable regional and international instruments including—

(i) Southern African Development Community (SADC) Vision 2050;

(ii) African Union's (AU) Agenda 2063; and

(iii) United Nations Sustainable Development Goals;

(b) any other applicable regional norms and standards in respect of sustainable development; and

(c) any other relevant international instruments in respect of sustainable development.

(3) The sustainable development statement shall be made by the Minister.

(4) The sustainable development statement shall—

(a) identify any relevant regional and international commitments of [*State*]; and

(b) set out the implications of the annual budget for actual and projected compliance with those commitments.

(5) The Minister may make regulations about the form and content of sustainable development statements.

(6) Before making regulations under this section, and before making sustainable development statements, the Minister shall have regard to—

(a) any relevant guidance, policies or programmes issued or operated by the United Nations in respect of sustainable development goals; and

(b) any other guidance, policies or programmes (whether issued or operated by the Government, by the government of another country or by a national or international organisation) that the Minister considers helpful.

Illicit financial flows

67.—(1) The annual budget for a financial year shall be accompanied by a statement on illicit financial flows.

(2) The statement under this section shall be made by the Minister.

(3) The statement shall include—

(a) an assessment of the current nature and extent of illicit financial flows;

(b) an assessment of progress in preventing illicit financial flows; and

(c) proposals for action to be taken to prevent illicit financial flows.

Other international commitments and projects

68.—(1) The annual budget for a financial year shall be accompanied by an international commitment statement.

(2) In this section references to international commitments include references to regional commitments.

(3) An international commitment statement shall be made by the Minister.

(4) An international commitment statement shall—

(a) set out any commitments of [*State*] that in the Minister's opinion are reasonably likely to have an impact on public resources; and

(b) set out the implications of the annual budget for actual and projected compliance with those commitments.

(5) The Minister may make regulations about the form and content of international commitment statements.

(6) The Minister may by regulations specify matters that—

(a) are to be treated as commitments for the purposes of international commitment statements; or

(b) are not to be treated as commitments for the purposes of international commitment statements.

(7) Before making regulations under this section, and before making international commitment statements, the Minister shall have regard to—

(a) any relevant guidance, policies or programmes issued or operated by the United Nations in respect of international commitment budget impact; and

(b) any other guidance, policies or programmes (whether issued or operated by the Government, by the government of another country or by a national or international organisation) that the Minister considers helpful.

(8) Subject to regulations under subsection (6), the Minister shall include in an international commitment statement any obligations in respect of participation in Universal Health Coverage projects.

Equality and diversity

69.—(1) The annual budget for a financial year shall be accompanied by an equality and diversity statement.

(2) An equality and diversity statement shall be made by the Minister.

(3) An equality and diversity statement shall identify components of the annual budget that in the Minister's opinion are reasonably likely to have an impact on equality and diversity, including—

(a) any impact on gender equality and women's empowerment;

(b) any impact on persons with disabilities; and

(c) any impact on marginalised and disadvantaged groups generally.

(4) The Minister may make regulations about the form and content of equality and diversity statements (subject to subsection (3)).

(5) The Minister may by regulations specify matters that—

(a) are to be treated as reasonably likely to have an impact on equality and diversity for the purposes of equality and diversity statements; or

(b) are to be treated as not reasonably likely to have an impact on equality and diversity for the purposes of equality and diversity statements (subject to subsection (3)).

(6) Before making regulations under this section, and before making equality and diversity statements, the Minister shall have regard to—

(a) any law relating to equality or diversity;

(b) any guidance, policies or programmes issued or operated by the Government relating to equality or diversity; and

(c) any other matters that the Minister considers helpful.

(7) Before making equality and diversity statements the Minister shall consult persons with an interest in equality and diversity (including, in particular, persons representing the interests of women, of persons with disabilities and of marginalised and disadvantaged groups).

(8) Subject to regulations under subsection (5), the Minister shall include a gender impact assessment in each international commitment statement.

Past-year and future-year implications

70.—(1) The annual budget for a financial year shall be accompanied by a statement made by the Minister of the projected financial implications of that estimate for future financial years.

(2) The annual budget for a financial year shall be accompanied by—

(a) a statement of any anticipated deficit for the year; and

(b) proposals for financing that deficit in future years.

(3) The annual budget for a financial year shall be accompanied by a statement made by the Minister setting out—

(a) implications of that year's budget for Government borrowing in future years;

(b) proposals for controlling and servicing that borrowing;

(c) compliance with the debt management strategy; and

(d) any observations made by a debt management committee on a draft of the statement.

(4) The annual budget for a financial year shall be accompanied by a statement made by the Minister setting out—

(a) a timeline for full achievement of commitments to which the SDG budget statement relates;

(b) a timeline for full achievement of commitments to which the international commitment statement relates.

(5) The annual budget for a financial year shall be accompanied by a statement made by the Minister of—

(a) adjusted estimates for previous financial years; and

(b) consequential adjustments of proposals in respect of deficits and borrowing.

Multi-year budget projections

71.—(1) The Minister shall in each year table in Parliament a multi-year budget projection of—

(a) the estimated revenue expected to be raised during each year of the multi-year period; and

(b) the estimated expenditure expected to be incurred per vote during each year of the multi-year period, differentiating between capital and current expenditure.

(2) Each multi-year budget projection shall cover the number of years that is—

(a) prescribed, or

(b) in default of prescription, chosen by the Minister as providing the most reliable and useful forecast in the circumstances.

(3) Each multi-year budget projection shall contain key macro-economic projections.

(4) The Minister may make regulations about the timing, content and handling of multi-year budget projections (subject to any Standing Orders of Parliament about timing or processing in Parliament of multi-year budgets).

(5) The Minister may by regulations require estimates or other information provided in or with the annual budget to include prescribed multi-year information.

Public debt statement

72. The annual budget for a financial year shall be accompanied by a public debt statement under section {*Public debt statement*}.

In-year developments

National adjustment budgets

73.—(1) The Minister shall table in Parliament an adjustments budget (a "national adjustments budget") if the Minister considers it necessary or expedient (and in accordance with public financial management principles) to make adjustments to the annual budget for a financial year.

(2) A national adjustments budget may provide for adjustments to the annual budget for the financial year if (and only if) they are required —

(a) due to significant and unforeseeable economic and financial events affecting the fiscal targets set by the annual budget, or

(b) to provide for unforeseeable and unavoidable expenditure recommended by the Government by resolution of the Cabinet, or

(c) to provide for money to be appropriated for expenditure announced by the Minister during the tabling of the annual budget, or

(d) to reflect the shifting of funds between and within votes, or

(e) to use savings under a main division of a vote for the defrayment of excess expenditure under another main division of the same vote; or

(f) to permit the roll-over of unspent funds from the previous financial year.

(3) The Minister must maintain and publish arrangements designed to ensure that supplementary budgets or other national adjustments budgets—

(a) are used only where necessary (but are used, in particular, to address special drawing rights or other receipts not previously addressed in the Budget for a financial year); and

(b) are processed in a manner that minimises the impact on the efficacy of the budget controls set out in this Part.

In-year budget reports

74.—(1) Within 30 days of the end of each month, the Finance Secretary shall publish in the Gazette a statement (an "in-year budget report") of actual revenue into and expenditure out of the Consolidated Fund.

(2) An in-year budget report shall—

(a) specify the benchmark amounts, and

(b) compare each benchmark amount with the corresponding budgeted amount.

(3) The benchmark amounts are—

(a) the actual revenue for the relevant month;

(b) the actual revenue for the financial year up to the end of that month;

(c) the actual expenditure per vote (distinguishing between capital and current expenditure) for the relevant month;

(d) the actual expenditure per vote (distinguishing between capital and current expenditure) for the financial year up to the end of that month;

(e) actual borrowings for the relevant month; and

(f) actual borrowings for the financial year up to the end of that month.

(4) The Minister may make regulations about the format and content of in-year budget reports.

Delays and variations

Delayed budget

75.—(1) If the Minister considers that it is impossible or inappropriate to comply with section {*National annual budget*}(1) in respect of a particular financial year by reason of exceptional circumstances, the Minister shall—

(a) table the annual budget for that year as soon as possible after its beginning, and

(b) make a statement to Parliament before the beginning of that financial year, as to the reasons why the annual budget cannot or should not be tabled in accordance with section {*National annual budget*}.

(2) Subsection (1)(b) is subject to Standing Orders of Parliament in respect of statements under this section or generally.

Pre-budget expenditure

76.—(1) This section applies where an annual budget has not been passed before the beginning of the financial year to which it relates.

(2) Funds may be withdrawn in accordance with this section from the Consolidate Fund for the services of the state during that financial year as direct charges against the Fund until the budget is passed.

(3) Funds withdrawn in accordance with subsection (2) may be used only for services for which funds were appropriated in the previous annual budget or in a previous adjustments budget.

(4) Drawings under subsection (2)—

(a) during the first four months of the financial year, may not exceed 45% of the total amount appropriated in the previous annual budget;

(b) during each following month, may not exceed 10 per cent of the total amount appropriated in the previous annual budget; and

(c) in aggregate, may not exceed the total amount appropriated in the previous annual budget.

(5) Drawings under subsection (2) are not additional to any funds already appropriated for the relevant financial year (and any funds withdrawn in terms of that subsection shall be regarded as forming part of the funds appropriated in the annual budget for that financial year).

Withholding of appropriated funds

77.—(1) The Finance Ministry may make arrangements for withholding (or recovering) from a Ministry any remaining funds appropriated for a specific function if that function is transferred to another Ministry or another public authority.

(2) Where the Finance Ministry makes arrangements under subsection (1) it shall allocate the remaining funds to the transferee Ministry or public authority.

Unauthorised expenditure

78.—(1) The Minister shall make regulations about the treatment for budgetary purposes of expenditure that has not been authorised in accordance with this Part.

(2) The regulations may, in particular, make provision—

(a) for retrospective approval by Parliament, in exceptional circumstances on the written recommendation of the Finance Secretary, the Minister and the Auditor General;

(b) for setting amounts against future-year provision.

PART 8

GOVERNMENT BORROWING

Public debt

Classification of public debt

79.—(1) In this Act a reference to public debt is a reference to all financial liabilities of the State including—

(a) borrowing by the Government under this Part (including, but not limited to, the issuing of securities); and

(b) actual and potential financial liabilities incurred by the Government (including, but not limited to, the provision of guarantees).

(2) The Minister may by regulations provide for a specified matter—

(a) to be treated as public debt for the purposes of this Act; or

(b) not to be treated as public debt for the purposes of this Act.

(3) In making regulations under subsection (2) the Minister shall aim to ensure transparency of public debt.

(4) In particular, the Minister shall aim to include financial obligations ultimately falling on the Government, including, in particular—

(a) guarantees entered into by Government in respect of undertakings by statutory corporations, state-owned enterprises and any other organisation; and

(b) all other actual or potential obligations incurred for, through or on behalf of public authorities, state-owned enterprises and any other persons.

Debt management

Debt management strategy

80.—(1) The Minister shall prepare and lay before Parliament a debt management strategy (for presentation alongside the annual budget in accordance with section {*Public debt statement*}).

(2) The debt management strategy must include a risk management strategy, identifying and quantifying specific risks in connection with the provisions of the debt management strategy.

(3) The Minister shall review and revise the debt management strategy from time to time.

(4) Before preparing, reviewing or revising the debt management strategy the Minister shall consult—

(a) the Auditor General; and

(b) any Parliamentary Committee whose terms of reference include responsibilities in relation to the debt management strategy.

Debt management committees

81.—(1) The Minister shall make arrangements for the establishment of one or more debt management committees.

(2) The purpose of a debt management committee is to—

(a) monitor levels of public debt;

(b) oversee and scrutinise procedures in relation to the servicing and other management of public debt; and

(c) advise the Government about levels of public debt and other matters relating to public debt.

(3) In making appointments to a debt management committee, and in determining its processes and procedures, the Minister shall have regard to the desirability of ensuring that a debt management committee is able and willing to perform its functions—

(a) with the benefit of relevant expertise, and

(b) in a manner that is independent of the Government and of particular commercial interests.

(4) The Minister may make arrangements under subsection (1) that are designed to ensure that a debt management committee includes experience or expertise in relation to international best practice with regard to the management of public debt.

Borrowing power

Authority to borrow

82.—(1) The Minister or the Finance Ministry have the power to borrow money from within [*State*] or elsewhere, in accordance with the provisions of this Part.

(2) The Minister or the Finance Ministry may exercise the power to borrow for any of the following purposes—

(a) to finance anticipated deficits in the annual accounts;

(b) to acquire foreign currency reserves; and

(c) to maintain such credit balances as the Minister or the Finance Ministry may consider necessary in the public interest.

Borrowing arrangements

83.—(1) For the purposes of borrowing in accordance with this Part the Minister or the Finance Ministry may—

(a) enter into arrangements with banks or other financial institutions (including the Central Bank, international banks or other foreign financial institutions);

(b) enter into arrangements with other governments;

(c) issue Government bills and public stock or bonds of any kind;

(d) issue bills of exchange or debentures for terms not exceeding 12 months.

(2) Arrangements under subsection (1) may be entered into on such terms and conditions as the Minister or the Finance Ministry consider appropriate.

(3) For the purposes of arrangements under subsection (2) the Minister or the Finance Ministry may issue or otherwise provide securities of any kind.

(4) Arrangements entered into under subsection (2) may, in particular, include provision for repayment during the term of the arrangement (with or without the ability to make further drawings under the arrangements during the term).

Government securities

Issue of securities

84.—(1) This section applies where the minister or the Finance Ministry propose to issue bonds or other securities in accordance with section {*Borrowing arrangements*}.

(2) The Finance Secretary may publish notices and prospectuses setting out the terms and conditions on which bills, stock or bonds or other securities are proposed to be issued.

(3) The Finance Secretary shall make arrangements for signature of securities by or on behalf of the Minister or the Finance Ministry.

(4) The Finance Secretary shall make arrangements for the issue of certificates in respect of registered securities.

(5) In this Act "securities" includes bills, stock, bonds, bills of exchange, debentures and securities of any other kind.

(6) The Finance Secretary may operate arrangements for the replacement of lost or damaged documents in respect of securities.

Securities agents

85.—(1) The Minister or Finance Secretary may enter into arrangements with a financial institution or any other person (a "securities agent") for the performance of specified functions in connection with Government securities.

(2) In particular, the arrangements may provide for a securities agent to exercise functions in respect of—

(a) the issue of securities;

(b) the transfer of securities;

(c) the administration of securities; and

(d) the purchase or repayment of securities.

Register of securities

86.—(1) The Finance Secretary shall maintain a register of securities issued in accordance with this Part.

(2) The register shall include such details of the holders of stock as may be prescribed.

Other borrowing

On-lending

87.—(1) In this Act a reference to "Government on-lending" is a reference to loans issued by or on behalf of the Government to a financial institution or public body funded by—

(a) public money, or

(b) Government borrowing.

(2) The Minister may make regulations about on-lending.

(3) The regulations may, in particular—

(a) establish a system for the giving of approval by the Minister, the Finance Secretary or another specified person in respect of particular proposals for on-lending;

(b) specify terms and conditions for on-lending;

(c) set limits or impose restrictions in respect of on-lending.

(4) The regulations may provide that specified arrangements, or arrangements of a specified kind, are to be or not to be regarded as on-lending for the purposes of this Act and the regulations (and subsection (1) is subject to regulations under this subsection).

Guarantees and indemnities

88.—(1) The Minister or the Finance Ministry may provide guarantees in respect of any obligation of the Government or any other public authority where the Minister or the Finance Ministry is satisfied that it is in the public interest.

(2) In this Act "guarantee" includes all indemnities and other similar arrangements (of any kind and by whatever name).

(3) The Minister shall make regulations about the provision of guarantees in accordance with this section; and the Regulations shall, in particular—

(a) set limits on the aggregate potential liabilities that may be incurred or maintained at any time through the provision of guarantees, expressed as a percentage of national revenue in the previous financial year;

(b) include provision for preventing those limits from being exceed, or for restoring compliance with those limits in cases where they exceeded by actions or events beyond the Government's control; and

(c) require ratification by Parliament of proposals for the provision of guarantees in specified cases or circumstances.

Statements

Public debt statements

89.—(1) The Minister shall make statements of the position in respect of public debt ("public debt statements").

(2) A public debt statement shall include—

(a) an assessment of the amount of outstanding public debt at the date of the statement;

(b) a report on debt repayments since the last statement;

(c) information on servicing and repayment rates, timings and other arrangements in respect of each element of public debt;

(d) information about resources allocated as, or available for allocation as, collateral in respect of each element of public debt;

(e) a projection of the rate at which obligations are expected to be incurred in the twelve months following the date of the statement; and

(f) proposals for debt reduction, servicing and management in the twelve months following the date of the statement.

(3) The Minister—

(a) shall make a public debt statement at least once in each financial year;

(b) shall make a public debt statement if required in accordance with section {*Debt ceiling: excess reports*};

(c) shall comply as soon as is reasonably practicable with a request of the Public Accounts Committee to make an additional public debt statement (and a request under this paragraph may not be made more than once in any financial year);

(d) shall comply as soon as is reasonably practicably with a request of the Auditor General to make an additional public debt statement (and a request under this paragraph may not be made more than once in any financial year); and

(e) may make a public debt statement whenever the Minister thinks it appropriate.

(4) Where the Minister makes a public debt statement (other than in accordance with section {*Budget: accompanying documents: public debt statement*}) the Minister shall lay it before Parliament as soon as is reasonably practicable.

Debt schedule

90.—(1) The Minister shall maintain a public debt schedule setting out the state of public debt from time to time.

(2) A public debt statement (whether made in accordance with section {*Budget: accompanying documents: public debt statement*} or otherwise) must include the latest version of the public debt schedule.

(3) The Minister may make regulations about the form and content of a public debt schedule.

(4) Subject to regulations under subsection (3), a public debt schedule must include details of—

(a) lenders;

(b) currency of debts;

(c) maturity timetables;

(d) interest rates; and

(e) other significant terms and conditions.

Debt ceiling

Ceiling limit

91.—(1) For the purposes of this Act the public debt reaches the debt ceiling if it exceeds 60% of the Gross Domestic Product ("GDP").

(2) The Minister—

(a) may propose a new percentage for the percentage specified in subsection (1) by way of amendment of this section (by Act of Parliament) from time to time; and

(b) shall aim to reduce that percentage (by amendment by Act of Parliament) by such decrements as appear to the Minister to be appropriate, so that it is reduced to 50% or less by the end of the period of 5 years beginning with the date of the commencement of this section.

(3) The Minister may make regulations about the calculation of GDP for the purposes of this section.

(4) Regulations under subsection (3) may, in particular, make provision—

(a) conferring a discretionary function on a specified person or body (other than the Minister);

(b) referring to standards or criteria published by a specified national or international organisation.

(5) Regulations under this section—

(a) are subject to draft affirmative resolution, if they include provision amending the GDP threshold percentage; and

(b) otherwise, are subject to negative resolution.

Excess reports

92.—(1) This section applies if public debt reaches the debt ceiling.

(2) The Minister shall make an emergency public debt statement as soon as is reasonably practicable.

(3) The Minister shall make arrangements for an emergency debate in Parliament on the emergency public debt statement.

(4) This section is subject to Standing Orders and other procedures of Parliament.

Continuing scrutiny

93.—(1) This section applies if—

(a) public debt exceeds the debt ceiling; or

(b) it appears to the Public Accounts Committee that, as a result of spending plans or other financial information or intentions announced by the Government, public debt is likely to exceed the debt ceiling.

(2) The Public Accounts Committee shall publish and maintain a strategy ("the public debt Parliamentary oversight strategy") for—

(a) monitoring the accrual of public debt;

(b) overseeing the management and servicing of public debt; and

(c) making recommendations for the reduction and control of public debt.

(3) Before publishing or revising the strategy the Public Accounts Committee shall consult—

(a) the Minister,

(b) the Auditor General, and

(c) the Accountant General.

(4) The public debt Parliamentary oversight strategy may recommend changes to the debt management strategy under section {*Debt management strategy*}.

(5) The debt Parliamentary oversight strategy may require the Minister to make specified arrangements for advance Parliamentary approval for debt incurred while public debt remains above the debt ceiling; and the arrangements may—

(a) require proposed additional debt to be approved by a specified majority;

(b) include budgetary or other sanctions for Ministries or public authorities incurring unauthorised borrowing.

Miscellaneous

Debt servicing account

94.—(1) The Minister may maintain an account (a "debt servicing account") with the Central Bank for the purposes of holding funds pending their application to servicing public debt.

(2) In subsection (1) the reference to servicing public debt includes a reference to reducing public debt.

Unauthorised borrowing

95.—(1) The Minister may make regulations about the incurring of debt by public authorities—

(a) otherwise than in accordance with the provisions of this Part, or

(b) contrary to the debt management strategy.

(2) Debt incurred as described in subsection (1) is "unauthorised borrowing" for the purposes of this Act.

(3) Regulations under this section may permit adjustment by the Minister of the budget of a public authority to include provision for the servicing, management, reduction or off-setting of unauthorised borrowing.

Recovery of debt owed to Government

96.—(1) This section applies where a person owes money to the Government.

(2) The debt may be waived, commuted or otherwise reduced (other than through payment) only by or with the consent of the Finance Ministry.

PART 9

PROCUREMENT AND USE OF PUBLIC RESOURCES [27]

Public procurement

97. In this Part "procurement activities" means activities undertaken in connection with the procurement of goods or services in the course of or in connection with the exercise or functions by government departments or other public bodies.

Procurement principle

98.—(1) The procurement principle is that procurement activities shall be carried out with a view to achieving, and in a manner designed to achieve, maximum value for public expenditure.

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[27] Drafting Note: Some States will have existing Acts dealing with details of public procurement, in which case this Part will be omitted from their Public Financial Management Act.

(2) In subsection (1) value includes cost-effectiveness and all other aspects of value for money.

(3) In accepting quotes for the provision of goods or services it is not contrary to the procurement principle to accept a quote other than the lowest quote, where other factors (including economy, efficiency and effectiveness) combine to make that better value for money overall than the cheapest quote.

Application of principle

99. A public authority exercising functions in connection with the procurement of goods or services by or in the course of, or in connection with, the exercise of functions by Government departments or other public bodies shall act in accordance with the procurement principle.

Government to Government assistance

100.—(1) Nothing in (or under) this Part applies in relation to services supplied to the Government by or on behalf of the government of another country ("Government to Government assistance").

(2) Public authorities with responsibility for making or supervising arrangements for Government to Government assistance shall—

(a) apply the procurement principle with such qualifications or modifications as appear to them to be necessary or desirable in the circumstances; and

(b) in particular, conduct an appropriate due diligence exercise to ensure value for money.

Procurement regulations

101.—(1) The Minister shall make regulations ("procurement regulations") about procurement practices within Government departments and other public bodies.

(2) The Minister shall take steps in order to be satisfied that procurement regulations are consistent with—

(a) the public financial management principles;

(b) the procurement principle; and

(c) current internationally accepted best practice (including Article 9 of the United Nations Convention Against Corruption – public procurement and management of public finances).

(3) Regulations under this section may, in particular, include provision requiring the use of technology designed—

(a) to facilitate compliance with this Part (and other provisions of this Act); and

(b) to maintain records sufficient to demonstrate compliance with this Part (and other provisions of this Act), and to identify and evidence non-compliance.

(4) In making regulations under this section the Minister shall, in particular, consider the potential for the use of transformation criteria in procurement processes for the purposes of advancing the interests of marginalised and disadvantaged groups.

Use of public resources

102.—(1) A public authority shall manage, use and account for all public resources—

(a) in accordance with the public finance principles, and

(b) taking the greatest possible care (in respect of which each public official is personally responsible).

(2) A public authority shall record all public stores and other property for which the public authority is responsible.

(3) The Minister may make regulations about the form and content of accounting and other records in respect of public stores and other property.

(4) The Minister may make regulations about the handling of public resources including the requisition, ordering, accounting for and custody and disposal of public resources of any kind.

(5) Regulations under this section may, in particular, include provision requiring the use of technology designed—

(c) to facilitate compliance with this Part (and other provisions of this Act); and

(d) to maintain records sufficient to demonstrate compliance with this Part (and other provisions of this Act), and to identify and evidence non-compliance.

Contract management

103. The accounting officer of a public authority shall ensure that the authority uses a contract management system designed—

(e) to facilitate compliance with this Part (and other provisions of this Act); and

(f) to maintain records sufficient to demonstrate compliance with this Part (and other provisions of this Act), and to identify and evidence non-compliance.

Conflict of interest management

104.—(1) This section applies where a public authority is applying the public financial management principles and the procurement principle to the exercise of functions relating to public procurement or the use of public resources.

(2) The public authority shall, in particular take all reasonable steps—

(a) to avoid any conflict of interest;

(b) to report in the prescribed manner any unexpected conflict of interest that may arise.

(3) The Minister may make regulations about the avoidance, reporting and management of conflicts of interest in relation to public procurement or the use of public resources.

Procurement in emergencies

105.—(1) Procurement regulations must include provision about the application and modification of the regulations where procurement activities are required to be undertaken in connection with, or during the course of, a civil contingency or other emergency.

(2) In making regulations in accordance with this section the Minister shall aim to ensure that the procurement principle, and the public financial management principles, are applied to the extent reasonably achievable having regard to the nature and extent of the emergency.

(3) The regulations must include provision as to what is to be, or not to be, treated as amounting to a civil contingency or other emergency for the purposes of this section.

(4) Regulations in accordance with this section may make provision by reference to any other law relating to civil contingencies and other emergencies.

PART 10

PUBLIC ACCOUNTS

Principles

Public accounting principles

106.—(1) The public accounting principles are—

(a) the public financial management principles, and

(b) generally accepted accounting principles.

(2) The Minister shall publish and maintain guidance on generally accepted accounting principles for the purposes of subsection (1)(b). [28]

Resource accounts [29]

Preparation

107.—(1) A Ministry for which an estimate is approved by Parliament in respect of a financial year shall prepare accounts ("resource accounts") for that year detailing—

(a) resources acquired, held or disposed of during the year by that Ministry, and

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[28] Drafting Note: The US GAAP principles include the 10 primary principles (Principle of consistency; Principle of permanent methods; Principle of non-compensation; Principle of prudence; Principle of regularity; Principle of sincerity; Principle of good faith; Principle of materiality; Principle of continuity; Principle of periodicity; the International Financial Reporting Standards (IFRS) are also likely to inform the guidance on GAAP.

[29] Drafting Note: Policy decision required from SADC Technical Working Group as to whether resource accounting should be the accepted norm under this Act, in accordance with best international practice, in place of simple cash accounting (which does not present a holistic picture of public finances).

(b) the use of resources during the year by that Ministry.

(2) The Minister may make regulations about the form and content of resource accounts ("resource accounting regulations").

(3) In making resource accounting regulations the Minister shall have regard to the importance of ensuring that resource accounts—

(a) present a true and fair view, and

(b) conform to generally accepted accounting practice subject to such adaptations as are necessary in the context of public finance accounts.

(4) The Minister or the Finance Ministry may issue guidance about the inclusion of an explanation in a Ministry's resource accounts of the difference between an item appearing in the Finance Ministry's estimate and a corresponding item appearing in or reflected in the Finance Ministry's resource accounts.

(5) Resource accounting regulations, and guidance under subsection (4), may require a Ministry to have regard to guidance issued by a specified body, or class of body, in relation to accounting standards; and in this subsection "body" includes a body in a country outside [*State*] or an international body, and "accounting standards" includes international accounting standards.

(6) A Ministry which prepares resource accounts shall send them to the Auditor General not later than [*date*[30]] in the financial year following that to which the accounts relate.

(7) The accounting officer of a Ministry shall be responsible for—

(a) the preparation of the Ministry's resource accounts, and

(b) their transmission to the Auditor General.

(8) The Finance Secretary may appoint an official of a Ministry as resource accounting officer in respect of the whole, or a specified part, of the Ministry's resource accounts; in which case the reference in subsection (7) to the accounting officer is, or includes, a reference to the resource accounting officer.

(9) The Minister may by regulations provide for the position of a specified body, or specified class of body, to be included in the resource accounts for a specified Ministry; in which case a reference in this Act to a Ministry in respect of resource accounts includes a reference to any body or class of body specified under this subsection.

Scrutiny

108.—(1) The Auditor General shall examine any resource accounts received from a Ministry with a view to being satisfied—

(a) that the accounts present a true and fair view,

(b) that money provided by Parliament has been expended for the purposes intended by Parliament,

(c) that resources authorised by Parliament to be used have been used for the purposes in relation to which the use was authorised, and

[30] Drafting Note: Date to be inserted to reflect the financial year of each jurisdiction and the timing of its Parliamentary and Executive accounting and budgeting cycles.

(d) that the financial transactions of the Ministry are in accordance with any relevant authority.

(2) If resource accounts appear to the Auditor General to suggest that a material use of resources required but did not receive the authority of the Finance Ministry—

(a) the Auditor General shall inform the Finance Ministry, and

(b) if the Finance Ministry sanctions the relevant use of resources, the Auditor General shall treat it as always having had the Finance Ministry's authority.

(3) Following an examination of resource accounts the Auditor General—

(a) shall certify them and issue a report,

(b) shall send the certified accounts and the report to the Finance Ministry before the end of the first three months of the financial year following that to which the accounts relate, and

(c) may report any matter arising out of the resource accounts direct to Parliament, and shall report under this paragraph any matter in respect of which the Auditor General is not satisfied of the matters set out in subsection (1)(a) to (d).

(4) The Minister shall lay accounts and reports received under subsection (3)(b) before Parliament as soon as is reasonably practicable.

Whole of government accounts

Preparation

109.—(1) The Finance Ministry shall prepare in respect of each financial year a set of accounts for a group of bodies each of which appears to the Finance Ministry—

(a) to exercise functions of a public nature, or

(b) to be entirely or substantially funded from public money.

(2) Accounts prepared under this section may include information referring wholly or partly to activities which—

(a) are not activities of bodies falling within subsection (1), but

(b) appear to the Finance Ministry to be activities of a public nature.

(3) The accounts shall contain such information in such form as the Finance Ministry directs.

(4) In determining the form and content of the accounts the Finance Ministry shall aim to ensure that the accounts—

(a) present a true and fair view, and

(b) conform to generally accepted accounting practice subject to such adaptations as are necessary in the context.

(5) For the purpose of subsection (4)(a) and (b) the Finance Ministry shall, in particular—

(a) have regard to any relevant guidance issued by any prescribed body;

(b) ensure that the accounts include a statement of financial performance, a statement of financial position and a cash flow statement; and

(c) ensure that the accounts include, in respect of funds specially allocated to sustainable development goals (in accordance with regional or other international commitments, or otherwise)—

i. a statement of financial performance;

ii. a statement of financial position; and

iii. a cash flow statement.

Obtaining information

110.—(1) Where the Finance Ministry intend the accounts under section {Whole of government accounts: preparation} for a particular financial year to relate in part to a particular body which falls within section {Whole of government accounts: preparation}(1), the Finance Ministry may by regulations designate that body for the purposes of this section in respect of that year.

(2) Where a body is designated in respect of a financial year it shall—

(a) prepare such financial information in relation to the year as the Finance Ministry may request,

(b) present the information in such form as the Finance Ministry may direct,

(c) arrange for the information to be audited, and

(d) deliver the information to the Finance Ministry, in such manner and by such date in the next year as the Finance Ministry may direct.

(3) Where a body is designated in respect of a financial year the Finance Ministry may request it to—

(a) prepare specified financial information in relation to a specified part of the year,

(b) present the information in a specified form, and

(c) deliver the information to the Finance Ministry in a specified manner by a specified date.

(4) A designated body shall comply with a request under subsection (3).

(5) A designated body shall comply with any direction of the Finance Ministry as to the person or kind of person to be given responsibility for ensuring compliance with subsections (2) and (3).

Scrutiny

111.—(1) The Finance Ministry shall send accounts under section {*Whole of government accounts: preparation*} to the Auditor General.

(2) The Auditor General shall examine accounts sent under this section with a view to being satisfied that they present a true and fair view.

(3) After conducting an examination of accounts the Auditor General shall—

(a) certify them and issue a report, and

(b) send the certified accounts and the report to the Finance Ministry.

(4) The Minister shall lay accounts and reports received under subsection (3)(b) before Parliament.

(5) The Auditor General may report any matter relating to examinations under this section direct to Parliament where the Auditor General considers it necessary or expedient.

(6) A person who acts as auditor for the purposes of section {*Whole of government accounts: obtaining information*}(2)(c) shall give the Auditor General any information and explanations reasonably requested for the purposes of this section.

(7) The Finance Ministry shall by regulations prescribe the dates by which the duties under subsections (1), (3)(b) and (4) are to be performed.

(8) Before making regulations under subsection (7) the Finance Ministry shall consult the Auditor General.

Other accounts

Other departmental accounts

112.—(1) The Finance Ministry may direct another Ministry to prepare for each financial year accounts in relation to any specified matter.

(2) Accounts under subsection (1) shall be prepared in accordance with directions issued by the Finance Ministry or the Finance Secretary.

(3) Where a Ministry prepares accounts under subsection (1)—

(a) it shall send them to the Auditor General not later than [*date*[31]] of the financial year following that to which the accounts relate,

(b) the Auditor General shall examine and certify the accounts, issue a report on them and send the certified accounts and the report to the Finance Ministry not later than [*date*[32]] of that year, and

(c) the Finance Ministry shall lay the certified accounts and the report before Parliament not later than [*date*[33]] of that year.

(4) The Auditor General shall carry out the examination of accounts under subsection (3)(b) with a view to being satisfied—

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31 Drafting Note: Date to be inserted to reflect the financial year of each jurisdiction and the timing of its Parliamentary and Executive accounting and budgeting cycles.

32 Drafting Note: Date to be inserted to reflect the financial year of each jurisdiction and the timing of its Parliamentary and Executive accounting and budgeting cycles.

33 Drafting Note: Date to be inserted to reflect the financial year of each jurisdiction and the timing of its Parliamentary and Executive accounting and budgeting cycles.

(a) that money provided by Parliament has been expended for the purposes intended by Parliament,

(b) that resources authorised by Parliament to be used have been used for the purposes in relation to which the use was authorised, and

(c) that the Finance Ministry's financial transactions are in accordance with any relevant authority.

(5) The Finance Ministry may, in relation to accounts under subsection (1) generally or in relation to specified accounts under subsection (1), direct that this section shall have effect as if references to the relevant Ministry were substituted for the references to the Finance Ministry in subsection (3)(b) and (c).

Tax expenditure reporting

113.—(1) The Minister shall make arrangements (whether as part of the accounting documents required by this Part, or as part of other documents produced in pursuance of a provision of this Act, or separately) for the preparation and publication of tax expenditure reports.

(2) Tax expenditure reports shall be designed to demonstrate the nature and extent of any diminution or reduction in tax liability compared with the benchmark tax system.

(3) For the purposes of subsection (2) it is immaterial—

(a) whether a diminution or reduction is temporary or permanent; and

(b) whether a diminution or reduction is effected—

(i) by way of differential taxation;

(ii) through coding mechanisms;

(iii) by way of exemptions or other exclusions from the tax base;

(iv) in the form of allowances or other deductions from the tax base before applying the tax rates;

(v) in the form of credits or other amounts deducted from tax liability;

(vi) through rate relief or other reduced tax rates;

(vii) by way of tax deferrals or delays; or

(viii) in any other way.

(4) Tax expenditure reports must include—

(a) identification of the benchmark tax system against which the report is measured, and

(b) the methodology used to identify the benchmark tax system.

(6) Without prejudice to the generality of subsection (1), tax expenditure cost estimates must, with a view to informing fiscal and financial management policy-making, be included in—

(a) the annual budget, or

(b) one or more of the documents published alongside the annual budget.

(7) The Accountant General, in consultation with the Auditor General, shall give guidance about the form and content of tax expenditure reports under this section (subject to subsections (2) to (6)).

(8) Guidance under subsection (7) must, in particular, have regard to best international practice in relation to tax expenditure reports.

Process and procedure

Preparation of accounts

114. The Finance Secretary is responsible for the maintenance of and publication of Government accounts in accordance with this part of this Act and all other relevant laws.

Financial statements

115.—(1) The Finance Secretary must make arrangements for financial statements used for the purposes of or in connection with the preparation of Government accounts.

(2) Arrangements under subsection (1) may include frameworks to be used in the preparation of financial statements.

Accounting regulations

116.—(1) The Minister shall make regulations ("accounting regulations") about the form, content and publication of Government accounts.

(2) Accounting regulations shall, in particular determine the form in which accounts are prepared, published and presented to Parliament.

(3) In making accounting regulations the Minister shall have regard, (in addition to the public financial management principles) to the desirability of conforming to international best practice in relation to government accounts.

Donor funds

117.—(1) Accounting regulations may make special provision about the treatment of donor funds for accounting purposes.

(2) The Finance Secretary may make special arrangements in relation to donor funds for accounting purposes.

Financial year

118.—(1) The year beginning [*date*[34]] shall be the financial year for accounting purposes for—

(a) every Ministry; and

[34] Drafting Note: Date to be inserted to reflect the financial year of each jurisdiction and the timing of its Parliamentary and Executive accounting and budgeting cycles.

(b) every other public authority.

(2) Subsection (1) does not apply to any public authority in respect of which a different financial year us provided for by or under any law.

PART 11

FINANCIAL MISCONDUCT, MISUSE AND MALADMINISTRATION

Interpretation

Public official

119. In this Act "public official" means—

(a) an officer, servant or agent of a Ministry, statutory corporation or any other body created by this Act or any other law;

(b) a Government official; and

(c) the holder of any office or position created by this Act or any other law.

Offences

Public financial misconduct

120.—(1) It is an offence for a public official to fail to comply with a provision of this Act or of regulations made under this Act.

(2) It is a defence for a person charged with an offence under this section in respect of a provision of this Act or of regulations under this Act to show that the person—

(a) took all reasonable steps to comply with the provision, or

(b) did not know, and could not reasonably have been expected to know, about the failure to comply.

(3) [*Penalty* [35]]

Misuse of public funds

121.—(1) It is an offence for a public official to misuse public funds.

(2) For the purposes of subsection (1) a public official misuses public funds if the official—

(a) contravenes a provision of this Act, or of regulations made under this Act, in respect of the treatment of public funds; or

(b) knowingly or recklessly—

[35] Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

i) incurs fruitless or wasteful expenditure from public funds; or

ii) arranges for fruitless or wasteful expenditure from public funds to be incurred; or

iii) facilitates arrangements for fruitless or wasteful expenditure from public funds.

(3) It is a defence for a person charged with an offence under this section in respect of contravention of a provision of this Act or of regulations under this Act to show that the person—

(a) took all reasonable steps to comply with the provision, or

(b) did not know, and could not reasonably have been expected to know, about the contravention.

(4) [*Penalty* [36]]

Maladministration

Maladministration

122.—(1) A report may identify a public official as having—

(a) failed properly to discharge a function under this Act; or

(b) behaved otherwise improperly in relation to public financial management in respect of matters within the public official's responsibility and control.

(2) In subsection (1) "report" means a report of—

(a) the Auditor General;

(b) the Public Accounts Committee;

(c) an investigation or inquiry established by the Minister, the Finance Secretary or a Ministry.

(3) A public official identified in accordance with this section may be described as having committed financial maladministration.

Enforcement

Recovery

123.—(1) The Minister shall make regulations ("Recovery Regulations") about the recovery of public funds in respect of which an offence under section {*Misuse of public funds*} has been, or is suspected to have been, committed.

(2) Recovery Regulations shall, in particular, require the Treasury to operate a scheme for the application by public authorities to the misuse of public funds of general enactments about—

(a) bribery and corruption;

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[36] Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

(b) proceeds of crime; and

(c) other matters appearing to the Minister to be relevant.

(3) This section applies in relation to resources other than money in the same way as to public funds.

Disqualification

124.—(1) A public official who has been identified in a report under section 121 as having committed financial maladministration may, by resolution of Parliament, be disqualified from a specified office or appointment, or class of offices or appointments, in respect of which Parliament has powers of appointment.

(2) A resolution—

(a) may be made on the motion of the Auditor General or a Parliamentary Committee made in accordance with Standing Orders; and

(b) must specify the period for which the disqualification is to apply.

Other enforcement

125.—(1) The Minister shall make regulations ("Enforcement Regulations") designed to enforce the provisions of this Act and of regulations under this Act.

(2) Enforcement Regulations may—

(a) require the provision of information;

(b) enable the giving and acceptance of undertakings; and

(c) create criminal offences.

(3) [*Penalty* [37]]

PART 12

CRYPTOCURRENCIES [38]

Definition: "cryptocurrency"

126.—(1) In this Act a reference to cryptocurrency is a reference to any digital currency or other asset (whether or not described as a currency) which provides a secure means, through cryptography, of—

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37 Drafting Note: Penalties will be inserted by each jurisdiction to reflect its approach to comparable offences, and in accordance with the principle of proportionality and other core principles of each jurisdiction's criminal justice policy.

38 Drafting Note: Based on the importance attached to this subject by the SADC PF Technical Working Group, the provisions about cryptocurrencies have been expanded from the previous internal working draft, and promoted to a separate Part. The additional detail reflects, *inter alia*, principles drawn from the London School of Economics and Political Science, Institute of Global Affairs, *Basic principles for regulating crypto-assets*, Fourth draft, 9 January 2019.

(a) creating units of currency;

(b) verifying asset transfer in that currency; and

(c) conducting transactions in that currency.

(2) The Minister may by regulations provide that a specified form of asset or other matter is to be, or not to be, treated as a cryptocurrency for the purposes of this Act.

(3) In making regulations under this section the Minister must set out, and have regard to, transparent and verifiable certification criteria for the classification of crypto-assets.

Regulatory principles

127.—(1) In exercising functions under this Part the Minister and any other public authority shall have regard, in addition to the public financial management principles, to—

(a) the over-arching crypto-currency principle; and

(b) the specific regulatory crypto-currency principles.

(2) The over-arching crypto-currency principle the importance of securing a transparent and verifiable regulatory framework for the future development of the crypto-currency sector.

(3) The specific regulatory crypto-currency principles are—

(a) **Constructive engagement:** Regulation should maintain a constructive approach to seek an orderly integration of crypto-assets into existing financial arrangements.

(b) **Classification:** Crypto-assets should be classified functionally (whether as currency, financial assets, tokens backed by assets, commodities or otherwise) to identify the financial or other regulatory regimes under which different crypto-assets should be subject to regulation, and the use of crypto-currencies as legal tender.

(c) **Consumer and investor protection:** The regulation of crypto-asset-related activities should be subject to the principles of conducting any financial businesses, including general principles of integrity, financial prudence, orderly market conduct, transparency, protection of clients' assets and avoidance of conflict of interest.

(d) **Cryptography and technology:** Regulation should be determined by reference to the functions of crypto-currencies rather than the underlying technology.

(e) **Constancy:** Regulation of crypto-currencies and related activities should be transparent, stable and predictable, to avoid regulatory uncertainty unduly deterring orderly integration of the sector into mainstream financial regulation.

Inclusion of cryptocurrencies

128.—(1) In the performance of a function under this Act the Minister and any other public authority shall include cryptocurrencies wherever it is reasonably practicable to do so.

(2) In particular (but subject to subsection (5)) budget documents under part {*National Budget*} shall specify separately—

(a) amounts expended or expected to be expended in cryptocurrency;

(b) amounts received or expected to be received in cryptocurrency.

(3) In particular (but subject to subsection (5)) accounts under Part {*National Accounts*} shall specify separately—

(a) assets held or expected to be acquired in cryptocurrency; and

(b) liabilities incurred or expected to be incurred in cryptocurrency

(4) In particular (but subject to subsection (5)) documents relating to public debt under Part {*Government borrowing*} shall include separate provision in respect of liabilities incurred or expected to be incurred in cryptocurrency.

(5) The Minister may by regulations provide—

(a) that cryptocurrency is to be disregarded for specified purposes of this Act;

(b) that cryptocurrency is to be included for specified purposes of this Act;

(c) that a provision of this Act is to be modified in so far as it relates to cryptocurrency.

(6) Regulations under subsection (5) may make provision—

(a) in respect of cryptocurrencies in general; or

(b) in respect of one or more specified forms of cryptocurrency.

Virtual currency strategy

129.—(1) The Minister shall publish and maintain a strategy ("the virtual currency strategy") for—

(a) the use[39] of cryptocurrencies by the Government and other public authorities;

(b) the management by the Government and other public authorities of risks associated specifically with creating, holding, transferring and transacting in cryptocurrencies.

(2) A Ministry or other public authority shall exercise functions under this Act, so far as reasonably practicable, in a manner that complies with, and furthers any principles articulated in, the virtual currency strategy.

(3) In preparing and promulgating the virtual currency strategy the Minister shall have regard to the importance of ensuring that financial managers and consumers in the public and private sectors—

(a) are able to assume the general legality of acquiring and dealing in crypto-currencies, subject to any specific limitations, restrictions or conditions provided by law; and

(b) understand clearly the nature and extent of any limitations, restrictions or conditions applied in relation to the legality of acquiring, possessing or dealing in crypto-currencies.

(4) Before issuing the virtual currency strategy under this section the Minister shall consult—

[39] Drafting Note: If a member State wishes its Government to be able to issue cryptocurrencies, provision to that effect would be expected to be made by or under laws relating to the Central Bank currency functions.

(a) the Accountant General,

(b) the Auditor General, and

(c) the Central Bank.

Virtual currency guidance

130.—(1) The Minister may give guidance to Ministries and other public authorities about—

(a) the use of cryptocurrencies for public commercial transactions; and

(b) accounting treatment of cryptocurrency assets and liabilities in public accounts.

(2) A Ministry or other public authority shall have regard to any guidance under this section.

(3) Before issuing guidance under this section the Minister shall consult—

(a) the Accountant General,

(b) the Auditor General, and

(c) the Central Bank.

PART 13

STATE GOVERNMENTS

Interpretation

131. In this Act "State Government" means [*jurisdiction-appropriate definition*].

Application of Act

132.—(1) The provisions of this Act listed in Part 1 of Schedule {*State Governments*} apply in relation to State Governments.

(2) The provisions of this Act which apply to State Governments apply with the modifications specified in Part 2 of Schedule {*State Governments*}.

(3) The Minister may by regulations amend Part 2 of Schedule {*State Governments*} to—

(a) add a modification;

(b) remove a modification;

(c) amend a modification.

PART 14

LOCAL AUTHORITIES

Interpretation

133. In this Act "local authorities" means [*jurisdiction-appropriate definition*].

Application of Act

134.—(1) The provisions of this Act listed in Part 1 of Schedule {*Local authorities*} apply in relation to local authorities.

(2) The provisions of this Act which apply to local authorities apply with the modifications specified in Part 2 of Schedule {*Local authorities*}.

(3) The Minister may by regulations amend Part 2 of Schedule {*Local authorities*} to—

(a) add a modification;

(b) remove a modification;

(c) amend a modification.

PART 15

STATE-OWNED ENTERPRISES

Interpretation

135.—(1) In this Act "State-owned enterprise" means—

(a) a body listed in Part 1 of Schedule {State-owned enterprises}, and

(a) any other enterprise over which the Government has sole control or in which the Government has a controlling interest.

(2) The Minister may make regulations for determining what is to be, or not to be, considered as sole control, or as a controlling interest, for the purposes of this section.

(3) The Minister may by regulations establish a scheme for certification of a body as being, or as not being, a State-owned enterprise for the purposes of this section; and the regulations may provide for a certificate to be conclusive to a prescribed extent or for prescribed purposes.

(4) The Minister may by regulations—

(a) add a body to Part 1 of Schedule 1;

(b) remove a body from Part 1 of Schedule 1;

(c) provide that a body listed in Part 1 of Schedule 1 is to be treated as a state-owned enterprise for the purposes of the application of this Act only—

(vi) for specified purposes, or

(vii) to a specified extent.

(5) The Minister—

(b) may add a body to the list in Part 1 of Schedule 1 by regulations under this section only if the Minister is satisfied that the body is funded directly or indirectly by public money in a manner and to an extent that make it appropriate for the provisions of this Act to apply to the body (whether generally or for specified purposes or to a specified extent);

(c) if not satisfied that a body is funded directly or indirectly by public money in a manner and to an extent that make it appropriate for the provisions of this Act to apply to the body generally, or in the manner or to the extent presently specified in respect of the body, shall—

(i) remove the body from the list in Part 1 of Schedule 1 by regulations under this section, or

(ii) add provision by regulations under this section so that the Act applies to the body to a only for specified purposes or to a specified extent.

Application of Act

136.—(1) The provisions of this Act listed in Part 2 of Schedule {*State-owned enterprises*} apply in relation to State-owned enterprises.

(2) The provisions of this Act which apply to State-owned enterprises apply with the modifications specified in Part 3 of Schedule {*State-owned enterprises*}.

(3) The Minister may by regulations amend Part 3 of Schedule {*State-owned enterprises*}to—

(a) add a modification;

(b) remove a modification;

(c) amend a modification.

PART 16

FINAL PROVISIONS

Documents

Publication requirements

137.—(1) This section applies where the Minister or another person is obliged under or by virtue of this Act to lay a document before Parliament.

(2) The Minister or other person shall also, as soon as is reasonably practicable, publish the document—

(a) on the Ministry's website; and

(b) in such other ways as the Minister or other person thinks appropriate (subject to subsection (3).

(3) The Minister may make regulations about the timing and form of publication in accordance with this section.

Service

138.—(1) A notice or other document required or permitted to be served under or by virtue of this Act may be served in hard copy, by email or by another form of electronic communication.

(2) Where the Minister or another public authority is required to publish a notice or other document under or by virtue of this Act, it shall be published on the Finance Ministry's website, or the public authority's website, as well as being published in any other way that the Minister or public authority consider appropriate.

Supplementary provision

Supplementary regulations

139. The Minister may by regulations make provision—

(a) supplementing the provisions of this Act;

(b) designed to facilitate implementation of a provision of this Act.

Guidance

140.—(1) Any of the following ("responsible authorities") may issue guidance in relation to matters of administrative process or procedure in connection with any provision of this Act—

(a) the Minister;

(b) the Finance Ministry;

(c) the Secretary;

(d) the Auditor General; and

(e) the Accountant General.

(2) A responsible authority who issues guidance under this section—

(a) shall keep it under review, and

(b) may revise it from time to time.

(3) A responsible authority who issues guidance under this section shall—

(a) publish it, and

(b) lay it before Parliament.

(4) Before issuing guidance under this section a responsible authority shall consult—

(a) the other responsible authorities, and

(b) such other persons as the responsible authority considers appropriate.

(5) A public authority shall have regard to any guidance (or revised guidance) issued under this section.

(6) Subsections (2) to (5) apply to revised guidance as to original guidance.

Technical provisions

Regulations: general

141.—(1) This section applies to regulations made under this Act.

(2) Regulations under this Act—

(a) may include supplementary or ancillary provision;

(b) may include transitional provisions, or savings;

(c) may make provision of a permanent or transitory nature;

(d) make provision that applies generally or only for specified cases or purposes;

(e) make different provision for different cases or purposes.

Regulations: Parliamentary scrutiny

142.—(1) Regulations that include provision under any of the following provisions of this Act are subject to [*affirmative Parliamentary scrutiny*]—

(a) section …[40]

(2) Regulations that include provision under any provision of this Act and which do not include provision under any of the provisions listed in subsection (1) are subject to [*negative Parliamentary scrutiny*].

(3) All other regulations under this Act shall be laid before Parliament as soon as is reasonably practicable after being made.

Commencement

143.—(1) This Act shall come into force on such day as the Minister may by [*notice published in the Gazette*[41]] appoint.

(2) Different days may be appointed for different provisions or purposes.

Transitional provision

144. A notice under section [*Commencement*] may include transitional provision.

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[40] Drafting Note: Each jurisdiction to determine the appropriate list in accordance with its policy on Parliamentary scrutiny arrangements for subordinate legislation.

[41] Drafting Note: This phrase is subject to variation to reflect the practices of each jurisdiction.

Repeals and revocations

145. The following are repealed or revoked—

(a) [*List of local primary and subordinate enactments overtaken by provisions of this Act*].

Extent and application

146. This Act extends to [*State*] and applies in accordance with the provisions of Part 1.

Short title

147. This Act may be cited as the Public Financial Management Act [*Year of Enactment*].

SCHEDULES

SCHEDULE 1

STATE GOVERNMENTS

PART 1

PROVISIONS OF THIS ACT APPLYING TO STATE GOVERNMENTS

[*List of provisions* (*to include provisions about PAC scrutiny*)]

PART 2

MODIFICATIONS IN APPLICATION TO STATE GOVERNMENTS

Introduction

. This Part sets out the modifications subject to which provisions of this Act apply to a State Government.

Accounting officers

.—(1) A reference to an accounting officer is to be construed as a reference to—

(a) the chief accounting officer of the State Government, or

(b) such other person as the Minister may designate in respect of the State Government.

(2) A designation under sub-paragraph (1)—

(a) may be made in respect of a class of State Government or in respect of one or more specified State Governments;

(b) shall be made in writing;

(c) may be modified by the Minister in writing; and

(d) shall be published by the Minister as soon as is reasonably practicable after being made (or modified).

SCHEDULE 2

LOCAL AUTHORITIES

PART 1

PROVISIONS OF THIS ACT APPLYING TO LOCAL AUTHORITIES

[*List of provisions* (*to include provisions about PAC scrutiny*)]

PART 2

MODIFICATIONS IN APPLICATION TO LOCAL AUTHORITIES

Introduction

. This Part sets out the modifications subject to which provisions of this Act apply to a local authority.

Accounting officers

.—(1) A reference to an accounting officer is to be construed as a reference to—

(c) the chief accounting officer of the local authority, or

(d) such other person as the Minister may designate in respect of the local authority.

(2) A designation under sub-paragraph (1)—

(e) may be made in respect of a class of local authority or in respect of one or more specified local authorities;

(f) shall be made in writing;

(g) may be modified by the Minister in writing; and

(h) shall be published by the Minister as soon as is reasonably practicable after being made (or modified).

SCHEDULE 3

STATE-OWNED ENTERPRISES

PART 1

BODIES TO WHICH THIS ACT APPLIES

[*List of bodies*]

PART 2

PROVISIONS OF THIS ACT APPLYING TO STATE-OWNED ENTERPRISES

[*List of provisions* (*to include provisions about PAC scrutiny*)]

PART 3

MODIFICATIONS IN APPLICATION TO STATE-OWNED ENTERPRISES

Introduction

. This Part sets out the modifications subject to which provisions of this Act apply to a State-owned enterprise.

Accounting officers

.—(1) A reference to an accounting officer is to be construed as a reference to—

(e) the chief accounting officer of the State-owned enterprise, or

(f) such other person as the Minister may designate in respect of the enterprise.

(2) A designation under sub-paragraph (1)—

(i) may be made in respect of a class of State-owned enterprise or in respect of one or more specified enterprises;

(j) shall be made in writing;

(k) may be modified by the Minister in writing; and

(l) shall be published by the Minister as soon as is reasonably practicable after being made (or modified).
