

Managing Public Money

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FOREWORD

i This document sets out the main principles for dealing with resources used by public sector organisations in the UK. Its origin lies in the requirements for departments in central government. Some of the specifics, especially those in the annexes, relate to England only rather than the devolved administrations which have their own detailed rulebooks. But the same basic principles generally apply in all parts of the UK public sector, with adjustments for context as necessary. And everyone working in public services in the UK should be aware of the need to manage and deploy public resources responsibly in the public interest.

ii Vital as these principles are, the advice in this document cannot stand forever. The law moves forward; the standards used in business and public life evolve; new techniques emerge; and public expectations change. Through all these shifts, Parliament rightly expects that public funds, whether raised through taxation or public sector charges, will be used properly. And Parliament looks to the Treasury to help the government and its public servants meet these expectations in a transparent, responsible and consistent fashion. So it will expect the guidance and standards in this document to be followed.

iii The duty to safeguard public funds is invariant. But how it is carried out will change over time. Public sector organisations can and should innovate in carrying out their responsibilities, using new technology and taking advantage of best practice in business efficiency. This could mean new kinds of organisation, new institutional arrangements or new delivery methods. Each will need to be evaluated and implemented carefully to protect Parliament's rights to authorise and oversee use of public resources.

iv Nothing in this document is intended to prevent such healthy developments.

v Nor should anything in this document discourage the application of sheer common sense.

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RESPONSIBILITIES

The relationship between the government, acting on behalf of the Crown, and Parliament, representing the public, is central to how public resources are managed. Ministers seek to implement government policies, and deliver public services, through public servants; but are able to do so only when Parliament grants the right to raise, commit and spend resources. It falls to the Treasury to respect and secure the rights of both government and Parliament in this process.

1.1 Managing public money: principles

1.1.1 The principles which apply to managing public resources run right across the many diverse organisations delivering public services in the UK. There are requirements for each kind of body, reflecting its duties, its responsibilities and public expectations. The standards which the public services should seek to deliver are set out in box 1.1. These are generally understood to be demanding.

box 1.1: standards expected of all public service

- honesty
- impartiality
- openness
- accountability
- accuracy
- fairness
- integrity
- transparency
- objectivity
- reliability

carried out

- in the spirit of, as well as to the letter of, the law
- in the public interest
- to high ethical standards
- achieving value for money

1.1.2 At a high level the principles in this handbook apply to public services in the UK, complementing the guidance on good governance in the *Code of Good Practice on Corporate Governance in Central Government Departments (the Corporate Governance Code)*¹). Some of the detail applies to England only, or just to departments of state. There is separate guidance for the devolved administrations. The text identifies any restrictions on where the principles apply.

1.1.3 Much of this document is about meeting the expectations of Parliament. Many of the disciplines should also deliver accountability to the general public. The delivery channels used evolve as technology permits. Public services should carry on their businesses and account for their stewardship of public resources in ways appropriate to their duties and context.

1.2 Ministers

1.2.1 In the absence of a written constitution, the powers used to deploy public resources are a blend of common law, primary and secondary legislation, Parliamentary procedure, the duties of ministers, and other long-standing practice. This mix may of course change from time to time.

¹ The Corporate Governance Code - see http://www.hm-treasury.gov.uk/documents/public_spending_reporting/governments_risks/psr_governance_corporate.cfm

1.2.2 As the *Corporate Governance Code* makes clear, the minister in charge of a department is responsible for its policy and business as part of the broader sweep of government policy determined in Cabinet. He or she:

- determines the department's policies;
- allocates responsibilities among the other ministers in the department and the officials of the department;
- chooses which areas of business to delegate to the department's officials, and with what conditions;
- looks to the department's Accounting Officer (see chapter 3) to delegate responsibility within the department to deliver the minister's decisions and to support the minister in making policy decisions; and
- may also have general oversight of other bodies on whose behalf he or she may answer in Parliament.

1.2.3 Within the department, the minister in charge may delegate defined areas of the department's business, including associated Parliamentary work, to his or her junior ministers. The Accounting Officer is always responsible for the organisation of the officials in the department. The senior minister in the department, though not junior ministers, may give directions to the Accounting Officer. Ministers are not accountable to the Accounting Officer.

1.2.4 Ministers have wide powers to make policies and to issue instructions to their officials. However, specific legislation is required to authorise expenditure of public funds to pursue their objectives (see section 2.1).

1.2.5 Only ministers can propose to Parliament to raise public revenue through taxation, or to commit or spend public funds to pursue their policy objectives. Taxes may be collected, and public funds may be drawn, only with Parliamentary authority to do so; and only as Parliament has authorised. The House of Commons (and not the House of Lords) exercises these powers.

1.3 Parliament

1.3.1 Parliament approves the legislation which empowers ministers to carry out their policies. It finances services when it approves Requests for Resources, including approval of net cash resources, year by year. Further information about this process is in the *Estimates Manual*.

1.3.2 From time to time Parliament may examine particular policies or delivery of services. In addition, select committees may examine policies, expenditure, administration and service delivery in particular sectors. Of these, the Committee of Public Accounts (PAC - see section 3.5) has a special role in examining financial accounts, scrutinising value for money and generally holding the government and its public servants to account for the quality of administration.

1.4 The Treasury

1.4.1 Parliament looks to the Treasury to make sure that:

- departments use their powers only as it has intended; and
- revenue is raised, and the resources so raised spent, only within the agreed limits.

1.4.2 Hence it falls to the Treasury to:

- set the ground rules for the administration of public money; and
- account to Parliament for doing so.

1.4.3 This document sets out how the Treasury seeks to meet these Parliamentary expectations. The key requirements are regularity, propriety (see box 2.4) and value for money (see 3.3.3). Supporting this, the Treasury:

- designs and runs the resource planning system and sets budgets for individual departments to meet ministers' fiscal policy objectives;
- oversees the operation of the Estimates presented by departments to obtain authority to spend year by year. The *Estimates Manual* contains more detail about the requirements;
- maintains the *Financial Reporting Manual (FReM)* setting the standards to which departments, Non-departmental public bodies (NDPBs) and other parts of the public sector publish annual reports and accounts. The *FReM* adapts generally accepted accounting practice (GAAP) to take account of the public sector context; and
- sets Accounts Directions for the different kinds of central government organisations whose accounts are laid in Parliament.

1.5 Departments

1.5.1 Within the standards expected by Parliament, and subject to the overall control and direction of their ministers, departments have considerable freedom about how they organise, direct and manage the resources at their disposal. It is for the Accounting Officer in each department, acting within ministers' instructions, to control and account for the department's business.

1.5.2 The *Corporate Governance Code* encourages departments to use a departmental board as a disciplined way of leading and managing the department's business. The character and organisation of the board in a department will depend on its ministers' preferences and the nature of its business (see section 4.1). Boards can be valuable in bringing to bear a range and variety of skills and experiences from elsewhere in, and outside of, the public sector.

1.5.3 Within a department, its staff, resources and assets should be organised to deliver ministers' policies. There should be adequate delegations, controls and reporting arrangements to provide assurance to the board, the Accounting Officer² and ultimately ministers about what is being achieved, to what standards and with what effect. In turn these arrangements should provide the management information to enable delivery plans to be adjusted as necessary. Similar feedback should enable ministers to reconsider their policies where the evidence shows that this is appropriate. This is discussed further in chapter 4.

1.5.4 In supporting ministers, civil servants in a department should provide politically impartial advice. Should they be asked to carry out duties which appear incompatible with this obligation, the Accounting Officer should take the matter up with the minister concerned (see also the *Civil Service Code*, annex 4.2).

1.5.5 Departments often operate with and through a variety of partners to deliver their ministers' policies. It is important that these relationships too operate in the public interest: see chapter 7.

² If there is a change of Accounting Officer in the course of the year, the Accounting Officer in place at the year end takes responsibility for the whole year's resource accounts, using assurances as necessary.

1.6 The Comptroller and Auditor General

1.6.1 Supported by the National Audit Office (NAO), the Comptroller and Auditor General (C&AG) helps Parliament scrutinise how public funds have been deployed in practice. Independent of government, the C&AG is the external auditor of nearly all bodies in central government. To help carry out this important role, the C&AG has significant and far reaching rights to inspect the books of a wider variety of public bodies. Further information about the role of the NAO is available on their website³ and in annex 1.1.

1.6.2 The C&AG provides Parliament with two sorts of audit:

- financial audit of the resource accounts of departments and NDPBs, covering:
 - assurance that resource accounts have been properly prepared and are free from material misstatements⁴; and
 - confirmation that the underlying transactions have appropriate Parliamentary authority;
- value for money reports assessing the economy, efficiency and effectiveness with which public money has been deployed in selected areas of public business. A rolling programme of these reviews covers a wide variety of subjects over a period, taking account of the risks to value for money and Parliament's interests.

1.6.3 In addition, the C&AG publishes a range of other independent reports to Parliament. The PAC (see section 3.5) may hold hearings to examine evidence on any of these reports.

1.7 The Parliamentary and Health Service Ombudsman

1.7.1 Public sector organisations are expected to deliver reliable services of good quality. Independent of both the government and the National Health Service (NHS), the Parliamentary and Health Service Ombudsman (PHSO) provides a service to the public by investigating complaints that government departments, a range of other public organisations in the UK and the NHS in England have not acted properly or fairly, or have provided a poor service. The role of the PHSO is discussed further in section 4.13.

Annex 1.1 The Comptroller and Auditor General

³ The NAO website address is <http://www.nao.org.uk>.

⁴ See Audit Practice Note 10 of the Audit Practices Board on the FRC website at [Http://www.frc.org.uk](http://www.frc.org.uk)

This chapter explains the process for Parliamentary authorisation of public resources. Parliament expects the Treasury to oversee the operation of these controls.

Parliament consents in principle to the use of public funds through legislation to enable specified policies. It approves use of public resources to carry out those policies year by year. Only in very limited circumstances can lesser authority suffice. Where there are uncertainties Parliament should be given meaningful information about what is likely to be involved.

At the close of each financial year, Parliament expects a clear account of the use of the public funds it has authorised for use. The PAC may investigate specific issues further.

2.1 Power to commit public funds

2.1.1 Ministers have very broad powers to control and direct their departments. In general, they may do anything that legislation does not prohibit or limit, including using common law powers⁵ to continue business as usual. But they must normally seek Parliamentary authority for specific legislation to empower any significant new commitment which seems likely to persist. In the Concordat of 1932⁶ (see annex 2.1) the Treasury undertook to aim that departments would respect this requirement.

2.1.2 The Treasury controls public expenditure. So all legislation with expenditure implications, both primary and secondary, must have the support of the Treasury before it is introduced, laid in draft or made, as the case may be (see annex 2.2).

2.1.3 Box 2.1 outlines how public expenditure is controlled by the Treasury, authorised by Parliament and accounted for in public. It is important to note that Treasury agreement to budget provision in spending reviews does not alone provide adequate authorisation. Nor does the existence of specific legal authority. Parliamentary approval for drawdown of funds is also essential. The Estimates process is designed to achieve this. Chapter 5 examines this further.

2.1.4 The Accounting Officer of a department (see chapter 3) is responsible for ensuring that:

- the Estimate(s) presented to Parliament for the department's annual expenditure are consistent with the statutory powers and with the government's expenditure plans; and
- use of resources in the department is consistent with the Estimate(s);

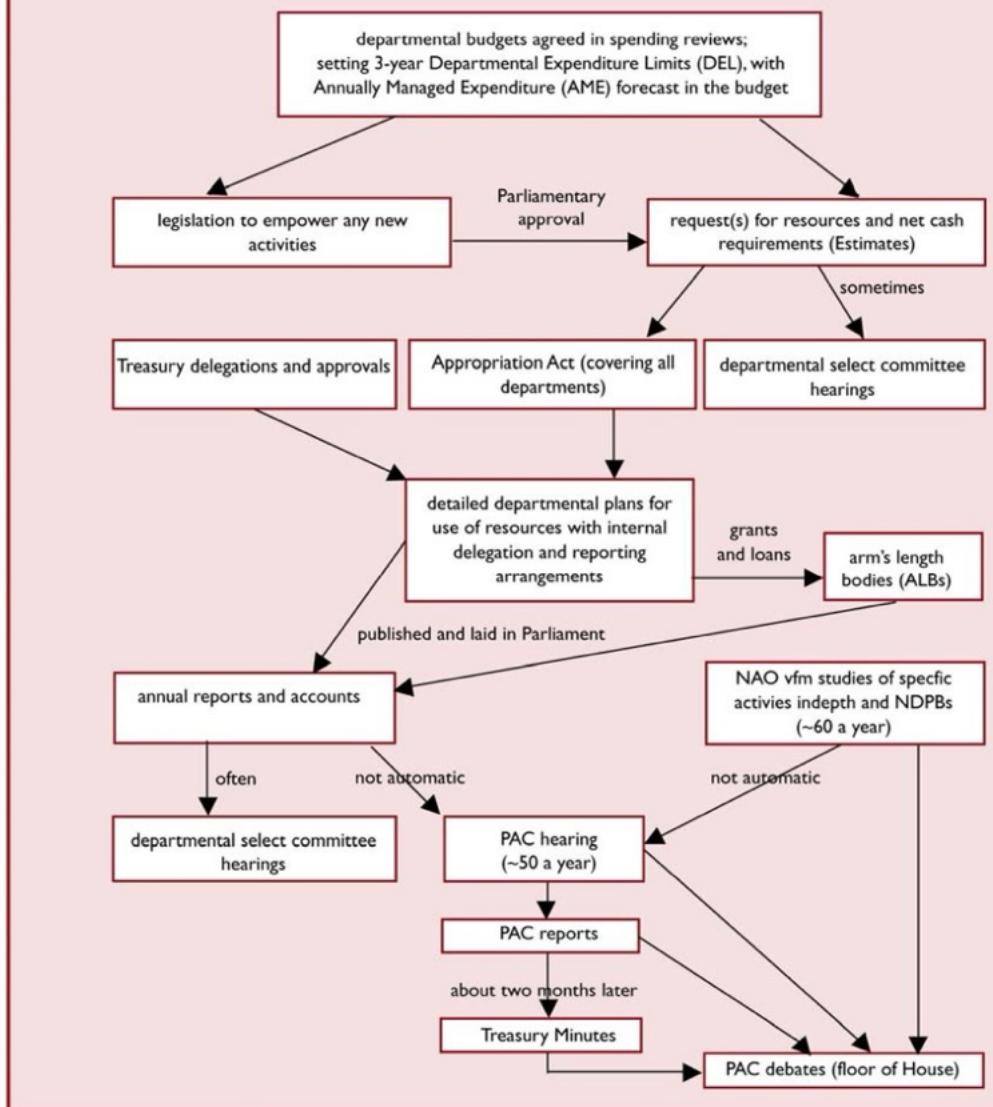
and must answer to Parliament for stewardship of these responsibilities.

2.1.5 In addition, departments need Treasury consent before undertaking expenditure or committing to other resource consumption. Usually the Treasury agrees general approvals for resource consumption subject to delegated limits and/or exclusions. This avoids the need for specific consent to each item. Some common approaches to setting delegations are suggested in box 2.2 and are discussed further in annex 2.3. Whatever form they take, it is good practice to review these delegated authorities from time to time to make sure that they remain up to date and appropriate.

⁵ The Ram doctrine of November 1945, after Sir Granville Ram, then First Parliamentary Counsel.

⁶ Also known as the Baldwin convention.

box 2.1: schematic account of how central government expenditure is authorised and accounted for



2.1.6 Similarly, departments should agree with any bodies to which they provide resources, or over which they have oversight, how their resources should be used. Chapter 7 discusses how such relationships should work in greater depth.

box 2.2: examples of approaches to delegated authorities

- objective criteria for exceptions requiring specific Treasury scrutiny; and/or
- a sampling mechanism to allow specimen cases to be checked; and/or
- a threshold above which certain kinds of projects must achieve specific consent.

2.1.7 There is an important category of resource commitments for which the Treasury *cannot* delegate responsibility. It is transactions which set precedents, are novel, potentially contentious, or could cause repercussions elsewhere in the public sector - see box 2.3. Departments should always obtain Treasury consent to resource commitments of this kind before proceeding, even for transactions within the agreed delegated limits which appear to offer value for money.

2.1.8 Some legislation calls for explicit Treasury consents, eg for certain large projects. In such cases proceeding without Treasury approval is unlawful. In other cases resource consumption without Treasury approval is irregular.

2.1.9 Neither unlawful nor irregular expenditure can be authorised by Parliamentary approval for the relevant Estimate, so the resource account must be noted accordingly. When such expenditure comes to light, both the Treasury and the NAO should be alerted. If the Treasury gives retrospective consent to irregular expenditure, the transaction is treated in the resource accounts as if it had achieved consent in time. Where there is a statutory requirement for Treasury consent, however, retrospective authority for improper (unlawful) expenditure is not possible. Section 5.3 explores this further.

box 2.3: some transactions requiring specific Treasury consent

- extra statutory payments in settlement of legal disputes out of court
- certain private expenses of employees made necessary because of their public duties
- severance payments in excess of the employer's contractual commitment
- non-standard payments in kind
- unusual financing transactions, especially those with lasting commitments

2.2 Regularity and propriety

2.2.1 Accounting Officers must make sure that their organisations' activities achieve high and reliable standards of regularity and propriety (see the Treasury's *Guide to scrutiny of public expenditure*⁷). These important terms, which are often used together because they are so closely linked, are defined in box 2.4.

box 2.4: regularity and propriety

- **Regularity:** resource consumption should accord with the relevant legislation, the relevant delegated authority and this document.
- **Propriety:** patterns of resource consumption should respect Parliament's intentions, conventions and control procedures, including any laid down by the PAC.

2.2.2 The concept of regularity and propriety is powerful. Parliament has consistently interpreted it as delivering public sector values in the round, encompassing the qualities summarised in box 1.1. Supporting this concept are the *Seven Principles of Public Life (the Nolan principles* - see annex 2.4), which apply to the public sector at large. In striving to meet these standards, central government departments should give a lead to the partners with which they work.

2.2.3 Each departmental Accounting Officer should make sure that ministers in his or her department appreciate:

⁷ The *Guide to scrutiny of public expenditure* - see www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_public_expenditure.cfm and the *Regularity, Propriety and Value for Money* handbook – see www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_valueformoney.cfm

- the importance of operating with regularity and propriety; and
- the need for efficiency, economy, effectiveness and prudence in the administration of public resources, to deliver value for money.

2.2.4 Should a minister seek a course of action which the Accounting Officer cannot reconcile with any of these requirements, he or she should seek instructions in writing from the minister before proceeding (see chapter 3).

2.2.5 Should departments need to resolve an issue about regularity or propriety, they should consult the relevant Treasury spending team. Similarly, arm's length bodies (ALBs - NDPBs, companies in which the department has a significant shareholding and other sponsored bodies) should consult their sponsor departments about such issues, and the department concerned may need in turn to consult the Treasury.

2.3 Using the authority of the Appropriation Act

2.3.1 In certain limited circumstances departments may obtain authorisation for their planned expenditure not through specific empowering legislation but by relying just on the authority of an Appropriation Act. Such Acts cover the whole range of voted expenditure in Estimates. Parliament does not normally authorise consumption of public resources through these instruments alone because the approval process does not provide a meaningful opportunity for detailed scrutiny.

2.3.2 The two Appropriation Acts for a given year provide aggregate Parliamentary approval for the year's Estimates, authorising resource consumption one year at a time. By convention, this is sufficient authority for expenditure on administration. The same convention also allows departments to seek Parliamentary authority to use resources one year at a time for administration where there is a more lasting commitment of some kind. Some examples are mentioned in box 2.5. The list is not exhaustive.

2.3.3 With Treasury approval, it is sometimes possible to rely on an Appropriation Act alone for certain other expenditure in order to avoid an undue burden on the Parliamentary timetable. So Parliament is routinely prepared to authorise certain expenditure through an Appropriation Act alone, subject to the conditions:

- the expenditure is no more than £1.5m a year; or
- it is expected to last for no more than two years, eg to finance a pilot study;

and

- any existing explicit statutory limits are respected; and
- no specific legislation on the matter in question is before Parliament (though see annex 2.5).

box 2.5: resource use which an Appropriation Act may authorise

- expenditure on administration: employment costs, rent, cleaning etc
- lease agreements, eg for photocopiers
- contractual obligations to purchase goods or services (where it might be poor value for money to agree single year contracts only)
- employing staff with significant notice periods
- supporting capital projects lasting for more than a year
- staged grants phased over more than a single financial year
- resources used under prerogative powers such as international treaty obligations

2.4 New services

2.4.1 When ministers decide on a new activity, such a new service normally requires both specific legislative authority and cover in an Appropriation Act. However, the authority of an Appropriation Act alone can suffice if the conditions in paragraph 2.3.3 are satisfied. This of course is not adequate for any new policy which is intended to last more than a couple of years.

2.4.2 Nevertheless, sometimes ministers are anxious to make an early start on a new activity which is expected to continue but for which explicit Parliamentary authority has not yet been secured. In these circumstances there are limited steps that can be taken to make the new service ready for delivery when Parliament has assented. Specific Treasury consent is always required.

2.4.3 Relying on the Appropriation Act ahead of full and specific legal authority will often mean borrowing from the Contingencies Fund (see annex 2.5). Access to this Fund is controlled by the Treasury and cannot be assumed. The conditions for drawing on it are:

- the proposed expenditure must be genuinely urgent and in the public interest, ie there must be wider benefits to outweigh the convention of awaiting Parliamentary authority;
- the relevant bill must have successfully passed second reading in the House of Commons;
- Parliament must have been made aware of the intended steps in appropriate detail when relevant previous legislative steps were taken;
- the planned legislation must be certain, or virtually certain, to pass into law in the near future, and usually within the financial year; and
- the department responsible must explain clearly to Parliament what is taking place, why, and by when matters should be placed on a normal footing.

Annex 2.1 The PAC concordat of 1932

Annex 2.2 Treasury approval of legislation

Annex 2.3 Treasury approval of Expenditure

Annex 2.4 *The Seven Principles of Public Life (the Nolan Principles)*

Annex 2.5 The new services rules

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3

ACCOUNTING OFFICERS

This chapter sets out the personal responsibilities of all Accounting Officers, both in government departments and in other parts of central government. Essentially Accounting Officers must be able to assure Parliament and the public of high standards of probity in the management of public funds. This chapter is drawn to the attention of all Accounting Officers when they are appointed.

3.1 Role of the Accounting Officer

3.1.1 Each organisation in central government - department, agency, trading fund, NHS body, NDPB or significant arm's length body - must have an Accounting Officer. This person is usually the senior official in the organisation. In line with the *Code of Good Practice on Corporate Governance in Central Government Departments*, it is now usual for the Accounting Officer to be supported by a board whose structure should be agreed with the responsible minister(s) where it is not set in statute. Arrangements for leadership and accountability may be slightly different in other parts of the public sector.

3.1.2 Formally the Accounting Officer is someone who may be called to account in Parliament for the stewardship of the resources within the organisation's control. The standards the Accounting Officer is expected to deliver in the organisation are summarised in box 3.1. The senior business managers of other public sector organisations are expected to deliver similar standards.

3.2 Appointment of Accounting Officers

3.2.1 The Treasury appoints the permanent head of each central government department to be its Accounting Officer. Where there are several Accounting Officers in a department, the permanent head is the Principal Accounting Officer.

3.2.2 Within departments, the Treasury also appoints the chief executive of each trading fund as its Accounting Officer; and may also appoint Additional Accounting Officers with responsibility for certain Requests for Resources.

3.2.3 In turn the Accounting Officer of each department normally appoints the permanent heads:

- of its executive agencies, as Agency Accounting Officers for their agencies; and
- of all its NDPBs⁸, and of most other significant arm's length bodies, as Accounting Officers for these bodies.

3.3 Special responsibilities of Accounting Officers

3.3.1 It is important that each Accounting Officer takes personal responsibility for ensuring that the organisation he or she manages delivers the standards in box 1.1. In particular, the Accounting Officer must personally sign:

- the resource accounts
- the annual report

⁸ In certain NDPBs with small budgets, an Accounting Officer in the sponsor department may be appointed as the Accounting Officer for the NDPB, with the costs of the NDPB charged directly to the sponsor department's Estimate. This is the usual arrangement for advisory bodies and Royal Commissions.

- the statement on internal control (SIC);

and, having been satisfied that they have been properly prepared to reflect the business of the organisation, must personally approve:

- any Request(s) for Resources; and
- the associated Estimates Memorandum.

box 3.1: standards expected of the Accounting Officer's organisation

Acting within the authority of the minister(s) to whom he or she is responsible, the Accounting Officer should ensure that the organisation, and any subsidiary to it or organisation sponsored by it, operates effectively and to a high standard of probity. The organisation should:

governance

- have a governance structure which transmits, delegates, implements and enforces decisions
- have trustworthy internal controls to safeguard, channel and record resources as intended
- operate with propriety and regularity in all its transactions
- treat its customers and business counterparts fairly and honestly
- offer redress for failure to meet agreed customer standards where appropriate
- give timely, transparent and realistic accounts of its business, underpinning public confidence;

decision-making

- support its ministers with clear, well reasoned, timely and impartial advice
- make all its decisions in line with the strategy, aims and objectives of the organisation set by ministers and/or in legislation
- meet the Treasury's requirements about limits on use of public resources
- manage its staff fairly, with inclusive policies designed to promote and integrate diversity
- communicate its decisions openly and transparently;

financial management

- use its resources efficiently, economically and effectively, avoiding waste and extravagance
- carry out procurement and project appraisal objectively and fairly, seeking good value for the public sector as a whole
- use management information systems to secure assurance about value for money and the quality of delivery and so make timely adjustments
- avoid overdefining detail and imposing undue compliance costs, either on its own staff or on its customers and stakeholders
- have practical documented arrangements for working in partnership with other organisations
- use internal and external audit to improve its internal controls and performance.

3.3.2 In the case of Accounting Officers of corporate arm's length bodies, the Accounting Officer should also arrange for a board member to sign the accounts as well, if (unusually) he or she is not a member of the board.

3.3.3 There are several other areas where Parliament expects Accounting Officers to take personal responsibility:

- *regularity and propriety* (see box 2.4), including seeking Treasury approval for any expenditure outside the normal delegations or outside the subheads of Estimates, and carried through with appropriate disclosures in the resource accounts;
- selection and *appraisal* of programmes and projects: using the Treasury's *Green Book* to evaluate alternatives, and good quality project and programme management techniques, such as Office of Government Commerce (OGC) Gateways™, to track and where necessary adjust progress;
- *value for money*: ensuring that the organisation's procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, good value and avoidance of error and other waste, judged for the public sector as a whole, not just for the Accounting Officer's organisation;
- management of *opportunity and risk* to achieve the right balance commensurate with the institution's business and risk appetite;
- *learning from experience*, both using internal feedback, and from right across the public sector; and
- accounting accurately for the organisation's *financial position* and *transactions*: to ensure that the government published financial information is transparent and up to date; and that the organisation's efficiency in the use of resources is tracked and recorded.

3.4 Advice to ministers

3.4.1 Each departmental Accounting Officer should take care to bring to the attention of the minister(s) to whom he or she is responsible any conflict between the minister's instructions and his or her duties. There is no set form for doing this, though the Accounting Officer should be specific about the nature of his or her objections. The acid test is whether the Accounting Officer could justify the proposed activity if asked to defend it.

3.4.2 If, despite the Accounting Officer's advice, the minister decides to continue with a course the Accounting Officer has advised against, the Accounting Officer should ask for a formal direction to proceed. This can be oral but, if so, should be confirmed in writing as soon as possible. Examples of concerns where this procedure is appropriate are in box 3.2.

3.4.3 Directions of this kind are rare. It is good practice for an Accounting Officer to discuss the matter with the Treasury if time permits. The ultimate judgement must lie with the Accounting Officer personally.

3.4.4 When a direction is made, the Accounting Officer should:

- copy the relevant papers to the C&AG promptly. The C&AG will normally draw the matter to the attention of the PAC, who will attach no blame to the Accounting Officer;
- follow the minister's direction without further ado; and

- if asked, explain the minister's course of action. This respects ministers' rights to frank advice, while protecting the quality of internal debate.

box 3.2: examples when Accounting Officers should seek a direction reflecting previous cases

- **Irregularity:** if a proposal is outside the legal powers, Parliamentary consents, or Treasury delegations.
- **Impropriety:** if a proposal would breach Parliamentary control procedures.
- **Poor value for money:** if an alternative proposal, or doing nothing, would deliver better value, eg a cheaper or higher quality outcome.

3.5 Public Accounts Committee

3.5.1 The PAC may hold public hearings on the accounts of central government organisations laid in Parliament (see section 1.6). In practice most PAC hearings focus on NAO value for money studies. The PAC expects that NAO will agree the texts of these reports with the Accounting Officer(s) of the organisation(s) concerned so there is a clear evidence base for their scrutiny to proceed.

3.5.2 When a hearing is scheduled, the PAC normally invites the Accounting Officer(s) of the relevant institution(s) to attend as witness(es). An Accounting Officer may be accompanied by appropriate officials. Where it is appropriate, and the PAC agrees, the Accounting Officer may send a substitute. In answering questions, the Accounting Officer should take responsibility for the organisation's business, even if it was delegated or if the events in question happened before he or she was appointed Accounting Officer.

3.5.3 The PAC expects witnesses to give clear, accurate and complete evidence. If evidence is sensitive, witnesses may ask to give it in private. It is also acceptable to offer supplementary notes if a witness does not have the detail to hand at the hearing. Where such notes are offered, they should be provided within two weeks and with attention to the PAC's concerns in asking for the information. If the evidence might take longer to prepare, witnesses may seek an extension. They should do so without delay.

3.5.4 The Treasury Officer of Accounts (or an alternate) attends all PAC hearings. This allows scope for the PAC to explore any issues of more general application arising out of the subject of the hearing.

3.6 When the Accounting Officer is not available

3.6.1 Each organisation must have an Accounting Officer available for advice or decision as necessary at short notice.

3.6.2 When the Accounting Officer is absent and cannot readily be contacted, another senior official should deputise. If a significant absence is planned, the Accounting Officer should invite the Treasury (or the sponsor department, as the case may be) to appoint a temporary acting Accounting Officer.

3.7 Conflicts of interest

3.7.1 If an Accounting Officer faces an actual or potential conflict of interest, it is essential to find a way of eliminating it. There must be no doubt that the Accounting Officer meets the standards described in box 3.1 without divided loyalties. Possible ways of managing this issue include:

- for a significant but temporary conflict, inviting the Treasury (or sponsor department, as the case may be) to appoint an interim Accounting Officer for the period of the conflict of interest;
- for a minor conflict, arranging for someone other than the Accounting Officer to make the key decisions on the issue(s) in question; or
- for serious and lasting conflicts, resignation.

3.8 Arm's length bodies

3.8.1 The responsibilities of Accounting Officers in departments and in arm's length bodies (ALBs) are essentially very similar. But Accounting Officers in ALBs must also take account of their special responsibilities and powers. In particular, they must respect the legislation (or equivalent) establishing the organisation and the terms of the framework document agreed with the sponsor department. The relationship between sponsor departments and their ALBs is discussed further in chapter 7.

3.8.2 The Accounting Officer of a department which sponsors an ALB should, in addition, make arrangements to satisfy himself or herself that the Accounting Officer of the ALB is carrying out his or her responsibilities. Similarly, the Accounting Officer of an ALB with a subsidiary should have some meaningful oversight of the subsidiary. This means taking steps to gain assurance that public resources in the ALB, or its subsidiary, are being managed to appropriate standards (see box 3.1). It is not acceptable to establish ALBs, or subsidiaries to ALBs, in order to avoid or weaken Parliamentary scrutiny.

3.8.3 The framework document agreed between an ALB and its sponsor always envisages the sponsor department exercising meaningful oversight of the ALB's strategy and performance, pay arrangements and/or major financial transactions, eg by monthly returns, standard delegations, exception reporting or other techniques. ALBs should refer to their sponsor departments any activities which appear novel, contentious or repercussive; in turn the sponsor department may need to seek Treasury consent.

3.8.4 There are some sensitivities about the role of the Accounting Officer in an ALB which is governed by an independent board, eg a charity or a company. The Accounting Officer, who will normally be a member of the board, must take care that his or her personal responsibilities do not conflict with his or her duties as board member. In particular, the Accounting Officer should vote against any proposal which appears to cause such a conflict; it is not sufficient to abstain.

3.8.5 Moreover, if the chair or board of such an ALB is minded to instruct the Accounting Officer to carry out some course which appears inconsistent with the standards in box 3.1, then the Accounting Officer should make his or her reservations clear, preferably in writing. If the board is minded nevertheless to proceed, the Accounting Officer should then:

- ask the Accounting Officer of the sponsor department to consider intervening to resolve the difference of view, preferably in writing;
- if the board's decision stands, seek its written direction to carry it out, asking the sponsor department to inform the Treasury;

- proceed to implement without delay; and
- inform the C&AG of what has happened.

3.8.6 This process is similar to what happens in departments (section 3.4), allowing for the special position of the organisation's board, which will often have been appointed under statute.

3.9 In the round

3.9.1 It is not realistic to set firm rules for every aspect of the business with which an Accounting Officer may deal. Sometimes the Accounting Officer may need to take a principled decision on the facts in circumstances where precedents are of limited value. Should that happen, the Accounting Officer should be guided by the standards in box 3.1, adapted if need be to suit the issue. Where time permits, the Treasury stands ready to help Accounting Officers think through and decide upon an appropriate course of action.

This chapter discusses how public sector organisations should manage their governance, systems and processes. In general it is for each public sector organisation to define its own standards within the policy framework set by ministers and public expectations of public services, including openness about governance and public sector activities generally. There are some specific requirements for central government organisations, notably reporting to Parliament.

4.1 Governance structure

4.1.1 Each public sector organisation needs explicit arrangements for its internal governance, complemented by appropriate accountability. Most will have some key ground rules laid down in statute or by convention. But significant discretion usually remains. Those running the organisation should make, and then periodically review, decisions about how in practice the organisation should operate.

4.1.2 Box 4.1 contains a checklist of decisions that the governing body of each public sector organisation should take to clarify how it should operate. In a government department this will be for the management board or its equivalent; in many ALBs it will be for a statutory board of some kind.

box 4.1: checklist of key governing body decisions

- its role and responsibilities
- its remit and objectives
- the scope of its delegations
- its procedures and processes
- arrangements for monitoring performance and reporting back
- control and management of relationships with ALBs and other partners
- the organisation's risk appetite and risk control procedures
- how it should account for its decisions and actions – to its ministers, to its staff, and to the wider public
- how, and how often, its membership should be refreshed to furnish the desired skill set
- how, and how often, it should review its working practices

4.1.3 In central government departments, it may be necessary to clear these decisions with ministers. It is good practice to document the chain of responsibilities and the processes by which they will be delivered. There should be clear records of the processes for reporting to the board, taking forward board decisions, and resolving disputes and uncertainties.

4.1.4 In central government departments, the board should be guided by the *Corporate Governance Code*. In particular, the board of a central government department should include a professional finance director (see guidance in annex 4.1). With appropriate adjustments, the same principles should apply in other kinds of organisation in the public sector.

4.1.5 The governing body of each public sector organisation should have clear arrangements for resolving disputes, including any concerns that the Accounting Officer may have. It should always be possible for the Accounting Officer to seek a written direction, if need be, from the appropriate authority, eg the minister in the case of a department. Sections 3.4 and 3.8 expand on this.

4.1.6 It is good practice to define the roles of the different kinds of board members, typically:

- executives drawn from the organisation's staff;
- executives from operationally independent internal units, eg people from agencies within a department;
- non-executives from connected organisations, eg people from NDPBs (or other ALBs) sponsored by a department;
- independent non-executives, among whom a senior non-executive may be appointed as primary spokesperson; or
- (sometimes) members with specific responsibilities, eg for regional or professional issues.

4.2 Processes

4.2.1 Each public sector organisation should strive to attain and maintain the standards described in box 3.1, adopting or adapting good modern commercial practice where it makes sense to do so. The *Civil Service Code* (annex 4.2) shows what is expected of civil servants. The Ombudsman's *Principles of Good Administration* (annex 4.3) sets out the standards against which services may be judged in the event of failure of delivery or complaint.

4.2.2 Each public sector organisation should have robust and effective systems for decision making. Box 4.2 sets out some key essentials. Some organisations may require special additional processes, eg where it is important to integrate scientific, artistic or other professional standards with administrative procedure.

4.2.3 A key concept in use of public funds is achieving value for money. It bears on nearly all aspects of deployment of public resources: procurement, asset management, disposals, administrative systems and financing arrangements such as leases and PFI transactions. It means finding solutions which achieve the best mix of quality and effectiveness for the least outlay. This may not always mean choosing the immediately cheapest option since, for instance, it may be more cost effective to buy a more reliable service or a better quality asset with lower maintenance costs and a longer operating life.

4.2.4 As part of reaching and maintaining high standards of ethical behaviour, all central government organisations should support the Treasury in meeting its obligations to Parliament under the Concordat (see annex 2.1). It is important that they are able to provide timely and accurate information to the Treasury about their planned and actual use of public funds (see section 5.1). So:

- departments should provide the Treasury with high level information about in-year developments of their expenditure, performance against objectives and evolution of risk (eg serious unforeseen events or discovery of fraud);
- ALBs should provide their sponsor departments with similar information; and
- the established mechanisms for controlling and reporting public expenditure, including Treasury support or approval where necessary, should be respected.

box 4.2: essentials of effective internal decision making**choice**

- active management of the portfolio of risks and opportunities, drawing on the *Orange Book*
- appraisal of alternative courses of action using the techniques in the *Green Book*, and including assessment of feasibility
- where appropriate, use of pilot studies to provide evidence on which to make decisions among policy or project choices
- active steering of initiatives, eg using *Gateway™* reviews to help guide progress at critical points of projects

operation

- appropriate internal delegations
- regular and meaningful management information on costs (including unit costs), efficiency, quality and performance against targets to enable assessment of value for money
- proportionate administration and enforcement mechanisms, without unnecessary complexity
- periodic assessment of whether decisions taken remain appropriate, drawing on feedback from internal and external audit and elsewhere
- systematic iterative appraisal of risk, to track changes and make adjustments in response

afterwards

- after the event evaluation of policy, project and programme outputs and outcomes, including whether to continue, adjust or cease any lasting activities
- arrangements to draw out and propagate lessons from experience

4.2.5 In particular, departments should consult the Treasury (and ALBs their sponsor departments) at an early stage about proposals to undertake unusual transactions or financing techniques. This applies especially to any transactions which may have wider implications elsewhere in the public sector (see paragraph 2.1.7 and box 2.3).

4.2.6 One such class of transactions is those involving tax planning or tax avoidance on the part of the supplier, often in the context of procurement. Generally, public sector organisations should avoid using tax advisers or tax avoidance schemes as any apparent savings can only be made at the expense of other taxpayers or other parts of the public sector.

4.2.7 It is important to assess the impact on the public sector as a whole in considering proposals for non-standard tax treatment. It is good practice to seek expert advice from Her Majesty's Revenue and Customs (HMRC) before proceeding. Treasury approval is nearly always required because such transactions tend to be novel, contentious, or both (see section 2.1). Annex 4.4 discusses this further.

4.3 Opportunity and risk

4.3.1 Embedded in each public sector organisation's internal systems there should be arrangements for recognising, managing and tracking its opportunities and risks. Each organisation's governing body should make a considered choice about its desired risk profile, taking account of its legal obligations, ministers' policy decisions, its business objectives, and public expectations of what it should deliver. This can mean that different organisations take very different approaches to the same risks.

4.3.2 There should be a regular discipline of reappraising the opportunities and risks facing the organisation as both alter with time and circumstances, as indeed the chosen responses may do too. In the public sector there is a common risk to reputation, since poor performance could undermine the credibility, and ultimately the creditworthiness, of the public sector as a whole. It is also important to be aware that excessive caution can be as damaging as unnecessary risk taking.

4.3.3 Decisions on how to control and manage risk generally draw from the five standard responses outlined in box 4.3. In choosing among them, factors to consider include cost, feasibility, probability and the potential impact. For routine processes, it is a good discipline to consider building in safeguards to manage risk out, or at least downwards, so that some protection is automatic. For other risks, it can be useful to consider the scope for risk sharing, or for copying or adapting the conditions imposed by commercial insurers, who often keep their premiums down by reducing risk potential.

4.3.4 Evidence from internal and external audit is especially valuable for those making decisions about how to manage and control opportunity and risk. Audit can provide specific, objective and well-informed insight to help an organisation evaluate its effectiveness in achieving the outcomes it seeks. It can be helpful for the audit committee to advise the governing board of a public sector organisation on the key decisions it must make on governance and managing opportunities and risks. In turn the board should support the Accounting Officer in drawing up the Statement on Internal Control (SIC), which forms part of the resource accounts. Further information on this important discipline is in the *Orange Book*.

box 4.3: responses to risk

- **take opportunities:** for circumstances where the potential gain seems likely to outweigh the potential downside
- **tolerate:** for unavoidable risks, or those so mild or remote as to make avoidance action disproportionate or unattractive
- **treat:** for risks that can be reduced or eliminated by prevention or other control action
- **transfer:** where another party can take on some or all of the risk more economically or more effectively, eg through insurance, sharing risk with a contractor, or management techniques such as public-private partnership
- **terminate:** for intolerable risks, but only where it is possible for the organisation to exit (note that some risks can only be assumed by the public sector)

4.4 Insurance

4.4.1 It is generally not good value for money for central government organisations to take out commercial insurance. This is because the public sector has a wide and diversified asset portfolio as well as a reliable income by virtue of the ability to raise revenue through taxation. So the public purse is uniquely able to finance the repair or replacement of damaged assets or deal with other crystallised risks, even very large ones. If the government were to insure its large range of risks, it would add to its costs, even allowing for the expense of remedying damage, because it would also have to meet the costs and profit margins of the commercial insurers.

4.4.2 However, there are some limited circumstances in which it is appropriate for public sector organisations to insure. They include legal obligations (eg arms length bodies should insure vehicles where the Road Traffic Acts require it) and, depending on the circumstances, wider markets activities (see section 7.11). In the latter case, it is important that the value or availability of public assets is not damaged by activities outside statutory requirements. Further information about insurance generally is in annex 4.5.

4.5 Control of expenditure

4.5.1 The Treasury coordinates a system through which departments are allocated administrative control totals for their public expenditure. Each department's allocation covers its own spending and that of its associated ALBs. Within the agreed totals, it has considerable discretion over setting priorities to deliver the public services for which it is responsible. Public sector organisations should keep their use of public resources within the agreed budgets, and take them into account when entering into commitments.

4.5.2 Public sector organisations should also ensure that their use of resources is properly authorised and controlled. The nature of these arrangements will depend on the range of payments to be made, the techniques available and the risks to be managed (annex 4.6 provides advice on types of payments). It is good practice to review these systems from time to time to check that they are fit for purpose and deliver good value. A checklist of essential features is at box 4.4. Advice about countering and dealing with fraud is at annex 4.7.

box 4.4: essentials of systems for committing and paying funds

- Internal controls to provide authority for acquiring the goods or services to be purchased (including controls on new suppliers), within any legal constraints.
- Authorisation for payment separated from the process of making the payment, with appropriate validation and recording at each step.
- Checks that the goods or services acquired have been supplied in accordance with the relevant agreement(s) before paying for them.
- Payment terms chosen or negotiated to provide good value.
- Invoices paid accurately when mature, once and on time, avoiding late payment penalties.
- A balance of preventive and detective controls to tackle and deter fraud, corruption, etc.
- Audit trails, which can readily be checked and reported upon both internally and externally.
- Periodic reviews to bring to bear any lessons from internal audit examination or other relevant experience, or to implement developments in good practice.

4.5.3 Where an organisation discovers an underpayment, the deficit should be made good as soon as is practicable and in full. If there has been a lapse of time, for example caused by legal action to establish the correct position, it may be appropriate to consider paying ex gratia interest, depending on the nature of the commitment to the payee and taking into account the reputation of the organisation and value for money for the public sector as a whole (see also section 4.11).

4.6 Receipts

4.6.1 Similarly, public sector organisations should have arrangements for identifying, collecting and recording all amounts due to them promptly and in full. Outstanding amounts should be followed up diligently. Key features of internal systems of control are suggested in box 4.5.

box 4.5: essential features of systems for collecting sums due

- Adequate records to enable claims to be made and pursued in full.
- Routines to prevent unauthorised deletions and amendments to claims.
- Credit management systems to manage and pursue amounts outstanding.
- Controls to prevent diversion of funds and other frauds.
- Clear lines of responsibility for making decisions about pressing claims increasingly more firmly, and for deciding on any abatement or abandonment of claims which may be merited.
- Decisions about any fees and charges made in line with the principles in chapter 6.
- Audit trails which can readily be checked and reported upon both internally and externally.

4.7 Unusual circumstances

4.7.1 Sometimes public sector organisations face a dilemma in dealing with transactions in public funds. They may have a legal or business obligation which it would be uneconomic or inappropriate to carry out assiduously to the letter. In such cases it may be right to seek a just, pragmatic and transparent alternative approach, appropriately reported to Parliament and set out in the organisation's report and accounts. One-off schemes of this kind are nearly always novel and so require Treasury approval, not least because they may also require legislation or have to rest on the authority of the Appropriation Act. Box 4.6 suggests precedented examples.

box 4.6: examples of one-off pragmatic schemes

- A court ruling could mean that a public sector organisation owed each of a large number of people a very small sum of money. It might cost more to set up and operate a payment scheme than the total payable. The organisation could instead make one-off donation(s) equal to the sum outstanding to one or more charities connected with the recipient group.
- A dispute with a contractor might conclude that the contractor owed a public sector body an amount too big for it to meet in a single year while staying solvent. The customer organisation might agree more favourable payment terms for the remainder of an existing contract instead, provided it was satisfied that this arrangement would be value for money, and with appropriate safeguards.

4.8 Dealing with initiatives

4.8.1 Public sector organisations need to integrate all the advice in this handbook when introducing new policies or planning projects. Each is unique and will need bespoke treatment. The checklist in box 4.7 may help to bring all the different factors together. It applies primarily to central government organisations but the principles will be of value elsewhere.

box 4.7: factors to consider when planning policies or projects**design**

- Has the proposal been evaluated against alternative options, including doing nothing?
- Is there a case for pilot testing before full roll out?
- Are the controls documented clearly?
- Have the risks and opportunities been considered systematically? How will they be managed? Is the process resilient to shocks? What contingencies might arise?
- Is the intended policy proportionate to the perceived need for intervention?
- Will the outcome(s) to be delivered achieve adequate standards?
- Could the proposal be simplified without loss of function?
- If it is to operate with one or more partners, is the allocation of responsibilities documented?
- Will the proposal be efficient, effective and offer good value for money?
- Is the policy sustainable in the broadest sense? Should it have a sunset clause?
- Does the planned activity meet high standards of probity, integrity and honesty?
- Will the proposal deliver the desired outcome to time and cost in a feasible fashion?

control

- Is the proposal empowered in legislation? If not, what steps are needed to secure the necessary vires?
- Is the policy or project within European law, including limits on state aids?
- How will the proposal be financed? Is there budget and Estimate cover?
- Is the proposed action within the department's delegated authorities?
- What Treasury agreement is required, if any?
- How will the internal governance and delegation work? Will it be effective? Is it transparent?
- What financial techniques will be used to manage rollout and implementation?
- Are project and programme management techniques likely to be useful?
- How will the intended new arrangements be monitored and efficiency measured?
- Are there arrangements to use feedback to improve outcomes?
- What safeguards are planned to encourage proper and accurate use of resources, prevent misuse and counter fraud?
- How will the associated risks be tracked and the responses adjusted?
- What intervention will be possible if things go off track?

accountability

- Should Parliament be told of the proposal? If so how?
- How will Parliament be kept informed of progress?
- What targets will be used? Are they stretching? Do they need to be linked to any PSAs?
- Should there be customer standards? Should there be feedback to learn from complaints?
- Should there be arrangements for redress after poor delivery?
- Is enforcement required? If so, is it proportionate?
- Is public access called for? How?
- Will any new policy or service be administered and enforced openly, fairly and impartially?
- Is an appeal mechanism needed?
- Is any regulatory oversight called for?

learning lessons

- What audit arrangements (internal and external) are intended?
- What information about and records of the activity will be published? How and how often?
- When and how will the policy or project be evaluated to assess its cost and benefits and to determine whether it should continue, be adjusted, replaced or ceased?

4.9 Staff

4.9.1 Each public sector organisation should have sufficient staff with the skills and expertise to manage its business efficiently and effectively. The span of skills required will depend on its objectives, responsibilities and resources. There should be an appropriate balance between those with professional, practical or operational skills and policy makers, recognising the value of each discipline. Succession and disaster planning should ensure that the organisation can cope robustly with changes in the resources available, including unforeseen disruption.

4.9.2 Public sector organisations should seek to be fair, honest and considerate employers. Some desirable characteristics are suggested in box 4.8.

box 4.8: public sector organisations as good employers

- fairness, integrity, honesty, impartiality and objectivity
- clear lines of reporting and responsibility
- equal access to development opportunities to make good use of staff potential
- diversity valued and personal privacy respected
- processes to identify and deal with poor performance
- discipline to underpin the department's integrity
- mechanisms to support efficient working practices, both normally and under pressure
- arrangements for whistle blowers to raise worries privately without personal repercussions

4.9.3 Similarly, public sector employers have a right to expect good standards of conduct from their employees. The qualities and standards expected of civil servants are set out in the *Civil Service Code* (annex 4.2). Other public sector employees should strive for similar standards, appropriate to their context.

4.10 Assets

4.10.1 All public sector organisations own or use a range of assets. Each organisation needs to devise an appropriate asset management strategy to define how it acquires, maintains, tracks, deploys and disposes of the various kinds of assets it uses. Annex 4.8 discusses some features that are usually worth covering in such a strategy.

4.10.2 An important part of asset management is good procurement delivering value for money. Public sector organisations should normally acquire goods and services through fair and open competition, using OGC advice to determine best practice. Annex 4.4 offers further advice on techniques. It is important to ensure that procurement is in line with European law, including restrictions on state aids, discussed further in annex 4.9.

4.10.3 It is good practice for public sector organisations to take stock of their assets from time to time and reconsider whether they are being used efficiently. If there is irreducible spare capacity there may be scope to use part of it for other government activities, or to exploit it commercially for non-statutory business - sometimes called wider markets activity. These can generate additional income for the organisation, improving its efficiency (see section 7.11).

4.11 Non-standard transactions

4.11.1 From time to time public sector organisations may find it makes sense to carry out transactions outside the usual planned range, eg:

- write-offs of unrecoverable debts or overpayments;
- recognising losses of stocks or other assets;
- long term loans of assets; or
- gifts of assets.

4.11.2 In each case it is important to deal with the issue in the public interest, with due regard for probity and value for money. Annexes 4.10 to 4.13 set out what is expected when such transactions take place in central government, including notifying Parliament.

4.11.3 Similarly, public sector organisations may have reason to carry out current transactions which would not normally be planned for. These might be:

- extra contractual payments to service providers;
- extra-statutory payments to claimants;
- ex gratia payments to customers; or
- severance payments to employees leaving voluntarily before retirement or the end of their contract.

4.11.4 Again it is important that these payments are made in the public interest, objectively and without favouritism. The disciplines Parliament expects of central government entities are set out in annex 4.13, which explains the notification procedure to be followed for larger one-off transactions of this kind. The steps to be considered when setting up compensation schemes, both statutory and ex gratia, are discussed in annex 4.14.

4.12 Standards of service

4.12.1 Parliament and the public do not find poor quality public services acceptable. Public sector organisations should therefore define what their customers, business counterparts and other stakeholders can expect of them.

4.12.2 Standards of this kind can be expressed in a number of ways. Examples include guidelines (eg response times), targets (eg take-up rates) or a collection of customer rights in a charter. In central government these will sometimes be defined in departmental strategic objectives or public service agreements (PSAs). Even where standards are not set explicitly, they may sometimes be inferred from the way the provider organisation carries out its responsibilities.

4.12.3 Whatever standards are set, they should be defined in a measurable way, with plans for recording performance, so that delivery can be readily gauged. It is good practice to use customer feedback, including from complaints, to reassess from time to time whether they remain appropriate and meaningful to customers.

4.12.4 Where public sector organisations fail to meet their standards, or where they fall short of reasonable behaviour in relation to those they do business with, it may be appropriate to consider offering remedies. These can take a variety of forms, including apologies, restitution (eg supplying a missing licence) or in more serious cases financial payments beyond what the law or contract strictly requires. When deciding whether financial remedies might be appropriate, each

organisation should consider the legal rights of the other party or parties, the potential effects on its reputation and the impact on its future business.

4.12.5 When central government organisations consider making such payments, whether statutory or ex gratia, they should follow the guidance in annex 4.14, which includes the PHSO's *Principles for Remedy*. Any schemes of financial redress which are unusual or could have implications elsewhere should be discussed with the Treasury before commitments are made, just as with any other public expenditure out of the normal pattern (see sections 2.1 and 2.2).

4.13 Complaints

4.13.1 The PHSO (see www.ombudsman.org.uk) investigates complaints that government departments, a range of other public organisations in the UK and the NHS in England have not acted properly or fairly, or have provided a poor service. In the light of the investigation of a case, the PHSO decides whether those complaining have suffered injustice or hardship because of maladministration or service failure, and whether any injustice or hardship has been, or will be, remedied. The PHSO's view is final, subject to judicial review by the courts.

4.13.2 Where maladministration or service failure is found, the PHSO may recommend that the public organisation concerned should provide redress for those complaining, and for any others who may have suffered in the same way. Further guidance about redress is at annex 4.14. If the PHSO considers that the injustice has not been, or will not be, remedied, the PHSO may lay a special report before Parliament. Such reports are examined by the Public Administration Select Committee.

4.13.3 There are a number of other organisations charged with investigating complaints and recommending further action where it is merited. Some of these are also called Ombudsmen. In general they operate according to similar principles to those governing the PHSO, though not with the same reporting arrangements to Parliament.

4.14 Transparency

4.14.1 All public sector organisations should operate as openly as is compatible with the requirements of their business. In line with public rights under the Freedom of Information Act 2000, the Data Protection Act 1998, the Environmental Information Regulations 2004, and the Re-use of Public Sector Information Regulations 2005, they should make available timely information about their services, standards and performance. This material should strike an appropriate balance between protecting confidentiality and open disclosure in the public interest. It is good practice to adopt a publication scheme routinely offering information about the organisation's activities.

4.14.2 All public sector organisations should also publish regular information about their plans, performance and use of public resources. For instance, box 4.9 shows what is expected of central government departments.

box 4.9: annual publications by central government departments

- Estimates, including an Estimates memorandum
- resource accounts, including a Statement on Internal Control and a management commentary, subject to Treasury direction
- departmental reports: annual and autumn performance
- an account of corporate governance systems and performance

4.14.3 In addition, the Treasury is responsible for publishing certain aggregate information about use of public resources, for example including comparisons of outturn with budgets. Office for National Statistics (ONS) also uses input from data gathered by the Treasury to publish the national accounts.

4.14.4 In certain areas of public business it is also important or desirable to provide adequate public access to physical assets. Unnecessary or disproportionate restrictions should be avoided. Managed properly, this can be a valuable mechanism to promote inclusion and enhance public accountability.

- Annex 4.1 Finance Directors
- Annex 4.2 The civil service code
- Annex 4.3 Principles of good administration
- Annex 4.4 Procurement
- Annex 4.5 Insurance
- Annex 4.6 Expenditure and payments
- Annex 4.7 Fraud
- Annex 4.8 Asset management
- Annex 4.9 State aid
- Annex 4.10 Losses and write-offs
- Annex 4.11 Overpayments
- Annex 4.12 Gifts
- Annex 4.13 Special payments
- Annex 4.14 Remedy

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5

FUNDING

This chapter explores the means by which central government organisations may obtain funds, and the framework for controlling expenditure so financed. In line with the Concordat, the Treasury operates disciplines to respect Parliament's concern to prevent unauthorised expenditure.

5.1 The framework for public expenditure control

5.1.1 Departments' centrally allocated budgets for use of resources (see para 4.5.1) are split into resource and capital totals. Each department's budget is in turn split between a departmental expenditure limit (DEL) and annually managed expenditure (AME). The totals of DEL and AME (some of the latter, such as debt interest, not allocated to departments) together make up total managed expenditure (TME). More information is in box 5.1.

box 5.1: elements of resource budgets

Departmental expenditure limits (DEL): provision planned and managed over three years, with scope (subject to Treasury agreement) for carrying forward unspent provision into future years to provide flexibility, encourage setting priorities and deter end-year surges in spending. Usually comprises most of each department's resource budget. Includes limits on near-cash expenditure and on the cost of administration.

Annually managed expenditure (AME): expenditure which is not as readily controlled as DEL is, but which must be budgeted for each year, including social security expenditure and local authority expenditure financed from local taxation.

Both DEL and AME may include capital and current resource provision.

5.1.2 In turn each central government department allocates its budget among its own responsibilities, cascading provision appropriately to those which receive grants from it, eg NDPBs. Annex 5.1 discusses the principles on which grants (for specific purposes) and grants-in-aid (unspecific support) should be based. In general it is sensible to consider arrangements for protecting the Exchequer interest through clawback of specific grants should the purposes for which they are agreed not materialise (annex 5.2).

5.1.3 Within the resource budgeting framework, a variety of mechanisms are used to encourage the wise and effective deployment of public expenditure to meet the government's objectives including:

- *administration budgets:* limiting the amount of resource DEL provision that can be used for basic support services such as salaries;
- *asset management strategies:* plans to build and manage capital stock through investment;
- *departmental strategic objectives,* often including *public service agreements* (PSAs): performance targets for public services, such as waiting times, crime rates or educational standards.

5.1.4 The budgeting framework is explained in the *Consolidated Budgeting Guidance*⁹.

⁹ Consolidated Budgeting Guidance – see http://www.hm-treasury.gov.uk/documents/public_spending_reporting/budgeting_classification/psr_bc_consolidated_budgeting.cfm

5.2 Estimates

5.2.1 The agreed departmental budgets do not of themselves confer authority to spend or commit resources. That requires Parliamentary agreement through the Estimates process. Departmental Estimates containing one or more Requests for Resources (RfRs) are put to Parliament covering one financial year at a time. In turn many departments' Estimates also contain provision for cash and other resources to finance their ALBs through grants or loans. Departmental Select Committees may examine departments on the plans contained in Estimates.

5.2.2 Once agreed, the Estimates become the expenditure limits voted by Parliament, set in the Appropriation Acts. These provide the legal authority for public expenditure within the ambit of each RfR. The ambit describes the activities on which expenditure is permitted by the RfR. There is some scope for transferring (viring) provision from one section or subhead to another within the same RfR. Details are in the *Estimates Manual*.

5.2.3 Agreed Estimate provision for one year cannot be carried forward to the next. If a department needs to spend resources it did not consume in a previous year, and provided the budget will bear it, authority to spend in a subsequent year must be requested afresh. Annex 5.3 explains the treatment of receipts, in particular when they can score as appropriations in aid, so reducing the gross provision for resource consumption for which Parliamentary approval must be sought.

5.2.4 There are some limited exceptions to the need for Estimates. The main ones are the National Insurance Fund (financed by its own hypothecated revenue stream) and various Consolidated Fund Standing Services.

5.2.5 The annual expenditure which Parliament authorises in Estimates is not calculated in quite the same way as multi year resource budgets. Annex 5.4 explains how the two are related. Detailed information on the operation of Estimates is in the *Estimates Manual*.

5.3 Excess votes

5.3.1 Accounting Officers have an important role in overseeing the overall accuracy of the presentation of the RfRs for which they are responsible. In particular, Accounting Officers are responsible for ensuring that actual spending is within the ambit of each RfR, is regular (see box 2.4), and does not exceed the amount of Estimate provision. The Treasury presents Parliament each year with a Statement of Excesses to request retrospective authority for the unauthorised resources (or cash or income) consumed above the relevant limits.

5.3.2 This statement identifies two kinds of excess expenditure:

- expenditure outside the ambit (EOTA)
- spending above the amount provided in an RfR.

5.3.3 Parliament usually regards EOTA as particularly unsatisfactory because it means that the department concerned has flouted the intentions that Parliament has set in statute. It is important to note that an RfR may be noted for EOTA for any excess not covered by suitable statutory powers, even if the total amount spent does not exceed the Appropriation Act limit.

5.3.4 Expenditure in excess of provision is also to be avoided since the authority of an Appropriation Act is required just as much as specific statutory authority. It is possible, with Treasury agreement, to raise the amount in an RfR during the course of the year through a Supplementary Estimate. But if need be, Accounting Officers should reduce or postpone use of resources to keep within the provision Parliament has agreed.

5.3.5 The C&AG reports both kinds of excess vote to Parliament. The PAC may examine the responsible Accounting Officers to see whether there is evidence of some underlying weakness of control.

5.4 Commitments

5.4.1 Just as Parliamentary authority is required for use of public funds in a given financial year, so Parliament also expects advance notice of any government commitment to future use of public funds for which there is no active request for resources through Estimates.

5.4.2 Ministers may commit the government to policies with financial implications without statutory authority. But commitments in time translate into resource consumption. So all commitments should be scrutinised and appraised as stringently as specific proposals for resource consumption (box 4.7 may help). It is essential for departments to have Treasury agreement before going firm. It is best practice then to obtain statutory authority before entering into all commitments to future deployment of public resources.

5.4.3 As the Concordat (annex 2.1) notes, Parliament is not bound to honour ministers' commitments unless and until there are statutory powers to meet them and it authorises public funds to finance them in a given year. So it is essential to give Parliament prompt and timely notice of any significant commitments, including contingent liabilities (above a specified threshold) into which the government intends to enter. This is especially important if the business in question is outside the department's existing statutory powers. The process for informing Parliament is set out in annex 5.5.

5.4.4 The general rule is to err on the side of caution in keeping Parliament informed of emerging contingent liabilities. It is impossible to generalise about every possible set of circumstances but some guidance is in box 5.2.

box 5.2: contingent liabilities: notifying Parliament

- Parliament should be notified of uncertain liabilities in a way that is meaningful without attempt at spurious accuracy. It is good practice to notify Parliament if the estimated liability changes significantly, or can be clarified.
- If a contingent liability affects several departments but cannot confidently be allocated among them, the relevant ministers should inform Parliament in a way which offers pragmatic information while recognising the scope for variation.
- If, exceptionally, the liability needs to remain confidential, the minister should inform the chairs of the relevant select committee and the PAC; then inform Parliament openly if the need for confidentiality lifts.
- Ministers should inform Parliament if an NDPB assumes a contingent liability which it could not absorb within its own resources, since the risk ultimately lies with the sponsor department's budget.

5.5 Public dividend capital

5.5.1 Certain public sector businesses, notably trading funds, are set up with public dividend capital (PDC) in lieu of equity. Like equity, PDC should be serviced, though not necessarily at a constant rate. PDC is not a soft option: in view of the risk it carries, it should deliver a rate of return comparable to commercial equity investments carrying a similar level of risk. There is scope for the return to vary to reflect market conditions and investment patterns; but persistent underperformance against the agreed rate of return should not be tolerated.

5.5.2 A department needs specific statutory power to issue PDC to an arm's length body, together with Estimates cover to pay it out of the Consolidated Fund. Sometimes instead of a specific issue of PDC, the legislation establishing (or financially reconstructing) a public sector business deems an issue of PDC to the new business. Dividends on PDC, and any repayments of PDC, are paid to the sponsor department of the business.

5.5.3 Further information about the use of PDC is in section 7.5 (trading funds) and in the *Estimates Manual*.

5.6 Borrowing by public sector organisations

5.6.1 Some public sector organisations, eg certain trading funds, are partly financed through loans provided through the sponsor department's Estimate; or from the National Loans Fund (NLF). Treasury consent and specific legal powers are always required. Limits and other conditions are common. Further discussion is at annex 5.6.

5.6.2 Every loan should be made with reasonable expectation that it will be serviced and repaid on the agreed schedule. Departments are responsible for scrutinising borrowers' creditworthiness, not relying solely on their track record. If timely repayment could not realistically be expected, the loan would be unlawful. Should a sponsor department become aware of concerns about the security of outstanding loans, it should warn the Treasury promptly and consider what action it can take to minimise any potential loss.

5.6.3 The NLF cannot make a loss. So the interest rates charged on NLF loans, whether fixed or variable, must be higher than the rates at which the NLF could raise funds for a similar period. Early repayment is sometimes possible, eg if the borrower has windfall receipts, but never simply to refinance on terms more favourable to the borrower. This is because there is a working assumption that the NLF continues to meet the cost of financing the amount outstanding and so the public sector as a whole would make a loss if the NLF offered cheaper replacement loans.

5.6.4 While NLF loans are repaid to the NLF direct, voted loans are repaid to the Consolidated Fund. The treatment of repayments and interest payments in Estimates and resource accounts is discussed in the *Consolidated Budgeting Guidance*, the *Estimates Manual* and the *FReM*. The Treasury also accounts for NLF transactions in the NLF's accounts. Any proposed write-offs must be notified to Parliament after obtaining Treasury agreement: see annex 5.6.

5.7 External borrowing

5.7.1 Public sector organisations may borrow from private sector sources only if they can achieve better value for money for the public sector as a whole by doing so. In practice it is usually difficult to satisfy this condition unless efficiency gains arise in the delivery of a project because of the introduction of externally raised debt (eg PFI). Treasury agreement to any such borrowing for ALBs is essential, and must be justified on value for money grounds. Nevertheless it can sometimes be expedient for public sector bodies to borrow short term, for example by overdraft.

5.7.2 When a sponsor department's ALB borrows in this way, the department should normally arrange to guarantee the loan to secure a fine rate. There may sometimes be overriding constraints, eg where such a guarantee would rank as a state aid (see annex 4.9). A department which guarantees a loan needs a specific statutory power as well as Estimate provision. On rare and exceptional occasions temporary non-statutory loans may be possible. In either case, Parliament must be notified when a loan guarantee is given, using the reporting procedures in annex 5.5.

5.7.3 Occasionally there is a case for a sponsored body to borrow in foreign currency in its own name rather than the government's. Because this can affect the credit standing of the government as a sovereign borrower, and may well cost more, it is essential to consult the Treasury beforehand.

5.7.4 The same principles apply to the borrowing of any bodies, such as subsidiaries, for which a sponsor department's ALBs are responsible. This is because their borrowing affects the creditworthiness of their sponsor department and thus of the UK as a sovereign borrower.

5.8 Banking

5.8.1 The various organisations in central government together handle very large flows of public funds every working day. At the end of each working day, the Exchequer must either borrow from the money market or place funds on deposit with the money market, depending on the net position reached after balancing outflows to finance expenditure against inflows from taxes and other sources. So there is considerable advantage to be gained for the public sector as a whole by minimising this net position. In practice this means gathering balances together at the end of each working day. Together all these accounts make up the Exchequer Pyramid at the Bank of England. Most are held with the Office of the Paymaster General (OPG).

5.8.2 This is why it is essential for departments and NDPBs to minimise the balances in their own accounts with commercial banks. Were each to retain a significant sum in its own account with such banks, the amount of net government borrowing outstanding on any given day would be appreciably higher, adding to interest costs and hence worsening the fiscal balance. Annex 5.7 sets out the requirements. In particular, balances held with commercial banks bear a capital charge, whereas OPG balances attract no such charge.

5.8.3 It is good practice for each organisation in central government to establish a policy for its use of banking services. See annex 5.7 for guidance. Sponsor departments should make sure that their ALBs are aware of the importance of managing this aspect of their business efficiently and effectively (see box 7.2).

5.9 Other financing techniques

5.9.1 Depending on its circumstances, purposes and risk profile, a public sector organisation may consider using financial instruments provided by the commercial markets. Among the techniques which may merit consideration are foreign currency transactions and various hedging instruments designed to control or limit business risks, for example those arising out of known requirements for specific future purchases of market priced commodities. Another possibility is permitting payments by various electronic means, including credit cards.

5.9.2 As with making decisions about other policies and projects, an organisation considering using an unfamiliar financing technique should evaluate it carefully. The checklists in boxes 4.3 and 4.7 have reminders of factors that may need to be considered. If the proposed transaction(s) are novel, contentious or repercussive, it is essential to consult the Treasury. Any organisation using a new technique should ensure that it has the competence to manage, control and track its use and any resulting financial exposures, which may vary with time. In particular, departments should consult the Treasury (and ALBs their sponsoring departments) before using derivatives for the first time.

5.9.3 When assessing an unfamiliar financial technique, it is important to remember that providers of finance and complex financial instruments intend to profit from their business. And providers' costs of finance are always inferior to the UK government's cost of borrowing. So it is usually right to be cautious about novel financial techniques. The Treasury will always refuse proposals to speculate. Offers which appear too good to be true usually are.

5.9.4 A simple example is the use of credit cards to pay debts owed to public sector organisations. When evaluating the options, it is important to balance any extra cost against the value of additional or faster flows of funds expected by offering this facility. There may be a case for limiting the transactions acceptable in this way, eg for payments up to certain amounts, or only using certain cards (depending on the commercial deals that can be negotiated). Parliament expects the public sector to make shrewd and well-informed decisions based on sound commercial principles.

5.9.5 A more complex example is deals financed under the Private Finance Initiative. There is more about this in section 7.10.

5.9.6 As with managing other business, Parliament may ask Accounting Officers to justify any decisions about use of financial transactions, especially if with hindsight they have not achieved good value for money.

- Annex 5.1 Grants and grants-in-aid
- Annex 5.2 Protecting public investments (clawback)
- Annex 5.3 Treatment of income and receipts
- Annex 5.4 How Estimates provision is derived from departmental budgets
- Annex 5.5 Liabilities
- Annex 5.6 Departmental lending
- Annex 5.7 Banking

6

FEES, CHARGES AND LEVIES

Where a fee is charged for access to public goods or services, there are some specific rules about how the charge should be determined. It is important to protect Parliament's right to decide which services should be charged for, and how public resources are to be allocated.

Basic policy

6.1.1 It is government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption. It also makes for easier comparisons with the private sector, promotes competition and helps develop markets.

6.1.2 The norm is to charge at full cost. Some exceptions are noted in box 6.1.

box 6.1: exceptions to full cost charging

- **Subsidised services:** where ministers decide to spend public resources on lowering costs for some or all consumers of public services, eg free prescriptions for children.
- **Taxation:** where Parliament authorises charges above cost, eg vehicle excise duty.
- **Information services:** where charges are generally low or minimal as a matter of policy, eg most freedom of information (FoI) requests.
- Certain discretionary services provided in **competition** with the private sector, where a commercial rate is normally charged, eg letting out public space for private use.
- **Levies:** licences to operate using public goods, often set to recover associated costs such as supervision by a regulator, eg gambling licences.

6.1.3 The guidance in this chapter applies to all charges and levies set by ministers or by an extensive range of public bodies: departments, trading funds, NDPBs, the NHS, non-devolved services in Scotland, Wales and Northern Ireland, and most public corporations. It also applies to charges for goods and services one central government organisation supplies to another; and to certain other statutory charges set by ministers, eg some local government fees. Those setting up a service carrying a charge may find the checklist in annex 6.1 useful.

6.1.4 Central government bodies usually need primary legislation to charge for a service provided to the public since Parliament expects to control use of public resources. Except in the case of commercial services (see section 6.4), if the charge exceeds the cost of supply, the excess must be remitted to the Consolidated Fund. If the excess is significant, the Office of National Statistics (ONS) may classify the whole charge as a tax.

6.2 Setting the charge

6.2.1 Setting a fee for a public service normally¹⁰ requires powers in primary legislation. These powers are usually fairly general, with the fee structure and each fee set in secondary legislation. Prior Treasury approval is required for primary legislation empowering charges. Even if the primary legislation does not call for it, the delegated authorities within which the organisation operates (see paragraph 2.1.5) will often insist upon Treasury consent to charges.

¹⁰ This requirement does not apply to discretionary services: see section 6.4.

6.2.2 In a limited range of cases, it may be possible to rely on secondary (rather than primary) legislation. One such group of cases is implementation of EU legislation. Depending on the policy to be implemented, it may be possible to use secondary orders under s2(2) of the European Communities Act 1972 for the substantive policy and under s56 of the Finance Act 1973 to set charge levels.

6.2.3 In certain other cases, charges can be adjusted where otherwise primary legislation would be necessary by using an order under s102 of the Finance (no 2) Act 1987. Because such orders amend primary legislation, they are unpopular in Parliament and are therefore used rarely. Box 6.2 explains the routine. Use of the s102 procedure often indicates that the fee is classified as a tax.

box 6.2: restructuring charges using s102

- Explicit prior Treasury agreement is essential.
- The order can vary or extend the powers in existing primary legislation by permitting specified factors to be taken into account in setting fees, eg to restructure fees to recover costs not directly related to the current costs of the service, or to recover past deficits.

But

- A s102 order cannot undermine primary legislation, eg it cannot authorise a charge for which no primary legislation exists, nor lift explicit statutory restrictions on which groups of consumers should pay a charge for a service.

6.2.4 When deciding the level of a charge, it is important to define:

- the range(s) of services for which a charge is to be made; and
- how any different categories of service are to be differentiated, if at all, in setting charges.

6.2.5 Normally the same charge should apply to all users of a defined category of service. The policy might be to charge at a uniform rate for all varieties of a service; or different fees may be set for objectively different categories of service costing different amounts to provide. Box 6.3 has some acceptable distinctions. It is often helpful to consult the Treasury as the categories to bear different charge levels are developed. This is essential if the proposed arrangements entail any features which could affect other parts of the public sector or set precedents for them.

6.2.6 Annex 6.2 contains guidance about how full cost should be measured for the purpose of setting charges. Special rules apply to charges for information services: see annex 6.3.

box 6.3: possible ways of setting charge for different categories of service

- Supply differences, eg in person, through the post, over the telephone or using the internet.
- Priority, eg where consumers pay more for a faster, more expensive, service.
- Scale or value, eg where a premium service offers more facilities to the customer than others.
- Structural, where it costs more to supply some consumers with a consistent service.

But not

- Differentiation by different kinds of customer, eg less for personal consumers and more for corporates (unless permitted or required by the primary powers).

6.2.7 Once defined, the full cost of each category of service should be measured realistically and objectively: see annex 6.2. The cost should be estimated, extrapolating past trends and forecasting future consumption patterns. The calculation should take full account of non-cash items eg depreciation, the cost of capital and the notional cost of insurance where applicable. There is some limited flexibility about the charge in any single year, since demand cannot be forecast precisely and it may make practical sense to round charges. But neither factor can justify planning to recover less or more than 100% of costs.

6.2.8 If ministers decide on a financial target short of full cost recovery, there should be a plan to achieve full cost recovery within a reasonable period. If this is not intended, it is important to decide (and document) clearly why and how long any deliberate public subsidy should last.

6.2.9 In general, cross subsidies are not good practice, eg businesses subsidising individuals or large businesses subsidising small ones. They may foster inefficient or wasteful patterns of consumption. Thus they always require explicit ministerial agreement and primary legislation (or a s102 order). And such charges are often classified as taxes.

6.2.10 Charges within and among central government organisations should be made at full cost, including the standard cost of capital. To charge otherwise would risk creating unwarranted subsidies or distorting competition.

6.3 Levies

6.3.1 Compulsory levies, eg licences to operate charged by statutory regulators, or to support industry specific research foundations, are normally classified as taxation. Such licences are justified in the wider public interest and not to provide a beneficial service to those who pay them. The Treasury may allow such bodies to retain the fees charged if this approach is efficient and in the public interest.

6.3.2 As with other fees and charges, levies of this kind should be designed to recover the full costs of the service provided. If the legislation permits, these costs can include the costs of the statutory body, eg a regulator could be empowered to recover the cost of supervision as well as registration to provide a licence. It may be appropriate to charge different levies to different kinds of licensees, depending on the cost of providing the licence.

6.4 Commercial services

6.4.1 Some public sector services are discretionary, ie no statute requires them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage. The key steps to take before setting up such a service are outlined in box 6.4.

box 6.4: setting up a commercial service

- Check whether the service is supplied in a competitive market.
- Establish whether adequate statutory authority exists for undertaking the planned activity.
- Consider whether Estimate authority is required to use public resources to supply the service.
- Agree the required rate of return with the Treasury.
- Obtain Treasury consent for any adjustment to the supplier's financial objective.
- If the intended commercial service is likely to be significant and to endure, tell Parliament of the plan to provide it.

6.4.2 For these services, the charges should be set at a commercial rate, including delivering a proper return on the use of resources acquired with public funds. So the financial target should be in line with market prices, using an appropriate risk weighted rate of return on capital. The rate of return used in pricing calculations for sales into commercial markets should be:

- for sales into commercial markets, in line with competitors' assessment of their business risk, rising to higher rates for more risky activities; or
- where a public sector body supplies another, or operates in a market without competitors, the standard rate for the cost of capital (see annex 6.2).

6.4.3 If a publicly provided commercial service does not deliver its target rate of return, outstanding deficits should be recovered, eg by adjusting charges. Any objective short of achieving the target rate of return calls for ministerial agreement, and should be cleared with the Treasury. In particular, discretionary services should never undermine the supplier organisation's public duties, including its financial objective(s).

6.4.4 It is important for public suppliers of commercial services to respect competition law. Otherwise public services using resources acquired with public funds might disturb or distort the fair operation of the market, especially where the public sector provider might be in a dominant position: see annex 6.4.

6.4.5 Wider markets activities are a special case of commercial services. See annex 7.6 for a fuller discussion.

6.5 Taking stock

6.5.1 As with any other use of public resources, it is important to monitor performance so that the undertaking can be adjusted as necessary to stay on track. It is good practice to review the service routinely at least once a year, to check, and if appropriate revise, the charging level. At intervals, a more fundamental review is usually appropriate, eg on a timetable compatible with the dynamics of the service. Box 6.5 suggests some issues to examine.

box 6.5: reviewing a public service for which a charge is made

- Is it still right for a public sector organisation to use public resources to supply the service?
- Does the business structure still make sense? Are the assets used for the service adequate?
- Would another business model (eg licensing, contracting out, privatising) be more satisfactory?
- For services supplied within the public sector, is there scope to supply others to take advantage of economies of scale?
- Is the financial objective right?
 - for a statutory service (or one supplied to another public organisation) if full costs are not recovered, why not?
 - for a commercial service, does the target rate of return still reflect market rates?
- Can efficiency and effectiveness be improved?
- Looking ahead, what developments might change the business climate?
- Do any discretionary services remain a good fit for the business model and wider objectives?
- Should any underused assets be redeployed, used for wider markets activity, or sold?

6.6 Accounts

6.6.1 As with public expenditure, the resources used in supplying public services and the proceeds of charges should be properly recorded and accounted for. Each service should keep records of its costs and the associated receipts. A memorandum trading account (MTA) prepared in accordance with GAAP and any relevant accounts direction is often a convenient way of doing this. Because MTAs record how the costs and revenues evolve, they help generate the end year resource accounts, whether the operation of the service is consolidated with the parent department's business or not.

6.6.2 The *FReM* discusses audit and reporting of trading funds in more detail.

Annex 6.1	Checklist for setting up new services
Annex 6.2	How to calculate fees
Annex 6.3	Charging for information
Annex 6.4	Competition law

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This chapter considers the working partnerships that public sector organisations may establish in order to deliver their objectives more effectively than they could act alone. There are some common features to competent management of these relationships, and some specifics which apply to certain sorts of relationships. It is essential that the public interest and value for public resources are given a high priority in the management of all these relationships.

7.1 The case for working partnerships

7.1.1 Parliament and the public expect high quality public services, adapted flexibly to suit the needs of different kinds of customers. It can make sense for public sector organisations to work with partners to deliver these services. The partners may be other public sector organisations, commercial organisations, or bodies from the third sector such as charities and voluntary groups. In this way the public sector can harness skills appropriate to the purpose in hand.

7.1.2 There are many different kinds of partnership. Each involves some tension between autonomy and accountability with scope for conflict if the terms of engagement are not resolved openly at the outset. Box 7.1 outlines some key areas that need to be decided early in the relationship. Each partnership requires its own customised terms to work effectively. One size does not fit all.

box 7.1: issues for every partnership with a public sector member

- As for projects, the decision to engage with a partner should rest on a business case in the public interest, evaluated against a range of alternative courses, including doing nothing.
- Conflicts of interest, including reputation risks, should be consciously recognised and dealt with, eg through explicit safeguards in the terms of the partnership.
- The cultural fit of the partners should be good enough to give each party confidence about trusting the other(s).
- The partnership framework should be documented and the terms of engagement kept up to date so that there is no doubt about responsibilities.
- Partnerships should not be a way of weakening accountability for the use of public resources, including reporting to Parliament.

7.2 Setting up new arm's length bodies

7.2.1 When a department sets up a new arm's length body (ALB), it needs to decide which kind of body it should be. Each has its strengths and merits. In general it makes sense to let the functions of the new body determine its form. It is important to consult the Cabinet Office and the Treasury in this process. Annex 7.1 suggests sources of guidance on some common types of ALB, while annex 7.2 outlines how to determine whether a new ALB should be an agency, an NDPB or a non-ministerial department.

7.2.2 Designing a new body for partnership with a public sector organisation always requires careful planning. It is important to ensure that the new arrangement will deliver the intended outcome(s) without unnecessary and confusing complexity. The sponsor department is responsible in the first instance for ensuring that the budgetary control and internal disciplines of new ALBs are satisfactory. It is desirable to arrange for a clear line of sight between those making the key decisions and the machinery for implementing them.

7.2.3 While the established models of public sector bodies are often useful, it can sometimes make sense to design new kinds of ALB. When departments plan to innovate in this way, it is usually necessary to consider whether primary legislation is required and to secure appropriate Estimate cover. Treasury support for any innovative development of this kind is always essential.

7.3 What to clarify

7.3.1 When documenting an agreement with a partner, public sector organisations should analyse the relationship and consider how it might evolve. The terms of the agreement must be clearly understood by each party to avoid confusion as the partnership develops. Box 7.2 lists terms which should always be considered for inclusion in partnership agreements. The list is not exhaustive.

7.3.2 In framing founding documentation of this kind, the partners should adopt a proportionate approach in line with the scale and risk of the business involved. Parliament expects that public funds will be used in a way that gives reasonable assurance that public resources will be used to deliver the intended objectives. It is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises.

7.3.3 In this process the aim should be to put the Accounting Officer(s) of the parties in a position to take a well-informed view on the status of the relationship, enabling timely adjustments to be made as necessary. So there might initially be a significant degree of reporting and other exchanges, with potential for intervention, underpinning a venture which is large, experimental and/or risky; and scaling back later if experience gives confidence about performance. Conversely, a partnership following a well-tested pattern in a familiar area might call for less intervention.

7.3.4 Where a new partnership is being developed, it may be necessary or desirable to devise bespoke working arrangements sensitive to the position of each of the partners. Box 7.1 may not cover every angle. For instance, a partnership with a charity will need to be compatible with the charity's purposes and constitution, while safeguarding the public investment.

7.4 Agencies

7.4.1 Each agency is either part of a central government department or a department in its own right. Agencies are intended to bring professionalism and customer focus to the management and delivery of central government services, operating with a degree of independence from the centre of their home departments. Some are also trading funds.

7.4.2 Each agency is established with a framework document on the lines sketched out in box 7.2. With the exception of those agencies which are trading funds (see section 7.5), they are normally funded through public expenditure supplied by Estimates. Departments should consult the Treasury and Cabinet Office about the preparation of framework documents.

7.4.3 Depending on the scale and nature of an agency's responsibilities, it may be appropriate for a senior official of an agency to be a member of the sponsor department's departmental board. It may also be appropriate for a representative of the sponsor department to join the agency's board, as part of the sponsor department's responsibilities for strategy, performance, risk taking and delivery within the department.

box 7.2: framework terms for partnership agreements

purpose

- The aims of the relationship, its working remit, standards, and the key objectives and targets.

governance and accountability

- The statutory position, including any financial or other limits and any regulatory requirements.
- The governance of the partnership: the terms of engagement of the partners and any arrangements for appointment (or approval) of the senior people in the other partner.
- The extent to which any department is responsible to Parliament for the conduct of a partner (this is always appropriate for partnerships with departments' ALBs).
- Any other important features of the sponsorship role of the public sector partner, eg acting as intelligent shareholder or consulting third parties.
- Any arrangements for successor activity, eg establishing similar partnerships elsewhere.

decision making

- How strategic decisions about the future of the partnership will be made, with timetable, terms for intervention, break points, dispute resolution procedures, termination process, and so on.
- How the chain of responsibility should work, eg stewardship reporting, keeping track of efficiency, risk assessment, project appraisal, management of interdependencies, and so on.
- How the partnership will identify, manage and track opportunities and risks.
- The status of the staff; and how they are to be hired, managed and remunerated.
- How any professional input (eg medical, scientific) is to be managed and quality assured.
- Arrangements for taking stock of performance and learning lessons from it.

financial management

- The financial relationship of the partners, eg:
 - any founding capital (including assets, goods, financial sums or other valuables)
 - any grants, one off or periodic, and their terms
 - how any charges to customers or users are to be set
 - how the partnership's corporate plan and annual target(s) are to be agreed
 - how asset management and capital projects are to be decided and managed
 - how cashflow is to be managed, and current expenditure financed
 - the distribution of income and profit flows
 - any financial target, eg return on capital employed (ROCE)
 - terms for disposal of assets acquired with public funds
 - any agreed limits on the partnership's business.
- Monitoring, reporting, regular liaison and any other tracking arrangements.
- Internal and external audit arrangements, with any relevant accounts directions.

7.5 Trading funds

7.5.1 A trading fund is either part of a department or a department in its own right. Its business must finance most or all of its operations.

7.5.2 Each trading fund is set up through an order under the Government Trading Act 1990, subject to affirmative resolution procedure. Before such an order can be laid in Parliament, the

Treasury will need to be satisfied that a proposed trading fund can satisfy the statutory requirement that it is likely to deliver better efficiency and effectiveness. A period of shadow operation as a pilot trading fund may help inform this assessment.

7.5.3 Each trading fund must primarily be financed out of its trading income like any other enterprise. In particular, each trading fund is expected to generate a financial return commensurate with the risk of the business in which it is engaged. In practice this means the target rate of return should be no lower than its cost of capital. The actual return achieved may vary a little from one year to the next, reflecting the vagaries of the market in which the trading fund operates.

7.5.4 The possible sources of capital for trading funds are shown in box 7.3. They are designed to give trading funds freedom from the discipline of annual Estimate funding. The actual mix for a given trading fund must be agreed with the sponsor department (if there is one) and with the Treasury.

box 7.3: sources of finance for trading funds

- public dividend capital (equivalent to equity, bearing dividends - see annex 7.2)
- reserves built up from trading surpluses
- long or short term borrowing (either voted from a sponsor department or direct from the National Loans Fund if the trading fund is a department in its own right)
- temporary subsidy from a sponsor department, voted in Estimates
- finance leases

7.5.5 Further detail about trading funds is in annex 7.3. Guidance on setting charges for the goods and services trading funds sell is in chapter 6.

7.5.6 Some trading funds move on to become wholly owned companies within the public sector. When this process is in prospect, the appropriate disciplines (see section 7.8) should be adopted.

7.6 Departments working together

7.6.1 To promote better delivery and enhance efficiency, departments often find it useful to work with other government departments (or NDPBs - see section 7.7). This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups - arrangements loosely categorised as joined up government. Another model might entail sharing common services, perhaps in a common building. Such arrangements offer opportunities for departments to reduce costs overall while each department plays to its strengths.

7.6.2 Such relationships can be constituted in a number of different ways. Some models are sketched in box 7.4. The list is not exhaustive.

7.6.3 Shared services often need funding to set up infrastructure, eg specialist IT for procurement. This could be agreed in a spending review, or customers could buy in by transferring budget provision to the lead provider. Each of the Accounting Officers involved will need assurance that the project offers value for money for the public sector as a whole. The provider's charges should be at cost, following the standard fees and charges rules within central government (see chapter 6).

7.6.4 If the PAC decides to investigate joined up activity, the Accounting Officers of each of the participants should expect to be summoned as witnesses.

box 7.4: example models of joined up activities in central government

- one partner can act as lead provider selling services (such as IT, HR, finance functions) to other(s) as customers, operating under service level agreement(s)
- cost sharing arrangements for common services (eg in a single building), allocated in line with an indicator such as numbers of staff employed or areas of office space occupied
- joint procurement using a collaborative protocol
- a joint venture project with its own governance, eg an agency or company, selling services to a number of organisations, some or all of which may be public sector
- an outsourced service, delivering to several public sector customers

7.7 Non-departmental public bodies

7.1.1 Non-departmental public bodies (NDPBs) may take a number of legal forms, including various corporate models and/or charities. Most executive NDPBs have a bespoke framework in legislation or its equivalent (eg a Royal Charter). This framework may specify in some detail what the NDPB is to do, what powers are invested in it, and how it should be financed. Annex 7.1 has links to further information about NDPBs.

7.1.2 Each NDPB is a special purpose body which plays a part in the process of government. Each has a sponsor department charged with general oversight and responsibility for reporting its activity to the Treasury. So sponsor departments should have appropriate arrangements for regular monitoring with scope for steering the NDPB's performance as necessary. Sometimes other departments also take an interest in particular aspects of an NDPB's business.

7.1.3 NDPBs' sources of finance vary according to their constitution and function. Box 7.5 shows the main options available.

box 7.5: sources of finance for NDPBs

- specific conditional grant(s) from the sponsor department (and/or other departments)
- general (less conditional) grant-in-aid from the sponsor department
- income from charges for goods or services the NDPB may sell
- public dividend capital

7.1.4 In practice NDPBs operate with some independence and are not under day-to-day ministerial control. Nevertheless, ministers are ultimately accountable to Parliament for NDPBs' efficiency and effectiveness. This is because ministers: are responsible for NDPBs' founding legislation; have influence over NDPBs' strategic direction; (usually) appoint their boards; and have the ultimate sanction of winding up unsatisfactory NDPBs.

7.1.5 As with agencies (see 7.4.3) there may be value in some cross membership of an NDPB board with its sponsor department's board. This can foster mutual confidence and provide valuable insight for both parties. In any case sponsor departments need arrangements to monitor and understand their NDPBs' strategy, performance and delivery, usually built around a framework document which includes terms on the lines of box 7.2 (see annex 7.4 for a suggested outline and a specimen example). In practice these arrangements can be very similar to those departments need for their relationships with agencies (see section 7.4).

7.8 Public corporations

7.8.1 Some departments own controlling shareholdings in public corporations or Companies Act companies, perhaps (but not necessarily) as a step toward disposal. Except where a public corporation's powers are defined in statute, such a company is subject to all the disciplines of corporate legislation; and may also be an NDPB. Shareholdings of this kind may be managed through the Shareholder Executive, which also provides advice on managing strategic relationships.

7.8.2 To manage relationships of this kind, departments need to adapt the framework in box 7.2 to suit the corporate context while delivering public sector disciplines. The financial performance expected of a public corporation should give the shareholding department a fair return on the public funds invested in the business. Box 7.6 offers a checklist. The same approach may be appropriate for a trading fund, especially if it is expected to become a Companies Act company in time.

box 7.6: outline terms for a relationship with a public corporation

- the shareholder's strategic vision for the business, including the rationale for public ownership and the public sector remit of the business
- the capital structure of the business and the agreed dividend regime, with suitable incentives for business performance
- the business objectives the enterprise is expected to meet, balancing policy, customer, shareholder and any regulatory interests
- the department's rights and duties as shareholder, including:
 - governance of the business
 - procedure for appointments
 - performance monitoring
 - any necessary approvals processes
 - the circumstances of, and rights upon, intervention

7.8.3 A shareholder department may also use a company it owns as a contractor or supplier of goods or services. It is a good discipline to separate decisions about the company's commercial performance from its contractual commitments, so avoiding confusion about objectives. So there should be clear arm's length contracts between the company and its customer departments defining the customer-supplier relationship(s).

7.9 Outsourcing

7.9.1 Public sector organisations often find it useful to outsource some non-core services or functions rather than provide them internally. Typical candidates include cleaning, catering and IT support. A much wider range of services is potentially suitable, depending on the nature of the organisation's business. The first step in setting up any outsourcing agreement should be to specify the service(s) to be provided and the length of contract to be sought.

7.9.2 It is good practice to arrange some form of competition for all outsourcing. In most cases, it is legally essential to open the competition to all firms in the EU (see annex 4.4). Where the organisation foresees the need to hire services at short notice, for example legal services to support opportunities, threats or other business pressures which emerge with little warning, it is good practice to arrange a competition to establish a standing panel of providers from which services can be called upon to deal with rapidly emerging needs.

7.9.3 In choosing partners to provide outsourced services, public sector organisations should seek the best value available. This may not be the same as the cheapest price.

7.10 PPPs and PFIs

7.10.1 Public private partnerships (PPPs) use structured arrangements between the public and private sectors to secure an outcome delivering good value for money for the public sector. These arrangements use private sector management skills, with suitable arrangements to protect staff terms and conditions. Various different business models are possible.

7.10.2 One special kind of PPP is the private finance initiative (PFI). In such deals a public sector organisation contracts with a private sector entity to construct a facility and provide associated services of a specified quality over a sustained period. Because the private sector contractor puts its own funds at risk, it has powerful incentives to deliver to time and cost, and can thus offer value for money. Such contracts should normally be built up using standard terms published by the Treasury (see annex 7.5).

7.10.3 PFI procurement is a flexible, versatile and often effective technique. But it is not appropriate for every project. Annex 7.5 discusses when PFI is worth considering and how it should best be used for good results.

7.11 Wider markets activity

7.11.1 Wider markets activity is part of good asset management in the public sector (see annex 4.8). Significant projects nearly always require some form of public-private partnership to operate and grow successfully, eg harnessing a private sector firm's marketing reach. In this way public sector organisations can make use of private sector expertise and finance to exploit the commercial potential of government assets. A great variety of business models is possible.

7.11.2 When public bodies have assets which are not fully used but are to be retained, it is good practice to consider exploiting the spare capacity to generate a commercial return in the public interest. Any kind of public sector asset can and should be considered. These can include both physical and intangible assets, for example land, buildings, equipment, software and intellectual property.

7.11.3 Such commercial services always go beyond the public sector supplier's core duties. Nevertheless the assets concerned have been acquired with public funds. So it is important that services are priced fairly: see chapter 6. It is also important to respect the rules on state aids: see annex 4.9. In planning any wider markets activity, central government organisations should work through the checklist at box 7.7 and the guidance in annex 7.6.

box 7.7: planning wider market activities

- define the service to be provided
- establish that any necessary vires and (if necessary) Estimate provision exist
- identify any prospective business partners and run a selection process
- if the proposed activity is novel, contentious, or likely to set a precedent elsewhere, or could exceed 5% of the department's DEL provision, obtain Treasury approval
- take account of the normal requirements for propriety, regularity and value for money

7.11.4 While it makes sense to make full use of assets acquired with public resources, such activity should not squeeze out, or risk damaging, a public sector organisation's main objectives and activities. Similarly, it is not acceptable to acquire assets just for the purpose of engaging in, or extending, wider markets activity. If a public sector supplier's wider markets activity reaches a point where further investment is needed to keep it viable, reappraisal is usually appropriate. This should consider alternatives such as selling the business, licensing it, bringing in private sector capital, or seeking other way(s) of exploiting the underused potential in the assets or business.

7.11.5 It is a matter of judgement when departments should inform Parliament of the existence, or growth, of significant wider markets ventures. It is good practice to consult the Treasury in good time on this point so that Parliament can be kept properly informed and not misled.

7.12 Working with third sector bodies

7.12.1 Central government organisations may also find it helpful to form working relationships with third sector bodies: that is, charities, social, voluntary or community institutions, mutual organisations and other not-for-profit bodies. Partnership with such bodies can achieve more than either the public or the third sector can achieve alone. For example, it can offer an extra dimension by providing insight into what particular groups and communities want, and what they can contribute, to the delivery of public services.

7.12.2 In this kind of relationship it is common for a public sector funder to make resources available to a third sector partner. These could be payments for services, assets, grants or other transfers for particular purposes. It is usual to include safeguards to ensure that any grants are used for the intended purpose (see annex 5.2). Otherwise Parliament might not be confident that its approval of voted resources is being honoured.

7.12.3 The safeguards to be applied should be agreed at the start of the relationship. They should be designed to suit the purpose and circumstances of the transaction. It is often right to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold (clawback). But it can be appropriate and valuable to set more flexible terms and conditions so long as they ensure that publicly funded assets are used for the intended purposes in broad terms. This is explored further in annex 7.7.

- Annex 7.1 Sources of guidance on setting up ALBs
- Annex 7.2 Guidelines for choosing the form of an ALB
- Annex 7.3 Trading funds
- Annex 7.4 Specimen framework document for executive NDPBs
- Annex 7.5 Private finance initiative (PFI) projects
- Annex 7.6 Wider markets activities
- Annex 7.7 Working with the third sector

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GLOSSARY

Term	Definition
Accounting Officer	a person appointed by the Treasury or designated by a department to be accountable for the operations of an organisation and the preparation of its accounts. The appointee is, by convention, usually the head of a department or other organisation or the Chief Executive of an non-departmental public body (NDPB). See chapter 3.
Accounts direction	a direction issued setting out the accounts which a body must prepare, and the form and content of those accounts.
Affirmative resolution	a Parliamentary procedure for exercising control over secondary legislation (ie a Statutory Instrument in the form of an order or regulation). The positive approval of Parliament is required before the instrument can take effect.
Annually Managed Expenditure, AME	is spending included in Total Managed Expenditure (TME), which does not fall within Departmental Expenditure Limits (DELs). Expenditure in AME is generally less predictable and controllable than expenditure in DEL.
Appropriation Act	annual Act of Parliament, which gives formal approval to departmental Supply Estimates. The Consolidated Fund (Appropriation) Bill when enacted becomes the Appropriation Act.
Appropriations in Aid	income received by a department which it is authorised to retain (rather than surrender to the Consolidated Fund) to finance related expenditure. Such income is voted by Parliament and accounted for in departmental resource accounts.
Arm's length bodies, ALBs	NDPBs, companies in which the department has a significant shareholding and other sponsored bodies.
Capital spending	spending on the purchase of assets, above a certain threshold, which are expected to be used for a period of at least one year. It includes the purchase of buildings, equipment and land. The threshold is set by each body: items valued below it are not counted as capital assets, even if they do have a productive life of more than one year.
Central government bodies	departments and departmental executive agencies, including trading funds, non-departmental public bodies, and NHS health authorities and boards.
Chief executive	title for the head of an arm's length body, normally appointed as accounting officer.
Civil Service Code	a concise statement issued by the Cabinet Office which sets out the framework within which all civil servants work, and the core values and standards they are expected to uphold. See annex 4.2
Clawback	the concept that where an asset financed by public money is sold, all or part of the proceeds of the sale should be returned to the Exchequer.
Commercial banks	bodies other than the OPG which provide banking services, including private sector banks and building societies.
Committee of Public Accounts	a committee of the House of Commons which examines the accounting for, and the regularity and propriety of, government expenditure. It also examines the economy, efficiency and effectiveness of expenditure. Also commonly known as the Public Accounts Committee (PAC).
Common law	one of the historical sources of law in the United Kingdom. Often used to distinguish judge-made case-law and longstanding legal principles from legislation which has been made by Parliament.

Comptroller and Auditor General, C&AG	the head of the National Audit Office, appointed by the Crown, and an Officer of the House of Commons. As Comptroller, the C&AG's duties are to authorise the issue by the Treasury of public funds from the Consolidated Fund and National Loans Fund to government departments and others; as Auditor General, the C&AG certifies the accounts of all government departments and some other public bodies, and carries out value-for-money examinations. See annex 1.1.
Concordat	a long-standing agreement between the Treasury and the Public Accounts Committee that continuing functions of government should be defined in specific statute. See annex 2.1.
Consolidated Fund standing services	payments for services which Parliament has decided by statute should be met directly from the Consolidated Fund, rather than financed annually by voted money.
Consolidated Fund, CF	the government's current account, operated by the Treasury, through which pass most government payments and receipts.
Contingencies Fund	a government fund, controlled by the Treasury, which, subject to certain criteria, can be used to finance urgent expenditure (through issue of repayable advances) in anticipation of parliamentary approval of Estimates, or used to finance expenditure in advance of receipts. See annex 2.5.
Contingent liabilities	potential liabilities that are uncertain but recognise that future expenditure may arise if certain conditions are met or certain events happen.
Control total	the measure used by the government to plan public expenditure for the medium term, and monitor and control it within each financial year.
Corporate governance	the system by which organisations are directed and controlled.
Cost of capital	the cost to the government of financing investment, ie the rate at which it borrows. This is charged to departments to improve transparency under resource accounting and encourage efficient use of assets. It is included in the calculation when setting fees and charges and is calculated as a percentage of the net asset value.
Data Protection Act	legislation (1998) which governs how organisations can use personal information which they hold.
Delegated authority	a standing authorisation by the Treasury under which a body may commit resources or incur expenditure from money voted by Parliament without specific prior approval from the Treasury. Delegated authorities may also authorise commitments to spend (including the acceptance of contingent liabilities) and to deal with special transactions (such as write-offs) without prior approval.
Departmental Expenditure Limit, DEL	expenditure limit within which a department has responsibility for resource allocation though some elements may be demand-led.
Depreciation	a measure of the wearing out, consumption or other reduction in the useful life of a fixed asset whether arising from use, passage of time or obsolescence through technological or market changes.
Derivative	a financial instrument derived from another, usually sold singly or in packages to promote hedging, eg interest rate and exchange rate options.
Detective controls	controls designed to detect error, fraud, irregularity or inefficiency.
Devolved administrations	the administrations established in Scotland, Wales and Northern Ireland under the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998.
Discretionary services	services that are not required by statute but are provided, often into competitive markets.
Estimate	a statement of how much money the government needs in the coming financial year, and for what purpose(s), by which Parliamentary authority is sought for the planned level of expenditure and receipts in a department.

Estimates Manual	a practical reference guide issued by the Treasury which provides detailed information on the Supply Estimates process.
Estimates Memorandum	an explanation to the relevant departmental select committee setting out the links to other spending controls and the contents of a departmental Estimate.
Excess vote	a request for resources which, after the year end, is found to have financed expenditure not agreed by Parliament, whether because it exceeds the prescribed amount of expenditure or because part is outside the descriptions Parliament has approved. See section 5.3.
Exchequer	central government's central financing arrangements, based on the Consolidated Fund and National Loans Fund, and managed by the Treasury and the Bank of England.
Exchequer pyramid	a series of accounts operated by the Treasury through which the overnight sweep and funding flows.
Expenditure outside the ambit of a vote, EOTA	expenditure outside the ambit of a vote, ie resources spent on matters which were not included in the relevant ambit in the departmental Estimate and therefore Parliament has not authorised. See section 5.3.
Finance Act	the legislation through which Parliament agrees the government's tax decisions. Normally passed in the summer after the spring budget.
Framework document	a document setting out the key principles of accountability for agencies. See annex 7.4.
Freedom of Information	legislation (2000) designed to promote public access to a wide range of public sector data and information (but not personal data).
Full cost	the total cost of all the resources used in providing a good or service in any accounting period (usually one year). This will include all direct and indirect costs of producing the output (both cash and non-cash costs), including a full proportional share of overhead costs and any selling and distribution costs, insurance, depreciation, and the cost of capital, including any appropriate adjustment for expected cost increases.
Funding	transferring monies to an account, so that they are available when needed for payments.
Gateway™	a review process operated under OGC rules in which people not associated with a programme, policy or project assess its progress and offer pointers to improve its delivery.
Generally accepted accounting practice in the UK, UK GAAP	the accounting and disclosure requirements of the Companies Acts and pronouncements by the Accounting Standards Board (principally accounting standards and Urgent Issues Task Force abstracts), supplemented by accumulated professional judgement.
Grant	payments made by departments to outside bodies to reimburse expenditure on agreed items or functions, and often paid only on statutory conditions.
Grant in aid	regular payments made by departments to outside bodies (eg non-departmental public bodies) to finance their operating expenditure.
Green book	informal title of a document published by the Treasury called <i>Appraisal and Evaluation in Central Government</i> to guide central government organisations in investment appraisal.
Hedging	transaction(s) designed to reduce or eliminate financial risk, eg because of interest rate or exchange rate fluctuations.
Joined-up government	arrangements under which policy-making and service delivery are unhindered by departmental boundaries.
Judicial review	a procedure by which the courts can review the legality of the decisions and actions of public authorities, including the government. Judicial review looks at the fairness of the decision-making process rather than the merits of the decision itself.
Levies	licences to operate public goods, often set to recover associated costs such as supervision by a regulator. See section 6.3.

Maladministration	any form of administrative failing or bad practice. Maladministration can be investigated by various complaints handling authorities, including the Parliamentary and Health Service Ombudsman.
Memorandum Trading Accounts, MTAs	an informal working document, prepared before the start of the financial year in the form of a forecast to determine the appropriate level of fees and charges for a repayment service, and after the end of the year in the form of an outturn statement to provide a record of performance.
Misstatement	a statement which is untrue. The maker of a misstatement can be sued for damages by those who have relied on the misstatement, but only if in the circumstances it was reasonable to rely on it.
National Accounts	accounts produced by the Office for National Statistics in accordance with the European System of Accounts 1995, which promotes standardisation in the way in which public sector income and expenditure is measured.
National Audit Office, NAO	office of the Comptroller and Auditor General, which audits resource accounts. See annex 1.1.
National Insurance Fund, NIF	a government fund used to meet the cost of contribution-based benefits, financed mainly by contributions paid by employers and individuals.
National Loans Fund, NLF	the fund through which passes most of the government's borrowing transactions and some domestic lending transactions.
Near-cash	resource expenditure that has a related cash implication, even though the timing of the cash payment may be slightly different. For example, expenditure on gas or electricity supply is incurred as the fuel is used, though the cash payment might be made in arrears on a quarterly basis. Other examples of near-cash expenditure are: pay, rental.
Net cash requirement	the upper limit agreed by Parliament on the cash which a department may draw from the Consolidated Fund to finance the expenditure within the ambit of its Request for Resources. It is equal to the agreed amount of net resources and net capital less non-cash items and working capital.
Non-cash cost	costs where there is no cash transaction but which are included in a body's accounts (or taken into account in charging for a service) to establish the true cost of all the resources used.
Non-departmental public body, NDPB	a body which has a role in the processes of government, but is not a government department or part of one. NDPBs accordingly operate at arm's length from government Ministers.
Notional cost of insurance	a cost which is taken into account in setting fees and charges to improve comparability with private sector service providers. The charge takes account of the fact that public bodies do not generally pay an insurance premium to a commercial insurer.
Office for National Statistics, ONS	the independent body responsible for collecting and publishing official statistics about the UK's society and economy. (At the time of going to print legislation was progressing to change this body to the Statistics Board).
Office of Government Commerce, OGC	an office of the Treasury, with a status similar to that of an agency, which aims to maximise the government's purchasing power for routine items and combine professional expertise to bear on capital projects.
Office of the Paymaster General, OPG	the government department responsible for discharging the Paymaster General's statutory responsibilities to hold accounts and make payments for government departments and other public bodies.
Orange book	the informal title for <i>Management of Risks: Principles and Concepts</i> , which is published by the Treasury for the guidance of public sector bodies.

Overdraft	an account with a negative balance.
Parliamentary authority	Parliament's formal agreement to authorise an activity or expenditure.
Prerogative powers	powers exercisable under the Royal Prerogative, ie powers which are unique to the Crown, as contrasted with common-law powers which may be available to the Crown on the same basis as to natural persons.
Primary legislation	Acts which have been passed by the Westminster Parliament and, where they have appropriate powers, the Scottish Parliament and the Northern Ireland Assembly. Begin as Bills until they have received Royal Assent.
Private Finance Initiative, PFI	arrangements under which a public sector organisation contracts with a private sector entity to construct a facility and provide associated services of a specified quality over a sustained period. See annex 7.5.
Propriety	the principle that patterns of resource consumption should respect Parliament's intentions, conventions and control procedures, including any laid down by the PAC. See box 2.4.
Public Accounts Committee	see Committee of Public Accounts.
Public corporation	a trading body controlled by central government, local authority or other public corporation that has substantial day to day operating independence. See section 7.8.
Public Dividend Capital, PDC	finance provided by government to public sector bodies as an equity stake; an alternative to loan finance.
Public Service Agreement, PSA	sets out what the public can expect the government to deliver with its resources. Every large government department has PSA(s) which specify deliverables as targets or aims related to objectives.
Public Private partnership, PPP	a structured arrangement between a public sector and a private sector organisation to secure an outcome delivering good value for money for the public sector. It is classified to the public or private sector according to which has more control.
Rate of return	the financial remuneration delivered by a particular project or enterprise, expressed as a percentage of the net assets employed.
Regularity	the principle that resource consumption should accord with the relevant legislation, the relevant delegated authority and this document. See box 2.4.
Request for Resources, RfR	the functional level into which departmental Estimates may be split. RfRs contain a number of functions being carried out by the department in pursuit of one or more of that department's objectives.
Resource account	an accruals account produced in line with the <i>Financial Reporting Manual (FReM)</i> .
Resource accounting	the system under which budgets, Estimates and accounts are constructed in a similar way to commercial audited accounts, so that both plans and records of expenditure allow in full for the goods and services which are to be, or have been, consumed – ie not just the cash expended.
Resource budget	the means by which the government plans and controls the expenditure of resources to meet its objectives.
Restitution	a legal concept which allows money and property to be returned to its rightful owner. It typically operates where another person can be said to have been unjustly enriched by receiving such monies.
Return on capital employed, ROCE	the ratio of profit to capital employed of an accounting entity during an identified period. Various measures of profit and of capital employed may be used in calculating the ratio.

Royal charter	the document setting out the powers and constitution of a corporation established under prerogative power of the monarch acting on Privy Council advice.
Second reading	the second formal time that a House of Parliament may debate a bill, although in practice the first substantive debate on its content. If successful, it is deemed to denote Parliamentary approval of the principle of the proposed legislation.
Secondary legislation	laws, including orders and regulations, which are made using powers in primary legislation. Normally used to set out technical and administrative provision in greater detail than primary legislation, they are subject to a less intense level of scrutiny in Parliament. European legislation is, however, often implemented in secondary legislation using powers in the European Communities Act 1972.
Service-level agreement	agreement between parties, setting out in detail the level of service to be performed. Where agreements are between central government bodies, they are not legally a contract but have a similar function.
Shareholder Executive	a body created to improve the government's performance as a shareholder in businesses.
Spending review	sets out the key improvements in public services that the public can expect over a given period. It includes a thorough review of departmental aims and objectives to find the best way of delivering the government's objectives, and sets out the spending plans for the given period.
State aid	state support for a domestic body or company which could distort EU competition and so is not usually allowed. See annex 4.9.
Statement of Excess	a formal statement detailing departments' overspends prepared by the Comptroller and Auditor General as a result of undertaking annual audits.
Statement on Internal Control, SIC	an annual statement that Accounting Officers are required to make as part of the accounts on a range of risk and control issues.
Subhead	individual elements of departmental expenditure identifiable in Estimates as single cells, for example cell A1 being administration costs within a particular line of departmental spending.
Supply	resources voted by Parliament in response to Estimates, for expenditure by government departments.
Supply Estimates	a statement of the resources the government needs in the coming financial year, and for what purpose(s), by which Parliamentary authority is sought for the planned level of expenditure and income.
Target rate of return	the rate of return required of a project or enterprise over a given period, usually at least a year.
Third sector	private sector bodies which do not act commercially, including charities, social and voluntary organisations and other not-for-profit collectives. See annex 7.7.
Total Managed Expenditure, TME	a Treasury budgeting term which covers all current and capital spending carried out by the public sector (ie not just by central departments).
Trading fund	an organisation (either within a government department or forming one) which is largely or wholly financed from commercial revenue generated by its activities. Its Estimate shows its net impact, allowing its income from receipts to be devoted entirely to its business.
Treasury Minute	a formal administrative document drawn up by the Treasury, which may serve a wide variety of purposes including seeking Parliamentary approval for the use of receipts as appropriations in aid, a remission of some or all of the principal of voted loans, and responding on behalf of the government to reports by the Public Accounts Committee (PAC).

Value for money	the process under which organisation's procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, value and avoidance of error and other waste, judged for the public sector as a whole.
Virement	the process through which funds are moved between subheads such that additional expenditure on one is met by savings on one or more others.
Vote	the process by which Parliament approves funds in response to supply Estimates.
Voted expenditure	provision for expenditure that has been authorised by Parliament. Parliament 'votes' authority for public expenditure through the Supply Estimates process. Most expenditure by central government departments is authorised in this way.
Wider market activity	activities undertaken by central government organisations outside their statutory duties, using spare capacity and aimed at generating a commercial profit. See annex 7.6.
Windfall	monies received by a department which were not anticipated in the spending review.

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Note to users: References are to sections, paragraphs, boxes and annexes. Section references appear in **bold**.

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A

ANNEX I.I

COMPTROLLER AND AUDITOR GENERAL

Assisted by staff of the National Audit Office (NAO), the Comptroller and Auditor General (C&AG) is the independent auditor of nearly all central government institutions. Using extensive rights of access to records the C&AG provides direct advice and assurance to Parliament.

A.I.I.1 The C&AG is an officer of the House of Commons appointed by the Queen. He or she is responsible for the audit of most central government institutions. This work is carried out under his or her direction by either NAO staff (see www.nao.org.uk) or by contracting out. The C&AG can be removed from office only by the Queen on an address by both Houses of Parliament.

A.I.I.2 The NAO is financed by an Estimate on which the government has no influence. The Public Accounts Commission (TPAC) oversees NAO's expenditure.

A.I.I.3 These arrangements mean that the C&AG is independent of the government of the day, deciding the scope of all the work NAO carries out.

Audit

A.I.I.4 In order to carry out financial audit work, the C&AG has extensive statutory rights of access to central government institutions' records, wherever they are and whatever form they may take. This includes any material required to compile Whole of Government Accounts, and extends to the records of many contractors and recipients of grants. The C&AG also has a right to obtain information about, and explanations of, any of this evidence.

A.I.I.5 The C&AG audits both expenditure and revenue accounts and reports on them to Parliament. Financial audits are carried out in accordance with International Standards on Auditing (UK and Ireland).

A.I.I.6 In addition, the C&AG may carry out audits of particular areas of central government expenditure to establish whether public funds have been used economically, efficiently and effectively. Selection of these value for money (vfm) studies is the responsibility of the C&AG alone. It is government policy that the C&AG has the same access rights for vfm examinations as for financial audit. This does not extend to access to policy (eg Cabinet) papers.

A.I.I.7 The Public Accounts Committee (PAC) may decide to examine witnesses on either financial or vfm studies.

The Comptroller function

A.I.I.8 A small but important part of the C&AG's responsibilities is oversight of payments from the Consolidated Fund and the National Loans Fund. In response to requests from the Treasury, NAO staff establish that the sums paid out of these funds each business day are made in accordance with legislation. Once the authorisations (credits) are given, the Treasury may make drawings from these funds to finance the Exchequer's commitments.

Other studies

A.I.I.9 From time to time ministers may ask the C&AG to carry out independent studies of various kinds. For example, the C&AG reports regularly on the reasonableness of the assumptions underlying the budget, and these reports are published as part of the budget suite of documents.

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ANNEX 2.I THE PAC CONCORDAT

Chapter 2 explains that Parliament expects both specific legislation and Parliamentary authority for each year's expenditure to be in place for continuing expenditure. It expects the Treasury to police this requirement. This annex sets Parliament's concerns in context.

A.2.I.1 The PAC has had long standing concerns about how the government gains authority from Parliament for each area of spending.

A.2.I.2 In the mid 19th century it became customary for governments to gain Parliamentary authority for some areas of expenditure simply by use of the Contingencies Fund, without troubling to obtain specific powers for them. Shortly after its formation in 1862, the PAC protested about this practice, partly because it involved less stringent audit. It urged that the Contingencies Fund should be used only for in-year funding of pressing needs, and that all continuing and other substantive spending should be submitted to the Estimates process with due itemisation.

A.2.I.3 By 1885 the PAC had become concerned that the authority of the Estimate and its successor Appropriation Act was not really sufficient either:

.....cannot accept the view in a legal, still less in a financial, sense that the distinct terms of an Act of Parliament may be properly overridden by a Supplementary Estimate supported by the Appropriation Act.....this matter....is one of great importance from a constitutional point of view.....

A.2.I.4 While the Treasury agreed in principle, the practice did not die out because in 1908 the PAC again complained:

.....while it is undoubtedly within the discretion of Parliament to override the provisions of an existing statute by a vote in Supply confirmed by the Appropriation Act, it is desirable in the interests of financial regularity and constitutional consistency that such a procedure should be resorted to as rarely as possible, and only to meet a temporary emergency.

A.2.I.5 The PAC reverted to the issue in 1930 and again in 1932, citing a number of cases involving various departments. It was concerned to specify how far an annual Appropriation Act could be regarded as sufficient authority for the exercise of functions by a government department in cases where no other specific statutory authority exists. It took the view that:

.....where it is desired that continuing functions should be exercised by a government department, particularly where such functions may involve financial liabilities extending beyond a given financial year, it is proper, subject to certain recognised exceptions, that the powers and duties to be exercised should be defined by specific statute.

A.2.I.6 In reply, the Treasury Minute said:

.....while it is competent to Parliament, by means of an annual vote embodied in the Appropriation Acts, in effect to extend powers specifically limited by statute, constitutional propriety requires that such extensions should be regularised at the earliest possible date by amending legislation, unless they are of a purely emergency or non-continuing character.

.....whilethe Executive Government must continue to be allowed a certain measure of discretion in asking Parliament to exercise a power which undoubtedly belongs to it,

they agree that practice should normally accord with the view expressed by the Committee that, where it is desired that continuing functions should be exercised by a government department (particularly where such functions involve financial liabilities extending beyond a given year) it is proper that the powers and duties to be exercised should be defined by specific statute. The Treasury will, for their part, continue to aim at the observance of this principle.

A.2.1.7 With this Concordat, the matter still rests.

A.2.1.8 Use of the Appropriation Act as authority for expenditure is discussed in annex 2.5.

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ANNEX 2.2

LEGISLATION: TREASURY APPROVAL

This annex sets out how departments should clear proposed legislation with the Treasury where there are financial implications, either for expenditure or raising revenue. More detailed guidance on the preparation of legislation and the legislative process should be sought from departmental parliamentary clerks.

Consulting the Treasury

A.2.2.1 When preparing legislation, departments must consult the Treasury:

- before any proposals for legislation with financial implications are submitted to ministers collectively for policy approval;
- about any provisions included in legislation with financial and public service manpower implications.
- on the terms of Money Resolutions and Explanatory Notes; and
- subsequently about any changes that are proposed to the agreed financial provisions, eg during the legislation's passage through Parliament.

A.2.2.2 Departments should make sure that they achieve Treasury agreement early in the process and in any event before drafting instructions to Parliamentary Counsel are prepared.

Treasury consent

A.2.2.3 All legislation with a financial dimension should provide for specific Treasury consents to any key changes in the implementation of the powers it contains. Examples of such triggers, all requiring ministerial decisions, are in box A.2.2A. Treasury consent is required to protect the authority of the Chancellor of the Exchequer in matters of finance or establishment.

A.2.2.4 In principle, the Chancellor's authority is protected by:

- the doctrine of the collective responsibility of ministers;
- the need for Treasury approval of Estimates before they are presented to Parliament; and
- the need for most resource accounts to gain Treasury approval before resources consumed or expenditure incurred can be charged on the Consolidated Fund;

but providing for statutory consent avoids any danger that the Chancellor might be committed to legislation he or she would not have agreed.

box A.2.2A examples of legislation which require explicit Treasury approval

expenditure met from the Consolidated Fund (CF):

- as a direct charge (a Consolidated Fund standing service), or
- indirectly, ie “out of monies to be provided by Parliament” (through Estimates):
 - expenditure proposals affecting public expenditure as defined in the current public expenditure planning total, eg rates of grant
 - contingent liabilities, including powers to issue indemnities or to give guarantees
 - loans taken from the National Loans Fund (NLF)
 - provisions for writing off NLF debt
 - use of public dividend capital (PDC)
 - provisions involving the assets and liabilities of the CF and NLF
 - borrowing powers
 - fees and charges, including changes in level and coverage
 - the form of government accounts and associated audit requirements
 - public service manpower
 - pay and conditions (eg superannuation and early severance terms) of civil servants
 - pay and conditions of board members of statutory organisations
 - creation of (or alteration to) new statutory bodies and related financial arrangements
 - provisions affecting grant recipients, including grants in aid
 - provisions on audit – usually giving the C&AG right of access

Money resolutions

A.2.2.5 A money resolution is required¹¹ for legislation which creates a charge upon public funds, either by way of new resource expenditure or by remission of debt. Further advice on money resolutions should be sought from Parliamentary Clerks.

A.2.2.6 The responsible department should clear the draft with the Treasury at official level. When agreed, the Treasury will arrange for a copy initialled by the Financial Secretary to be returned to Counsel.

Ways and Means resolutions

A.2.2.7 A ways and means resolution is required in the House of Commons where legislation directs the payment of money raised from the public to the Consolidated Fund (this technically constitutes the raising of money for the Crown to spend). Some legislation may require both a money resolution and a ways and means resolution.

¹¹ By virtue of Standing Order 49 of the House of Commons

A.2.2.8 Departments should clear ways and means resolutions with the Treasury. Further advice should be sought from Parliamentary Clerks.

Explanatory Notes

A.2.2.9 Except for finance, consolidation and tax law rewrite bills, departments should prepare explanatory notes for all government bills. The main items to be covered are set out in box A.2.2B. Guidance on preparation is at www.cabinet-office.gov.uk/parliamentary-counsel.

box A.2.2B legislation authorising expenditure: explanatory notes

1. financial effects of the legislation:
 - estimates of expenditure expected to fall on
 - the Consolidated Fund (CF), distinguishing between Consolidated Fund standing services and charges to be met from Supply Estimates; or
 - the National Loans Fund (NLF)
 - estimates of any other financial consequences for total public expenditure (i.e. in addition to costs which would fall on the CF or NLF) as defined in the current public-expenditure planning total;
 - estimates of any effects on local government expenditure
2. effects of the legislation on public service manpower:
 - forecasts of any changes (or postponement of changes) to staff numbers in government departments expected to result from the legislation;
 - forecasts of the likely effects to other public service manpower levels, for example in non-departmental public bodies (NDPBs) and local authorities.

A.2.2.10 Explanatory notes must be ready in time for the introduction of each bill. Any containing details of financial or manpower effects must be cleared with the Treasury, before the responsible department sends it to Parliamentary Counsel.

Consultation with others

A.2.2.11 Departments should also clear any legislation which has implications for audit by the C&AG with the National Audit Office (NAO). It is usual to provide that the C&AG has rights of inspection and access so that he or she can carry out value for money examinations.

A.2.2.12 Departments should also consult the Paymaster General (via HMRC) about any new legislation that may have tax implications (eg the legislation creates taxable bodies, transfers assets to new bodies or make changes to other legislation which affects tax treatment).

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ANNEX 2.3

TREASURY APPROVAL OF EXPENDITURE

This annex expands on the requirement for departments to obtain Treasury consent to their public expenditure. It includes advice on delegated authorities.

A.2.3.1 The requirement for Treasury approval for expenditure is one aspect of the long-standing convention that Parliament expects the Treasury to control all other departments in matters of finance and public expenditure. Accounting Officers are responsible (see first bullet of paragraph 3.3) for ensuring that prior Treasury approval is obtained in all cases where it is needed.

A.2.3.2 The need for Treasury approval embraces all the ways in which departments might make public commitments to expenditure, not just Estimates or legislation, important as they are. Box A2.3A identifies the main ways in which the need can arise. It may not be exhaustive.

box A.2.3A where Treasury approval is required

- Treasury agreement is needed for public statements or other commitments to use of public resources beyond the agreed budget plans
- guarantees, indemnities or letters of comfort creating contingent liabilities require Treasury agreement as if they were expenditure
- Treasury approval is required for any proposals outside the department's delegated limits
- all expenditure which is novel, contentious or repercussive, irrespective of size, requires Treasury approval even if it appears to offer value for money taken in isolation
- where Treasury approval has been overlooked, the case should immediately be brought to the Treasury's attention.

A.2.3.3 Treasury approval:

- must be confirmed in writing, even where initially given orally;
- cannot be implied in the absence of a reply;
- must be sought in good time to allow reasonable consideration before decisions are required.

Departmental ministers should be made aware when Treasury consent is required in addition to their own.

Delegation

A.2.3.4 Formally, Treasury consent is required for all expenditure or resource commitments. In practice, the Treasury delegates to departments authority to enter into commitments and to spend within predefined limits without specific prior approval from the Treasury (but see A.2.3.9 for exceptions). Delegated authorities may also allow departments to enter into commitments to spend (eg contingent liabilities) and to deal with special transactions (such as some write-offs) without prior approval.

A.2.3.5 Delegated authorities must strike a balance between the Treasury's need for control in order to fulfil its responsibilities to Parliament and the department's freedom to manage within its agreed budget limits and Parliamentary provision.

A.2.3.6 Departments should not take general Treasury approval of an Estimate as approval for specific proposals outside delegated limits even if provision for them is included in the Estimate.

Setting delegated authorities

A.2.3.7 The standard items for inclusion in delegated authorities are set out in box A.2.3B. It is best to set these out in a single document. Departments should appreciate that delegated authorities for certain kinds of expenditure can be modified or removed entirely if the Treasury is not satisfied that the department is using them responsibly.

A.2.3.8 In establishing delegated authorities, the Treasury will:

- agree with the department how it will take spending decisions (e.g. criteria and/or techniques for investment appraisal, project management and later evaluation);
- establish a mechanism for checking the quality of the department's decision-taking (e.g. by reviewing cases above a specified limit, or giving full delegation but requiring a schedule of completed cases of which a sample may be examined subsequently); and
- encourage delegation of authority within the department to promote effective financial management. In general, authority should be delegated to the point where decisions can be taken most efficiently. It is for the Accounting Officer to determine how authority should be delegated to individual managers.

box A.2.3B standard terms for delegated authorities

- a clear description of each item delegated
- the extent of each delegation, usually in financial terms, but potentially also in qualitative terms, eg all items of a certain kind to require approval
- any relevant authorities, eg the enabling legislation or letter from a Treasury minister
- the relevant budget provision
- the relevant part of the department's RfR
- any effective dates
- arrangements for review.

A.2.3.9 In turn departments should agree delegated authorities with their arm's length bodies. In some cases express Treasury agreement may be required for some of their expenditure, eg very large projects.

A.2.3.10 There are some areas of expenditure and resource commitments which the Treasury cannot delegate: see box A.2.3C.

box A.2.3C where authority is never delegated

- items which are novel, contentious or repercussive, even if within delegated limits
- items which could exceed the agreed budget and Estimate limits
- contractual commitments to significant spending in future years for which plans have not been set
- items requiring primary legislation (eg to write off NLF debt or PDC)
- any item which could set a potentially expensive precedent

A.2.3.11 Strictly, the Treasury cannot delegate its power of approval where there is a statutory requirement for Treasury approval. But in practice it can be acceptable to set detailed and objective criteria where Treasury approval can be deemed without specific examination of each case. This may be appropriate to avoid a great deal of detailed case-by-case assessment. The Treasury may ask for intermittent sampling to check that this arrangement is operating satisfactorily.

Failure to obtain Treasury authority

A.2.3.12 All expenditure which falls outside a department's delegated authority and has not been approved by the Treasury, is **irregular**. It cannot be charged to departmental RfRs or Funds. Similarly, any resources committed or expenditure incurred in breach of a condition attached to Treasury approval is irregular.

A.2.3.13 Where resource consumption or expenditure is **irregular**, the Treasury may be prepared to give retrospective approval if it is satisfied that:

- it would have granted approval had it been approached properly in the first place; and
- the department is taking steps to ensure that there is no recurrence.

A.2.3.14 If the Treasury does not give retrospective approval or authorise write-off of irregular expenditure, the department must inform the NAO. The Treasury may also draw the matter to the attention of the responsible Accounting Officer. The C&AG may then qualify his or her opinion on the account and the PAC may decide to hold an oral hearing. In the case of voted expenditure, the Treasury will present an excess vote to Parliament to regularise the situation.

A.2.3.15 It is **illegal** to commit resources or incur expenditure without Treasury consent, where such consent is required by statute. In such cases retrospective consent cannot confer legality. Such consumption cannot, therefore, be regularised.

A.2.3.16 In cases of illegal expenditure, the responsible Accounting Officer must note the department's resource account accordingly and notify the NAO. It will then be for the C&AG to decide whether to report on the matter to Parliament with the relevant account and whether to draw it to the attention of the PAC.

A.2.3.17 The C&AG and the Treasury cooperate closely on questions of authority for expenditure. The C&AG may bring a department's attention to any cases where the department:

- has ignored or wrongly interpreted a Treasury ruling;

- is attempting to rely on a mistaken delegated authority, eg where the delegation has been changed or where consent was given orally only;
- has committed resources or incurred expenditure which the Treasury might not have approved had it been consulted.

A.2.3.18 Departments should bring such cases to the attention of the Treasury, indicating clearly the NAO interest. The Treasury and NAO keep each other in touch with such cases.

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ANNEX 2.4

THE SEVEN PRINCIPLES OF PUBLIC LIFE

These standards, known as the Nolan principles, should apply to all in the public service.

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

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ANNEX 2.5 NEW SERVICES

Chapter 2 outlines how public spending is authorised by Parliament, controlled by the Treasury, and accounted for in public. This annex expands on how departments can, in certain circumstances, undertake expenditure or commit resources in advance of the enactment of specific legislation.

A.2.5.1 New services are activities or services which Parliament has not yet authorised, either:

- specifically by way of enabling legislation;
- through the Supply procedure, in cases where it is legitimate to rest resource consumption or expenditure on the sole authority of the Appropriation Act (see chapter 2.3); or
- existing services which are to be carried out in a different way from that which Parliament has approved, or where additional legislation is to be enacted. For example, the union of the tax departments into HMRC was a new service until completion of the passage of the Commissioners for Revenue and Customs Act 2005.

In case of doubt, departments should always consult the Treasury for a definitive view.

A.2.5.2 Departments must only consume resources or incur expenditure on work that is part of the new service once the specific legislation has been enacted and provision has been made in Estimates for the new service.

When new services require specific statutory authority

A.2.5.3 Normally departments do not seek provision for new services in Estimates until the relevant enabling legislation has received royal assent. Departments should therefore take account of the Parliamentary timetable in planning legislation; and particularly in planning the start date of any new body created by it. They should also plan to meet the criteria for public appointments in the Commissioner for Public Appointments' Code of Practice (www.ocpa.gov.uk/the_code_of_practice.aspx) before making public commitments about the timetable for implementation.

Expenditure that can be incurred before Royal Assent?

A.2.5.4 Some preliminary steps are usually required before implementation of a new service can begin. Use of resources or expenditure on preliminary work for a new service need not depend on the enactment of legislation and may be met out of existing funds. Such use must, however, have cover in the ambit of the Estimate (see paragraph 3.9 of the Estimates Manual www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf). Some examples are given in box A.2.5A. The list is not exhaustive.

box A.2.5A expenditure that can be incurred before royal assent

- pilot studies informing the choice of the policy option (because this process is part of designing, modifying or even deciding to abandon the policy);
- scoping studies designed to identify in detail the implications of a proposal in terms of staff numbers, accommodation costs and other expenditure to inform the legislative process;
- in-house project teams and/or project management boards;
- use of private sector consultants to help identify the chosen policy option, assist with scoping studies or other work informing the legislative process;
- work on the legislative process associated with the new service.

A2.5.5 However, if preliminary work might last more than two years, separate statutory authority may be required. Departments should seek Treasury guidance in cases of doubt.

Expenditure that cannot be incurred before royal assent

A2.5.6 Expenditure which is likely to be nugatory or not cost-effective if the legislation for the new service fails should not be incurred prior to royal assent. Examples are in box A.2.5B. The touchstone is value for money. The process for authorising expenditure on exceptional spending outside these rules is set out below.

box A.2.5B expenditure not normally incurred before royal assent

- recruitment of chief executives and board members of a new body;
- recruitment of staff for a new body;
- significant work associated with preparing for or implementing the new task eg renting offices or designing or purchasing significant IT equipment.

How to fund preparatory work before royal assent

Paving bill

A2.5.7 If, exceptionally, the preparatory work on a particular policy development is so urgent that it cannot wait until royal assent, the department responsible should consider taking a short paving bill.

A2.5.8 Depending on the context, a paving bill can provide powers to allow expenditure which would be nugatory if the subsequent detailed legislation for the new service did not proceed, eg employing consultants to design a significant IT or regulatory system. Such bills are usually short, though they may be contentious (and time consuming) as they can give rise to discussion of the underlying principles. Departments' parliamentary clerks can help with guidance on the preparation of bills and the legislative process.

Access to the Contingencies Fund

A2.5.9 In exceptional cases, where expenditure is deemed to be urgent, it may be possible to borrow from the Contingencies Fund to finance expenditure on a new service before legislation comes into force (see section 2.4). The legislation must have passed second

reading in the House of Commons. Treasury agreement is essential and cannot be taken for granted.

A2.5.10 To obtain a Contingencies Fund advance, the proposal must pass the following tests:

- genuine urgency in the public interest: where it is inappropriate to postpone the expenditure until the necessary funds have been voted. Mere convenience is not enough; and
- near certainty that the bill will become law: successful passage of the second reading in the House of Commons is essential but may not be sufficient, eg if there is doubt about the assent of the Lords or risk of an early general election.

The department responsible must explain clearly to Parliament what is taking place, why, and by when matters should be placed on a normal footing.

A2.5.11 If a Contingencies Fund advance is sought to finance a new public sector body being set up under new legislation, senior appointments should normally wait until the legislation has received royal assent. However, in exceptional circumstances, and only with the approval of the Treasury, such appointments may be made after completion of second reading in the House of Commons. They will require a Contingencies Fund advance; and the people appointed must be clear that if for any reason the legislation fails, the appointments would have to be cancelled.

A2.5.12 Procedures for applying for a Contingencies Fund advance are in Section 5.B of the the Estimates Manual (www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf).

New services introduced through secondary legislation

A2.5.13 Where a service comes into final force through secondary legislation, the department may not normally incur expenditure on that function until the secondary legislation is passed. It may, however, include an appropriate form of words in the ambit of its Estimate and so seek Estimate cover so that expenditure may be incurred immediately the legislation is passed (see the Estimates Manual for further details).

A2.5.14 The remainder of this annex sets out some possible easements.

New services and the sole authority of the Appropriation Act

A2.5.15 As outlined in sections 2.3 and 2.4, in certain limited circumstances departments may obtain authorisation for their planned expenditure by relying entirely on the authority of the Appropriation Act, rather than through specific empowering legislation. Parliament is routinely prepared to authorise certain expenditure through an Appropriation Act alone, subject to the conditions:

- the expenditure is no more than £1.5m a year; or
- it is expected to last for no more than two years, eg to finance a pilot study;

and

- any existing explicit statutory limits are respected;

- no specific legislation on the matter in question is before Parliament.

Treasury approval is always required.

Using public resources ahead of royal assent

A2.5.16 In exceptional circumstances, and with Treasury consent, the Appropriation Act may be relied upon as the sole authority for expenditure or other use of resources before the specific legislation has completed its passage in Parliament. The conditions are:

- the proposed expenditure must be genuinely urgent and in the public interest;
- Parliament must have been made aware of the intended steps in appropriate detail when relevant previous legislative steps were taken;
- the planned legislation must be certain, or virtually certain, to pass into law in the near future, and usually within the financial year.

A2.5.17 Subject to Treasury agreement, this procedure may be used, for instance, if:

- a bill has achieved second reading in the House of Commons and it would be efficient to prepare steps to implement the main provisions;
- a bill has been enacted but activating secondary legislation is not yet complete.

A2.5.18 If this procedure is to be used, it is vital that the remaining steps to full specific legislation are imminent, are not expected to be controversial, and that Parliament has already been given at least an outline of the outstanding legislation in a way which allowed meaningful opportunities for possible objections to be discussed. A Contingencies Fund advance is normally required.

A2.5.19 If this device is used, it is essential to inform Parliament of what is intended, setting out the reason(s) for the urgency, how quickly the position will be placed on a regular footing, and which Estimate(s) will be used. The Estimate(s) themselves should be noted to explain why, exceptionally, the authority of the Appropriation Act alone is proposed pending full passage of the legislation.

A ANNEX 4.I FINANCE DIRECTORS

It is government policy that all departments should have professional finance directors reporting to the permanent secretary with a seat on the departmental board, at a level equivalent to other board members. It is good practice for all other public sector organisations to do the same, and to operate to the same standards. This annex sets out the main duties and responsibilities of finance directors.

The finance function

A.4.I.1 In line with the *Corporate Governance Code* (www.hm-treasury.gov.uk/public_spending_reporting/governance_risk/psr_governance_corporate.cfm), the finance director of a public sector organisation should:

- be a professional Finance Director¹²;
- have board status equivalent to other board members;
- report directly to the permanent head of the organisation;
- be a member of the senior leadership team, the management board and the executive committee (and/or equivalent bodies).

A.4.I.2 This demanding leadership role requires a persuasive and confident communicator with the stature and credibility to command respect and influence at all levels through the organisation. Its main features are described in box A.4.IA. Many of the day-to-day responsibilities may in practice be delegated, but the finance director should maintain oversight and control. In large part these duties consist of ensuring that the financial aspects of the Accounting Officer's responsibilities are carried through to the organisation and its arm's length bodies (ALBs) in depth.

A.4.I.3 The finance function should maintain a firm grasp of the organisation's financial position and performance. The finance director should ensure that there is sufficient expertise in depth, supported by effective systems, to discharge this responsibility and challenge those responsible for the organisation's activities to account for their financial performance. It is important that financial management is taken seriously throughout each public sector organisation.

¹² The term professional finance director in this context means *both* being a qualified member of one of the six bodies comprising the Consultative Committee of Accounting Bodies (CCAB) in the UK and Ireland, ie the Chartered Institute of Public Finance and Accountancy, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland, the Chartered Institute of Management Accountants, the Association of Chartered Certified Accountants, or having equivalent professional skills and/or qualifications; *and* having relevant prior experience of financial management in either the private or the public sector. Note these are the same professional bodies that the local government sector recognises in the appointment of their finance directors as required under the 1988 Local Government Finance Act.

box A.4.1A the role of the finance director**governance**

- financial leadership, both within the organisation and to its ALBs, at both a strategic and operational level
- ensuring sound and appropriate financial governance and risk management
- leading, motivating and developing the finance function, establishing its full commercial contribution to the business
- planning and delivering the financial framework agreed with the Treasury or sponsoring organisation against the defined strategic and operational criteria
- challenging and supporting decision makers, especially on affordability and value for money, by ensuring policy and operational proposals with a significant financial implication are signed-off by the finance function

internal controls

- co-ordinating the planning and budgeting processes
- applying discipline in financial management, including managing banking, debt and cash flow, with appropriate segregation of duties
- preparation of timely monthly management accounts
- ensuring that delegated financial authorities are respected
- selection, planning and oversight of any capital projects
- ensuring efficiency and value for money in the organisation's activities
- provision of information and advice to the Audit Committee
- leading or promoting change programmes both within the organisation and its ALBs

external links

- preparing Estimates, resource accounts and consolidation data for whole of government accounts
- liaison with the external auditor
- liaison with PAC and the relevant Select Committee(s)

Financial leadership

A4.1.4 The finance director is responsible for leadership of financial responsibilities within the organisation and its ALBs. He or she should ensure that the information on which decisions about the use of resources are based is reliable. Box A.4.2B explains some specific responsibilities of the role.

box A.4.1B financial management leadership

- providing professional advice and meaningful financial analysis enabling decision makers to take timely and informed business decisions
- maintaining a long term financial strategy to underpin the organisation's financial viability within the agreed framework
- developing and maintaining an effective resource allocation model to optimise outputs
- ensuring financial probity, regularity and value for money
- developing and maintaining appropriate asset management and procurement strategies
- reporting accurate and meaningful financial information about the organisation's performance to ONS, Parliament, the Treasury and the general public
- setting the strategic direction for any commercial activities
- acting as head of profession in the organisation

Internal financial discipline

A.4.1.5 The finance director should maintain strong and effective policies to control and manage use of resources in the organisation's activities. This includes improving the financial literacy of budget holders in the organisation. Similarly, he or she should ensure that there are similar disciplines in the organisation's ALBs. These should all draw on best practice in accounting and respect the Treasury's requirements, including, where relevant, accounts directions. These responsibilities are described in box A.4.1C.

box A.4.1C financial control

- enforcing financial compliance across the organisation while guarding against fraud and delivering continuous improvement in financial control
- applying strong internal controls in all areas of financial management, risk management and asset control
- establishing budgets, financial targets and performance indicators to help assess delivery
- reporting performance of both the organisation and its ALBs to the board, the Treasury and other parties as required
- value management of long term commercial contracts
- ensuring that the organisation's capital projects are chosen after appropriate value for money analysis and evaluation using the Green Book

A.4.1.6 Individual finance director posts will of course have duties specific to their organisations and contexts in addition to those delineated in this annex. But all finance director posts should seek to operate to these standards as an essential minimum.

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A ANNEX 4.2

THE CIVIL SERVICE CODE

The Civil Service Code sets out the framework within which all civil servants work, and the core values and standards they are expected to uphold. The new Civil Service Code issued on 6 June 2006 forms part of the terms and conditions of employment of every civil servant.

Civil Service values

1 The Civil Service is an integral and key part of the government of the United Kingdom¹³. It supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament¹⁴.

2 As a civil servant you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality. In this Code:

- 'integrity' is putting the obligations of public service above your own personal interests;
- 'honesty' is being truthful and open;
- 'objectivity' is basing your advice and decisions on rigorous analysis of the evidence; and
- 'impartiality' is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

3 These core values support good government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.

4 This Code¹⁵ sets out the standards of behaviour expected of you and all other civil servants. These are based on the core values. Individual departments may also have their own separate mission and values statements based on the core values, including the standards of behaviour expected of you when you deal with your colleagues.

Standards of behaviour

Integrity

5 You must:

- fulfil your duties and obligations responsibly;
- always act in a way that is professional¹⁶ and that deserves and retains the confidence of all those with whom you have dealings;

¹³ This Code applies to all Home civil servants. Those working in the Scottish Executive and the National Assembly for Wales, and their Agencies, have their own versions of the Code. Similar Codes apply to the Northern Ireland Civil Service and the Diplomatic Service.

¹⁴ Constitutionally, civil servants are servants of the Crown. The Crown's executive powers are exercised by the Government.

¹⁵ The respective responsibilities placed on Ministers and special advisers in relation to the Civil Service are set out in their Codes of Conduct: www.cabinetoffice.gov.uk/propriety_and_ethics

¹⁶ Including taking account of ethical standards governing particular professions.

- make sure public money and other resources are used properly and efficiently;
- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability;
- handle information as openly as possible within the legal framework; and comply with the law and uphold the administration of justice.

6 You must not:

- misuse your official position, for example by using information acquired in the course of your official duties to further your private interests or those of others;
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity; or
- disclose official information without authority. This duty continues to apply after leaving the Civil Service.

Honesty**7 You must:**

- set out the facts and relevant issues truthfully, and correct any errors as soon as possible; and
- use resources only for the authorised public purposes for which they are provided.

8 You must not:

- deceive or knowingly mislead Ministers, Parliament or others; or
- be influenced by improper pressures from others or the prospect of personal gain.

Objectivity**9 You must:**

- provide information and advice, including advice to Ministers, on the basis of the evidence, and
- accurately present the options and facts; take decisions on the merits of the case; and
- take due account of expert and professional advice.

10 You must not:

- ignore inconvenient facts or relevant considerations when providing advice or making decisions; or
- frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.

Impartiality**II You must:**

- carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.

I2 You must not:

- act in a way that unjustifiably favours or discriminates against particular individuals or interests.

Political impartiality

I3 You must:

- serve the Government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this Code, no matter what your own political beliefs are;
- act in a way which deserves and retains the confidence of Ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future Government; and
- comply with any restrictions that have been laid down on your political activities.

I4 You must not:

- act in a way that is determined by party political considerations, or use official resources for party political purposes; or
- allow your personal political views to determine any advice you give or your actions.

Rights and responsibilities

I5 Your department or agency has a duty to make you aware of this Code and its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.

I6 If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department's nominated officers who have been appointed to advise staff on the Code.

I7 If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain; alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate authorities.

I8 If you have raised a matter covered in paragraphs 15 to 17, in accordance with the relevant procedures¹⁷, and do not receive what you consider to be a reasonable response, you may report the matter to the Civil Service Commissioners¹⁸. The Commissioners will also consider taking a complaint direct.

¹⁷ The whistleblowing legislation (the Public Interest Disclosure Act 1998) may also apply in some circumstances. The Directory of Civil Service Guidance gives more information: www.cabinetoffice.gov.uk/propriety_and_ethics

¹⁸ The Civil Service Commissioners' Appeals leaflet gives more information: www.civilservicecommissioners.gov.uk. This Code does not cover HR management issues.

Their address is:
3rd Floor,
35 Great Smith Street,
London
SW1P 3BQ
Tel: 020 7276 2613
email: ocsc@civilservicecommissioners.gov.uk

19 If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.

20 This Code is part of the contractual relationship between you and your employer. It sets out the high standards of behaviour expected of you which follow from your position in public and national life as a civil servant. Civil servants can take pride in living up to these values.

Further details on the Civil Service Code are available at
<http://www.civilservice.gov.uk/publications/civilservicecode/index.asp> .

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ANNEX 4.3

PRINCIPLES OF GOOD ADMINISTRATION

The Ombudsman's Principles of Good Public Administration set out the standards against which services may be judged in the event of failure of delivery or complaint.

Principles of Good Administration

Good administration by a public body means:

- 1 Getting it right
 - Acting in accordance with the law and with due regard for the rights of those concerned.
 - Acting in accordance with the public body's policy and guidance (published or internal).
 - Taking proper account of established good practice.
 - Providing effective services, using appropriately trained and competent staff.
 - Taking reasonable decisions, based on all relevant considerations.
- 2 Being customer focused
 - Ensuring people can access services easily.
 - Informing customers what they can expect and what the public body expects of them.
 - Keeping to its commitments, including any published service standards.
 - Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
 - Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.
- 3 Being open and accountable
 - Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
 - Stating its criteria for decision making and giving reasons for decisions.
 - Handling information properly and appropriately.
 - Keeping proper and appropriate records.
 - Taking responsibility for its actions.
- 4 Acting fairly and proportionately
 - Treating people impartially, with respect and courtesy.
 - Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
 - Dealing with people and issues objectively and consistently.

- Ensuring that decisions and actions are proportionate, appropriate and fair.

5 Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6 Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate results in the circumstances. The Ombudsman will adopt a similar approach in deciding whether maladministration or service failure has occurred.

Further details on the Principles of Good Administration are available at www.ombudsman.org.uk/improving_services/good_administration/principles.html

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ANNEX 4.4 PROCUREMENT

It is important to secure value for money in asset management through sound procurement. Public sector organisations should normally acquire goods and services through fair and open competition, acting on OGC advice. This annex provides an overview of the policy framework for public procurement.

A.4.4.1 The government's procurement policy is to buy the goods, works and services that it needs under a fair and open procurement process, guarding against corruption and seeking to secure value for public funds with due regard to propriety and regularity. EU law and World Trade Organisation (WTO) agreements underpin these principles. The specific responsibilities of public sector organisations are set out in box A.4.4A.

box A.4.4A checklist of key purchasing responsibilities

General

- value for money, normally through competition
- compliance with legal obligations under EU rules and other international agreements
- follow OGC policies and standards on public procurement.

Management approach

- leadership on the importance of procurement in delivering objectives;
- define roles and responsibilities of key staff, with adequate separation of duties;
- promote awareness (including in ALBs) of the importance of procurement policy and the OGC guidance.

Planning and engagement

- consider market structure so as to attract and sustain a diverse supply base;
- clarify objectives of procurement from the start;
- design procurement strategy and engage with the market early;
- consult OGC on any difficult legal issues.

Skills

- use procurement professionals throughout;
- ensure that there is sufficient skills capacity in undertaking procurements and projects.

Review

- apply the OGC Gateway™ review process;
- comply with the procurement capability review process;
- draw issues which may have wider implications to OGC's attention.

A.4.4.2 This guidance is intended to be fully consistent with the UK's EU and international obligations. It does not create any rights or legal obligations.

Value for money

A4.4.3 Value for money is a key concept running through *MPM* (see paragraph 4.2.3). It means securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. It is not about minimising upfront prices. Whether in conventional procurement, market-testing, private finance or some other form of public private partnership, value for money will involve an appropriate allocation of risk.

A4.4.4 Purchasers need to develop clear strategies for continuing improvement in the procedures for acquisition of goods, works and services. Public sector organisations should collaborate with each other, following OGC guidance, in order to secure economies of scale, unless they can demonstrate that better value can be achieved in some other way.

Legal framework

A4.4.5 Public sector organisations are responsible for ensuring that they comply with the law on procurement (see box A.4.4B). EC Treaty principles apply to all procurement, and there are specific EU rules that apply to most contracts where the estimated value exceeds a specified threshold.

box A.4.4B the legal framework for public procurement

- EU procurement rules (the Treaty and procurement directives)
- international obligations, notably WTO agreements
- specific domestic legislation, including subordinate legislation implementing directives;
- contract and commercial law in general
- relevant European Court of Justice case law
- domestic case law

A4.4.6 In the event of infraction proceedings by the European Commission, however, OGC will coordinate the response under the arrangements set out in Cabinet Office guidance (*United Kingdom involvement in infraction proceedings and other EC litigation*). There are separate arrangements for cases involving devolved administrations.

The user's requirement

A4.4.7 Procurement should help deliver relevant departmental and government-wide strategies and policies. It is appropriate to outsource when the goods or services required cannot be provided in house or better value for money can be achieved through third party delivery. The procuring organisation should establish that the supply sought is really needed, is likely to be cost effective and affordable. And the published requirement should specify clearly what is required, since this is crucial to obtaining the supply required.

The procurement process

A4.4.8 Competition promotes economy, efficiency and effectiveness in public expenditure. Goods and services should be acquired through competition unless there are convincing reasons to the contrary. The form of competition chosen should be appropriate to the value and complexity of the goods or services to be acquired.

A.4.4.9 Public sector organisations should aim to treat suppliers responsibly (see box A.4.4C) to maintain good reputations as purchasers.

box A.4.4C relationships with suppliers

- high professional standards in the award of contracts
- clear procurement contact points
- adequate information for suppliers to respond to the bidding process
- the outcome of bids announced promptly (noting EU standards)
- feedback to winners and losers on request on the outcome of the bidding process
- high professional standards in the management of contracts
- prompt, courteous and efficient responses to suggestions, enquiries and complaints

A.4.4.10 In seeking bids, purchasers should:

- start with the user requirement;
- specify it clearly, bearing in mind that it cannot be extended (though it can be narrowed);
- to leave room for innovation, consider describing the requirement in terms of what is to be achieved rather than precisely how the outcome should be constituted;
- avoid specifying any bias directly or indirectly in favour of UK suppliers;
- set out how bids will be evaluated;
- keep the costs of the bidding process to the minimum necessary for effective competition;
- design a competition which will work for the widest range of sizes and kinds of firms, without discrimination;
- publish procurement and project timetables and stick to them;
- when advertising smaller value contracts that are below EU thresholds, consider using the Government's opportunities portal: www.supply2.gov.uk.

A.4.4.11 During the evaluation process, it is important for procuring organisations to:

- secure value for money (see box A.4.4D), using relevant and consistent criteria for evaluating the key factors (cost, size, sustainability, design etc);
- assess suppliers' economic and financial standing to gain confidence of their capacity to carry out what the purchaser requires and deliver value for money;
- establish the propriety of candidate suppliers – taking account of the requirement to exclude those convicted of eg fraud, theft, fraudulent trading or cheating HMRC.

box A.4.4D securing value for money

Cost: the key factor is whole life cost, not lowest purchase price. Whole life cost takes into account the cost over time, including capital, maintenance, management, operating and disposal costs. For complex procurements, whole-life cost can be very different from initial price.

Quality: paying more for higher quality may be justified if the whole life cost is better, eg taking into account maintenance costs, useful life and residual value. The purchaser should determine whether increased benefits justify higher costs.

Perspective: each public sector organisation's procurement strategies should seek to achieve the best value outcome for the public sector as a whole, not just for the organisation itself. This should be designed in before the invitation to tender is published.

Contracts

A4.4.12 In drawing up contracts, purchasers should, where possible:

- use model terms and conditions developed in the light of collective experience and which may help avoid prejudicing the position of others using the same supplier;
- avoid variation of price clauses in contracts of less than two years' duration; and
- Include prompt payment clauses.

A4.4.13 Purchasers cannot enter into contracts with other parts of the legal entity to which they belong. So different parts of the Crown cannot contract with each other. Instead internal agreements which fall short of being contracts are service level agreements. These may have all the hallmarks of contracts other than scope for legal enforcement. Since service level agreements between bodies which are not part of the Crown may be subject to the EU procurement rules, it is usually wise to take legal advice when entering into them.

Central purchasing bodies and agencies

A4.4.14 Unless service level agreements exist, central government bodies are not tied to central purchasing bodies or agencies. In seeking value for money, they may, however, choose to enter into contracts under framework agreements put into place by a central purchasing body, such as OGCbuying.solutions.

A4.4.15 If purchasers employ private sector agents to undertake procurement on their behalf they should:

- require compliance with EU rules
- ensure clear allocation of responsibilities; and
- where appropriate, obtain the agent's indemnity against any costs incurred as a result of its failure to comply with the legal framework on its behalf.

Taxation

A4.4.16 Central government bodies should:

- base procurement decisions independent of any tax advantages that may arise from a particular bid;

- restrict contractors' use of offshore jurisdictions, consistent with EU and other international obligations and the government's stated objectives on tax transparency and openness, to avoid harmful tax competition;
- employ internal management processes to ensure that transactions that give rise to questions of propriety of tax arrangements are brought to the Accounting Officer's or, if necessary, Ministers' attention.

A.4.4.17 In the case of bids under the Private Finance Initiative (PFI), it is particularly important to ensure that comparisons of competing bids take account of any tax planning by bidders. The *Green Book* provides for a tax adjusted Public Sector Comparator to allow for the (usually) material tax difference between PFI and the wholly public sector alternative. It would be inappropriate to apply this to bids where tax planning has cancelled out this effect.

A.4.4.18 Public procurement projects involving the transfer of real estate or assets that are likely to appreciate in value can often give rise to specific tax issues, in particular liability to capital gains tax. If public sector organisations are negotiating with bodies that wish to structure procurement proposals in this way, they should consult the Treasury and HMRC at an early stage to identify the likely tax implications and assess the proposal for propriety generally.

Further guidance

A.4.4.19 Central sources of guidance on procurement and related issues include:

- the OGC [www.ogc.gov.uk/procurement.asp]
- the Treasury [www.hm-treasury.gov.uk/]
- the Green Book on appraisal and evaluation in central government www.hm-treasury.gov.uk./Economic_Data_and_Tools/greenbook/data_greenbook_index.cfm;
- Cabinet Office on market-testing, contracting-out and better government [www.cabinetoffice.gov.uk/];
- DTI on state aid rules [www.dti.gov.uk/bbf/state-aid/];
- Central Office of Information on media requirements www.coi.gov.uk/services.php;
- Office of Fair Trading on cartels and bid-rigging [www.oft.gov.uk/advice_and_resources/small_businesses/competing/cartels];
- HMRC on tax avoidance issues [www.hmrc.gov.uk].

Guidance on the EU rules (available on the OGC website) is also published by the Commission, but public sector organisations are advised not to seek advice from the Commission without first consulting their own and their sponsor body's procurement units, who may, in turn, consult OGC.

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A ANNEX 4.5 INSURANCE

Central government organisations should not generally take out commercial insurance because it is better value for money for the taxpayer to cover its own risks. However, there are some circumstances where commercial insurance is appropriate. This annex sets out the issues to be considered. This guidance applies to departments and their arms-length bodies.

A.4.5.1 Central government organisations should not normally buy commercial insurance to protect against risk. Since the government can pool and spread its own risks, there is little need to pay the private sector to provide this service. In general it is cheaper for the government to cover its own risks.

A.4.5.2 However, in certain circumstances, as part of forming a risk management strategy, the Accounting Officer in a public sector organisation may choose to purchase commercial insurance to protect certain parts of the organisation's portfolio. Such decisions should always be made after cost benefit analysis in order to secure value for money. Some acceptable reasons for using insurance are set out in box A.4.5A.

box A.4.5A where commercial insurance may be justified

- **Building insurance as a condition of the lease** and where the lessor will not accept an indemnity: commercial insurance may be taken out where the cost of accommodation, together with the cost of insurance, is more cost effective than other accommodation options.
- **Overall site insurance:** private sector contractors and developers usually take out a single-site insurance policy because it is cheaper than each individual party insuring themselves separately. So a client organisation may be able to cover its risks at little or no extra cost.
- **Insurance of boilers and lifts:** which may be a condition of taking out the lease, and typically involves periodic expert inspection designed to reduce the risk of loss or damage.
- **Wider markets initiatives:** because these activities are outside the government's core responsibilities, losses on a department's discretionary commercial activities could reduce resources available for its core activities (see chapter 7). It will usually therefore make sense to insure them. Any goods used for services sold to other parts of central government should not, however, be insured.
- **Where commercial insurance is integral to a project:** eg, where private contractors insist, it may be appropriate to purchase insurance even if the net benefit is negative. But this may be a sign that the project needs restructuring to avoid any requirement to buy commercial insurance, perhaps through letters of comfort or statements of support. The costs and benefits of taking out insurance should be included in the appraisal of the project as a whole.

A.4.5.3 Some NDPBs may be in a slightly different position to central government departments. Box A.4.5B gives examples of some items they may choose to insure commercially.

box A.4.5B items NDPBs may insure

- items the NDPB is required to insure, eg vehicles where the Road Traffic Acts require it.
- goods where a cost benefit analysis supports the case for insurance and the sponsor department agrees.
- goods owned by NDPBs receiving less than 50% of their income from the Exchequer (through grant-in-aid or fees and charges). Commercial insurance protects the risk to the Exchequer from claims from third parties.
- items used by an NDPB for income generation schemes to supplement the approved level of public spending. Commercial insurance is appropriate to cover the risks lest costs or losses could not be met out of receipts.

Appraising the options

A4.5.4 Decisions on whether to buy insurance should be based on objective cost-benefit analysis, using guidance in the *Green Book* (www.hm-treasury.gov.uk/Economic_Data_and_Tools/greenbook/data_greenbook_index.cfm). Box A.4.5C outlines some factors which are often worth considering in such assessments.

box A.4.5C costs and benefits which could be included in assessments**Costs:**

- the insurance premium which may be paid
- the administrative cost of managing claims with the insurance company

Benefits:

- transfer of risk, valued at the expected compensation for the insured losses
- claims handling, where the insurance company will manage claims against third parties
- the value of guaranteed business recovery: the potential reduction in the time taken to reinstate losses, reducing business interruption

Setting fees and charges

A4.5.5 If a central government organisation insures risks arising in supplying a service for which a fee or charge is levied, the actual premium payments should be included in the calculation of costs when deciding the fee or charge. Similarly, where a central government organisation self-insures, the notional cost of premium payments should be taken into account. See Chapter 6.2 for further details.

Claims administration

A4.5.6 Managing claims against third parties can be time-consuming and require expert attention. Insurance companies may be better placed than public sector organisations to deal with claims economically and efficiently. So contracting-out claims administration to an insurance company might be more cost-effective than retaining the work in-house.

Reporting

A.4.5.7 Departments should inform their Treasury spending team of:

- any decision to use the services of commercial insurance companies
- any reviews of insurance, or alternatives to insurance, that might contain lessons of wider application .

A.4.5.8 In turn arm's length bodies should consult their sponsor departments in similar circumstances.

Dealing with losses

Uninsured losses (except traffic accidents)

A.4.5.9 Where a loss occurs or a third-party claim is received, public sector organisations should initially consider whether the loss should be made good or the claim accepted. Thus:

- **loss of or damage to assets:** the question of repair or replacement should always be carefully considered, taking account of the need for the asset and current policies. This decision is, in effect, a new investment decision and should be appraised accordingly.
- **third-party claims:** the justification for the claim should be carefully considered with appropriate legal advice.

A.4.5.10 If the organisation decides to repair or replace an asset, or meet a third party claim, it should normally expect to meet the cost from within its existing allocations. The Treasury does not routinely entertain bids for additional resources in such cases. If a bid did arise the Treasury would consider it on its merits and in the light of the resources available, in the same way as other bids for increases in provision. Similarly, arm's length bodies should not normally expect their sponsor departments to meet claims for reimbursement of loss.

Insured losses

A.4.5.11 Public sector organisations should make insurance claims in accordance with the terms of the policy.

A.4.5.12 Arm's length bodies may retain amounts paid under commercial insurance policies to meet expenditure resulting from losses or third-party claims. If it is decided not to replace or to repair an insured asset, the sponsor department may reduce any grant in aid payable to the ALB.

Claims between public sector organisations

A.4.5.13 If two uninsured departments are involved in an incident causing loss to one or other, it is immaterial to the Exchequer whether one claims on the other for the damage. To avoid the cost involved in preparing and settling small claims the rule is not to make interdepartmental adjustments in the case of damage to fixed or movable property where the damage is less than £10,000 in value in any one case. Similar waiver arrangements should apply up to mutually agreed limits between other public sector organisations. But waiver arrangements of this kind are not appropriate where there are rights of claim against third parties.

A.4.5.14 Box A.4.5D shows how to proceed when one central government organisation makes a larger claim against one or more others.

box A.4.5D handling claims between public sector organisations

insurance status	settlement of claims
All insured	Insurers settle claims
All uninsured	Organisation(s) at fault negotiate about whether to reimburse the other(s)
Organisation at fault uninsured, other organisation(s) insured	Insured organisation claims on its insurance policy. Uninsured organisation(s) deal with claims from the insurers on the basis of strict legal liability
Organisation at fault insured, other organisation(s) uninsured	Uninsured organisation(s) seek financial satisfaction through the insurers of the organisation(s) at fault

Vehicles

A.4.5.15 Most NDPBs insure third-party vehicle claims to comply with the Road Traffic Acts. Public sector organisations that are not insured for traffic accidents should refer any third-party claims, either for or against, to the Treasury Solicitor who acts on behalf of the government.

A.4.5.16 Many claims between public sector organisations involving damage to, or loss caused by, vehicles, can be handled using the arrangements in paragraph A.4.5.13.

A.4.5.17 Vehicles travelling in other EU countries must comply with Directives. These require vehicles of a member state operating in another's territory to be covered by insurance to the extent required by the legislation in territory of the journey, unless there are acceptable alternative arrangements, eg indemnities.

Loans

A.4.5.18 When government assets are loaned to a body other than a public sector organisation which does not insure, it is important to protect the interests of the lending organisation. So the borrower should insure against damage or loss of the assets from the time of receipt and against claims by third parties including its own employees. An indemnity by the borrowers is an acceptable substitute if the lender is satisfied that the borrower could and would meet any damage or other loss.

A.4.5.19 Public sector organisations are usually expected to meet the cost of insuring any government assets (eg. equipment or stores) held by a contractor in the normal course of business. The cost of any insurance against risks arising from negligence or wilful misconduct by the contractor's employees should be borne by the contractor. These arrangements should be explicitly set out in the relevant contract.

A.4.5.20 Public sector organisations which borrow objects of value from a non-government body should normally offer the owner an indemnity against damage or loss. Such indemnities should leave no doubt as to the extent and duration of the borrowing organisation's liability. And they may need to be reported if they fall within the Parliamentary reporting requirements (see annex 5.2).

A.4.5.21 Borrowers should only take out commercial insurance for loaned items of value if the owner insists upon it, or if the borrower has reason to believe that commercial insurance would be more cost effective than giving an indemnity.

Employers' liability

A.4.5.22 The Crown is not bound by the Employers' Liability (Compulsory Insurance) Act 1969. So departments need not insure the risks outlined in the Act. Decisions on whether to insure should be taken on value for money grounds after an appraisal.

A.4.5.23 Similarly, a body funded by grant in aid need not insure against employers' liability risks. This is because the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573) provide exemption for any body (or person who may be an employer) holding a certificate issued by a government department. Again, the decision on whether to insure will depend on a value for money assessment. If the organisation chooses not to insure, responsibility for the issue of certificates in accordance with the Act rests with the department responsible for paying grant in aid, provided that it is satisfied that this is the appropriate course.

A.4.5.24 The scope of the certificate should be strictly confined to the risks with which the Employers' Liability (Compulsory Insurance) Act 1969 is concerned, and may not be extended to any other risks. It should be in the form set out in Box A.4.5E below. Departments should ensure that the circumstances in which certificates have been issued are reviewed from time to time, so that certificates may be revoked if circumstances change.

box A.4.5E form of exemption certificate

In accordance with the provisions of paragraph 1 of Schedule 2 of the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573), the Minister of/Secretary of State for..... hereby certifies that any claim established against [here specify the body or person] in respect of any liability to [here specify the employees involved] of the kind mentioned in section 1(1) of the Employers' Liability (Compulsory Insurance) Act 1969 will, to any extent to which it is otherwise incapable of being satisfied by the aforementioned employer, be satisfied out of moneys provided by Parliament.

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A ANNEX 4.6

EXPENDITURE AND PAYMENTS

As part of the process of authorising and controlling commitments and expenditure of public funds, public sector organisations should time their expenditure and payments to provide good value for public money.

A.4.6.1 Public sector organisations should use good commercial practice in managing the flows of expenditure and commitments they deal with. Box 4.4 has some sound high level principles. These need to be interpreted in the context of each organisation's business, in line with current legislation and using modern commercial practice. The actual techniques used may thus change from time to time.

A.4.6.2 In particular, public sector organisations should:

- explain payment procedures to suppliers;
- agree payment terms at the outset and sticking to them;
- pay bills in accordance with agreed terms, or as required by law;
- tell suppliers without delay when an invoice is contested; and
- settle quickly when a contested invoice gets a satisfactory response.

A.4.6.3 In October 2008, the Government made a commitment to speed up the payments process. Public Sector Organisations should aim to pay suppliers wherever possible within 10 days. The principles in Box 4.4 must still be applied to all payments. Further guidance is available at www.berr.gov.uk.

A.4.6.4 Public sector organisations are also bound by The Late Payment of Commercial Debts (Interest) Act 1988 (as amended by The Late Payment of Commercial Debt Regulations 2002 (SI 1674). It provides a statutory right for suppliers to claim interest on late payments of commercial debt. Payment is regarded as late if made outside the agreed terms, or 30 days after receipt of a valid invoice where no terms are agreed. Public sector organisations should note any expenditure made outside these terms should be exceptional and noted in resource accounts.

Payments outside the normal pattern

A.4.6.5 It is not good value for money for public sector organisations to act as a source of finance to contractors who have access to other forms of loan finance. So advance payments to contractors (ie payments made before equivalent value is received in return) should be exceptional, and should only be considered if a good value for money case can be made for them, eg a price discount commensurate with the time value of the funds in question. Even then, as advance payments lead to higher Exchequer financing costs, such payments are novel and contentious and usually require specific Treasury approval.

A.4.6.6 Exceptions to these guidelines include:

- service and maintenance contracts which require payment when the contract commences, provided that the service is available and can be called on from the date of payment;

- payments for activities carried out by, or on behalf of a public sector funder, eg grant in aid to NDPBs or grants to small voluntary or community bodies where the recipient needs working capital to carry out the commitment for which the grant is paid; and
- minor services such as training courses, conference bookings or magazine subscriptions, where local discretion is acceptable;
- prepayments up to a modest limit agreed with the Treasury, where a value for money assessment demonstrates clear advantage in early payment.

A.4.6.7 Interim payments may have an element of prepayment and so public sector organisations should consider them carefully before agreeing to them. However, if they are genuinely linked to work completed or physical progress satisfactorily achieved, preferably as defined under a contract, they may represent acceptable value for public funds. Taking legal advice as necessary, organisations should, however, consider whether:

- the contractor's reduced need for working capital should be reflected in reduced prices;
- the contractor should provide a performance bond in the form of a bank guarantee to deal with possible breach of contract.

A.4.6.8 Public sector organisations should not, however, use interim payments to circumvent public spending controls. For example, it is not acceptable to make payments where value has not been received, simply to avoid underspending.

A.4.6.9 Deferred payments are generally not good practice. They normally mean paying more to compensate the contractor for higher financing costs and are thus poor value for money (at the margin the Exchequer can always borrow more cheaply than the private sector). So any proposal for deliberate late payment is potentially novel and contentious. Any department or NDPB considering deferred payments must thus seek Treasury approval before proceeding.

A ANNEX 4.7

FRAUD

Governance in public sector organisations includes arrangements for preventing, countering and dealing with fraud. This annex provides further detail.

A.4.7.1 Accounting Officers are responsible for managing public sector organisations' risks, including fraud. Each organisation faces a range of fraud risks specific to its business, from internal and external sources. The risk of a given fraud is usually measured by the probability of it occurring and its impact in monetary and reputational terms should it occur.

A.4.7.2 In broad terms, managing the risk of fraud involves:

- assessing the organisation's overall vulnerability to fraud;
- identifying the areas most vulnerable to fraud risk;
- evaluating the scale of fraud risk;
- responding to the fraud risk;
- measuring the effectiveness of the fraud risk strategy; and
- reporting fraud to the Treasury.

A.4.7.3 For guidance on all these areas, see *Managing the Risk of Fraud – a Guide for Managers*.

Assessing vulnerability to fraud

A.4.7.4 Each organisation should identify, itemise and assess how it might be vulnerable to fraud, covering the main risks in some detail.

Evaluating the scale of fraud risk

A.4.7.5 Each public sector organisation should evaluate the possible impact and likelihood of risks of the specific fraud risks it has identified. From this, each organisation should deduce a priority order for managing its fraud risks. This will inform decisions about the action to be taken to manage fraud risk effectively.

Responding to fraud risk

A.4.7.6 The organisation's response to fraud risk should be customised to the risks it faces. Typically it will involve some or all of the following:

- Developing a **Fraud Policy Statement** and **Fraud Response Plan** (two key documents that every organisation should have).
- Developing and promoting an anti-fraud culture. It may be helpful to give all staff a clear statement of commitment to ethical behaviour to promote awareness of fraud. Recruitment screening and maintaining good staff morale can also be important.
- Allocating responsibilities for the overall management of fraud risk and for the management of specific fraud risks so that these processes are integrated into management generally.

- Establishing cost-effective internal controls to detect and deter fraud, commensurate with the identified risks.
- Developing the skills and expertise to manage fraud risk effectively and to respond to fraud effectively when it arises.
- Establishing well publicised avenues for staff and members of the public to report their suspicions of fraud.
- Responding quickly and effectively to fraud when it arises using trained and experienced personnel to investigate.
- Establishing systems to monitor the progress of investigations.
- Using Internal Audit to track all fraud cases and drawing on their experience to strengthen control to prevent repetition.
- Taking appropriate action (criminal, disciplinary) against fraudsters and seeking to recover losses.
- Continuously evaluating the effectiveness of anti-fraud measures in reducing fraud.
- Working with stakeholders to tackle fraud through intelligence sharing, joint investigations, etc.

Measuring the effectiveness of the fraud risk strategy

A4.7.7 It is important to measure the effectiveness of actions taken to reduce the risk of fraud. Assurances about these measures can be obtained from Internal Audit, stewardship reporting, control risk self assessment, monitoring against any relevant targets or from other review bodies.

Reporting internal fraud to the Treasury

A4.7.8 Public sector organisations are required to submit an annual fraud return to the Treasury. The data supplied is used to produce the Government Annual Fraud report. The main aim of the report is to share information about fraud across government to increase awareness of fraud risk in certain areas.

A4.7.9 Public sector organisations should also provide the Assurance, Control and Risk (ACR) team in the Treasury with details, as quickly as possible, of any novel or unusual frauds (or attempted frauds) so that details can be shared more widely. Public sector organisations should also consider reporting frauds and suspected fraud to the NAO.

A ANNEX 4.8

ASSET MANAGEMENT

Each public sector organisation should develop and operate an asset management strategy (section 4.10). This important feature of the management of an organisation should be reviewed annually as part of the corporate or business plan.

A.4.8.1 Asset management is a key part of financial management and thus one of the responsibilities of the Accounting Officer in a public sector organisation (box 3.1). Each organisation should arrange for the efficient and effective use, maintenance, acquisition and disposal of the public sector assets under their control. So each needs to have a clear and full understanding of:

- the content of the current assets base;
- the assets needed to deliver efficient, cost effective public services; and
- what this means for acquisitions, disposals and maintenance.

A.4.8.2 Normally these responsibilities will be dispersed through organisations through a system of delegations with appropriate reporting arrangements. Similarly, departments should ensure that each of their sponsored bodies has equivalent arrangements. Managers in all public sector organisations should be fully aware of how their responsibilities fit within the organisation's corporate plan.

Asset registers

A.4.8.3 It is good practice for each organisation to draw up, and keep up to date, a register of all the assets it owns and uses. This will usually be needed for preparation of its accounts. It is also a good way of taking stock of the organisation's current position and planning change.

A.4.8.4 The assets on an organisation's register should include both tangible and intangible assets, covering both owned assets and assets under its legal control. The list in box A.4.7A gives the main groups but is not exhaustive. Each organisation should decide on a meaningful valuation threshold.

A.4.8.5 In drawing up the asset register, particular care should be taken with two sorts of asset:

- attractive items, such as works of art and items susceptible to theft. These may be included even if they are below the valuation threshold, in line with guidance provided by the Government Art Collection; and
- investments in the form of debentures and shares in commercial companies. These should be checked at least annually. Except for NDPBs, details of all share holdings should also be shown in section 2 of the Supplementary Statements to the Consolidated Fund and National Loans Fund Accounts.

box A.4.8A main categories of public sector assets

tangible assets	intangible assets
• land	• copyrights
• buildings	• Crown copyright
• leased fixed assets (PFI and non-PFI)	• trademarks
• raw materials	• franchises
• stocks and stores	• patents
• plant and machinery	• intellectual property rights
• equipment	• goodwill
• tools	• data and information,
• furniture and fittings	• knowledge and know-how
• assets under construction	• software licences
• donated physical assets	• shares and debentures in companies
• infrastructure assets	• public dividend capital
• heritage assets	• loans and deposits
• antiques and works of art	• other investments
• software developed in house	

Asset management plans

A.4.8.6 Each public sector organisation should complement its business plan with a clear view of the asset base needed to deliver its objectives. Their asset management strategies should then aim to attain, maintain and where appropriate evolve this asset pattern, over a period if change is envisaged. Box A.4.8B suggests some key steps. The estates manager, the finance director and the organisation's business planners should all be engaged in this process. The organisation's board should take stock of progress with delivering the plan from time to time, and at least annually.

Management of assets

A.4.8.7 Assets should be managed like other parts of organisations' business, with information systems to provide feedback on efficiency and value for money (box 4.2). Maintenance should be cost effective, designed to achieve and retain assets at a good standard, and taking steps to manage the risks of fraud and theft.

A.4.8.8 Most public sector organisations should respect OGC initiatives for the coordination and management of the assets of the civil estate:

- ePIMS (electronic Property Management Information System), which is a central database recording information on the civil estate;

- the Civil Estate Occupancy Agreement governing relationships among Crown bodies sharing accommodation. Volume 1 covers leasehold agreements, Volume 2 covers freehold and long leaseholds and Volume 3 covers Private Finance Initiative funded properties; and
- the Civil Estate Coordination Protocol which is designed to improve the planning, acquisition, management, rationalisation and disposal of property and other workspace on the civil estate.

A.4.8.9 Loans of assets should specify the terms of each loan, with conditions for return, liability, damage and charges for use.

box A4.8B steps for developing asset management plans

- Review the asset register to assess its adequacy for the organisation's objectives and functions.
- Plan how retained assets will be used efficiently for the organisation's core functions.
- Plan asset acquisitions, eg to extend, modify or replace the existing estate. Proposals to acquire land or buildings in London and the South East require the approval of the Chief Secretary to the Treasury— see OGC's website (www.ogc.gov.uk/documents/DAO0505SupplementaryGuidance.pdf).
- Identify disposals, and plan to use the proceeds. Once decided upon, disposals should be as swift as the market will allow with reasonable value for money. (Treasury approval is required if departments do not have Estimate cover for spending receipts; if or sponsored bodies want to retain receipts from disposal of assets purchased out of grants.)
- Consider whether any retained assets have potential to generate revenue through non-core activities using the wider markets approach (see annex 7.6).

Asset transfers between public sector organisations

A.4.8.10 Public sector organisations may transfer assets among themselves without placing the property on the open market, provided they do so at market prices. They should follow the guidelines in box A.4.8C.

A.4.8.11 Sometimes transfers of assets result from machinery of government changes. The relevant legislation (eg a transfer of functions order) should prescribe the terms of any such transfers. The organisations concerned should follow the guidance in the Estimates Manual (www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf).

A.4.8.12 To help public sector organisations identify assets for acquisition by others, they should record their surplus assets on the Register of Public Sector Lands (www.englishpartnerships.co.uk/rspsl.htm), maintained by English Partnerships. Leasehold property with less than 99 years outstanding is excluded.

A.4.8.13 Exceptionally, certain sales to the Homes and Communities Agency (HCA) (replacing English Partnerships) may include overage. The only circumstances in which overage is acceptable are where:

- HCA intends to sell the property to a private developer for housing development within two years;
- there is a realistic prospect that selling through HCA will improve the outcome for housing policy, eg by creating an aggregate site;

- the Accounting Officers of both the selling public sector organisation and HCA are convinced that, in this transaction, overage offers value for money for the public sector as a whole;
- the development gains is to be split equally between the selling organisation and HCA; and
- the Treasury agrees.

box A.4.8C protocol for transfers of assets

- Value assets at market prices using RICS' Red Book (www.rics.org/Property/Propertyappraisalandvaluation/red_book.htm).
- The organisations should work collaboratively on the transfer to agree a price. It is good practice to commission a single independent valuation to settle the price to be paid.
- The organisations should take legal advice, especially where sponsored organisations are involved as these may have specific legal requirements.
- There is no need for full investigation of legal title since full transfer is not always necessary because of the indivisibility of the Crown.
- The terms of transfer should not normally involve neither clawback (rights to share disposal proceeds) or overage (rights to share future profits on disposal) though see A.4.8.13.

Disposals

A.4.8.14 Public sector organisations should take professional advice when disposing of land and property assets. Some key guidelines are in box A4.8.8D. Further guidance is on the OGC website.

box A.4.8D protocol for disposals of land, property and other assets

- Value assets at market prices using RICS' Red Book (www.rics.org/Property/Propertyappraisalandvaluation/red_book.htm).
- Dispose of surplus land property within three years.
- Dispose of surplus residential property within six months.
- Sell plant, machinery, office equipment, furniture and consumable stores by public auction as seen; or by open tender. Obtain payment before releasing the goods.
- If an asset is sold or leased at a loss, the proceeds forgone (compared to market value) should be treated as a gift, and the routine in annex 4.12 should be followed.

A.4.8.15 Sometimes PFI projects involve disposals. Each such case should be evaluated as part of the PFI project, with due attention to the need to secure good value for money. Further guidance is an annex 7.5.

A.4.8.16 Public sector organisations which make grants to third parties for the acquisition of assets should normally include a clawback condition under which they can recoup the proceeds if the recipient of the grant later sells the asset. There is some scope for flexibility in this discipline: see annex 5.2.

A.4.8.17 Disposals to charities require particular care. Their trust deeds sometimes place restrictions on how they may use their assets. It is good practice to consider the possible disposal of assets by such recipients before making gifts to them.

Central asset registers

A.4.8.18 From time to time the Treasury gathers information in order to publish a National Assets Register. Central government organisations and NHS bodies should supply the information on their assets when requested.

A.4.8.19 Under Crown copyright policy, certain public sector organisations are required to supply details for the official bibliographic database. See annex 6.3 for further details.

Digest of guidance

Box A4.8E guidance specific to asset management**mandatory**

- High Performing Property – a routemap to Asset Management Excellence (OGC) www.ogc.gov.uk/better_asset_management_efficiency_in_property_asset_management.asp
- Common Minimum Standards - procurement of built environments in the public sector www.ogc.gov.uk/documents/Common_Minimum_Standards_PDF.pdf
- guidance on the Register of Surplus Public Sector Assets www.englishpartnerships.co.uk/rspsl.htm
- English Partnerships quality standards www.englishpartnerships.co.uk/qualitystandards.htm
- recording property details on OGC's ePIMS (electronic Property Information System) www.ogc.gov.uk/electronic_property_information_mapping_service.asp
- Treasury approval for substantial accommodation proposals in London and the South East; supplementary guidance www.ogc.gov.uk/documents/DAO505SupplementaryGuidance.pdf
- Sustainable Development on the Government Estate targets www.sustainable-development.gov.uk/government/estates/index.htm
- Civil Estate Occupancy Agreement (2006) - providing standard terms and conditions for terms of occupation www.ogc.gov.uk/high_performing_property_property_coordination.asp
- Civil Estate Coordination Protocol - coordinating property activities and events across the civil estate www.ogc.gov.uk/better_asset_management_property_coordination.asp
- recording details of Crown copyright on departments' Information Asset Registers (Annex 6.1)
- Crichel Down rules - offering land and property acquired by the public sector back to former owners – www.communities.gov.uk/publications/planningandbuilding/circularcompulsorypurchase2 .
- Disposal of Historic Buildings: Guidance Note for Government Departments and NDPBs http://www.culture.gov.uk/NR/rdonlyres/.../Disposal_Historic_report.pdf

recommended

- Towards Better Assets Management – A Report by Sir Michael Lyons (December 2004) www.hm-treasury.gov.uk./media/6/A/pbr04_lyonspas_complete_205.pdf ;
- disposals in PFI projects: Public Private Partnerships www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_guidance_index.cfm
- Guide to the Disposal of Surplus Assets http://www.ogc.gov.uk/..._disposal_of_surplus_property.asp
- Better Measurement, Better Management – effective management of the government estate www.ogc.gov.uk/better_asset_management_property_performance_measurement.asp
- Working without Walls www.ogc.gov.uk/government_relocation_transforming_workspace.asp

A ANNEX 4.9 STATE AIDS

While a great deal of public expenditure is not classified as State Aid, any funding favouring a particular company or sector could be subject to the EU rules and, in certain circumstances, require notification to the Commission.

A.4.9.1 Article 87 of the EU Treaty prohibits in principle any form of preferential government assistance – state aid - to commercial undertakings. The underlying concern is to prevent distortion of competition within the EU.

A.4.9.2 There is no precise definition of state aid. Article 87(1) (box A.4.9A) provides a statement of principle. Its battery of tests may need to be applied to a wide variety of policies since for these purposes commercial undertakings can include public organisations, charities and not-for-profit organisations if they engage in economic activities or compete with commercial organisations. And the Commission may judge that even small amounts of aid could distort competition. It is sometimes possible to escape the last test on tradable activity for very small scale and localised assistance.

box A.4.9A characteristics of state aids

- the aid is granted by a member state or through state resources (including eg lottery distributions and European funds)
- it favours certain commercial undertakings
- it distorts or threatens to distort competition
- the activity is tradable between Member States.

All four tests have to be met for the state aid rules to apply.

A.4.9.3 However, a measure meeting all the tests in box A4.9A is not automatically illegal. Article 87 sets out circumstances when State aid can be considered permissible – eg to encourage cultural and regional development. European Commission frameworks and guidelines enable Member States to target market failures in order to achieve desirable policy outcomes, eg to facilitate competitiveness through research spending, improve access to venture capital for small firms, support the environment, help provide access to training, or encourage regional development.

A.4.9.4 Before state aid can be given, the public organisation responsible should notify the Commission and obtain approval. This process can take 4-6 months, sometimes longer.

A.4.9.5 There is a range of cases where European block exemption regulations exempt member states from the notification process. For these, aid may not have to be notified in advance. These apply to aid to small firms, training aid and employment aid. As long as the aid meets the strict conditions set out in the regulations, member states simply have to inform the Commission and confirm compliance with the regulation within 20 days of implementing it, rather than going through the notification process.

A.4.9.6 There is also a de minimis regulation which allows member states to give small amounts of aid (200,000 euros over a three-year period) to any enterprise of any size (with certain restrictions) as long as a number of administrative procedures are completed.

A.4.9.7 When designing policies, it is wise to consider the question of whether the state aids rules are engaged early. This allows time to work out whether any exemptions may apply; or if necessary to seek Commission agreement. The sources in box A.4.9B are a good place to start. Depending on the context, it may be useful to consult BERR, Defra or DfT.

box A.4.9B further guidance

The DTI State Aid Unit website – www.berr.gov.uk/bbf/state-aid/

State aid approval process flowchart – www.berr.gov.uk/files/file32882.pdf

European Commission State aid website – www.ec.europa.eu/comm/competition/index_en.html

Email enquiries on State aid to sapu@berr.gsi.gov.uk

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ANNEX 4.10

LOSSES AND WRITE OFFS

This annex sets out what is expected when departments and NDPBs make losses or write off assets, including notifying Parliament. Some rules are specific to NDPBs.

A.4.10.1 As Parliament does not include advance provision for losses when voting money or passing specific legislation, such transactions are subject to greater control than other payments. Public sector organisations should only consider writing off losses after careful appraisal of the facts (including whether all reasonable action has been taken to effect recovery), and should be satisfied that there is no feasible alternative. In dealing with individual cases, departments must always consider the soundness of their control systems, the efficiency with which they have been operated, and take any necessary steps to put failings right.

Levels of delegation

A.4.10.2 Box A.4.10A groups losses into categories to help decide how individual cases should be handled and notified to Parliament. Departments have delegated authority to deal with all losses falling into group 1. The Treasury retains control over losses falling into group 2, subject to any specific delegation arrangements agreed bilaterally.

Consulting the Treasury

A.4.10.3 When departments identify losses and write-offs, they should consult the Treasury, irrespective of any delegated authorities or the amount of money concerned, if they:

- involve important questions of principle;
- raise doubts about the effectiveness of existing systems;
- contain lessons which might be of wider interest;
- are novel or contentious;
- might create a precedent for other departments in similar circumstances;
- arise because of obscure or ambiguous instructions issued centrally.

A.4.10.4 Similarly, NDPBs should consult their sponsor departments about similar cases. In turn departments may need to consult the Treasury.

A.4.10.5 Where losses do not fall into these categories but exceed the relevant delegated limit, departments also need to consult the Treasury, setting out the facts in box A.4.10B and seeking permission to write them off. If the Treasury is not satisfied that a case has been appropriately managed (including imposing financial penalties or disciplinary measures, as appropriate), it may withhold approval. The Treasury brings any such refusal to sanction write-off to the notice of the C&AG. The C&AG in turn notifies the PAC, who may call the Accounting Officer to justify and defend the department's actions in the case.

box A.4.10A Classification of losses

type	description	delegation group
A	Losses	
i.	cash losses: physical losses of cash and its equivalents (e.g. bank notes, credit cards, electronic transfers, payable orders)	1
ii.	bookkeeping losses: <ul style="list-style-type: none"> unvouched or incompletely vouched payments, including missing items charges to RfRs to clear inexplicable or erroneous debit balances 	1
iii.	exchange rate fluctuations: losses due to fluctuations in exchange rates or revaluations of currencies	1
iv.	losses of pay, allowances and superannuation benefits paid to civil servants, members of the armed forces and NDPB employees <ul style="list-style-type: none"> overpayments due to miscalculation, misinterpretation, or missing information unauthorised issues, e.g. inadmissible payments losses arising from other causes, e.g. non-disclosure of full facts by the beneficiary, short of proven fraud 	1 2
v.	losses arising from overpayments of social security benefits, grants, subsidies, etc. arising from miscalculation, misinterpretation or missing information	2
vi.	losses arising from failure to make adequate charges for the use of public property or services	2
B	losses of accountable stores	
i.	proven or suspected fraud, theft, arson or sabotage, or any other deliberate act (including repairable damage caused maliciously to buildings, stores, etc. even where a legal claim is not possible)	1
ii.	losses arising from other causes	1
C	fruitless payments and constructive losses	1
D	claims waived or abandoned	2

Notification to Parliament

A.4.10.6 Losses should be brought to Parliament's attention at the earliest opportunity, normally by noting the department's resource account, whether or not they may be reduced by subsequent recoveries. For serious losses, departments should also consider the case for a written statement to Parliament. Departments should not hesitate to notify Parliament of any losses which it would be proper to bring to their attention.

box A.4.10B Cases exceeding delegated limits

Departments should consult the Treasury as soon as possible, outlining:

- the nature of the case, the amount involved and the circumstances in which it arose;
- the reasons for the proposed write-off, including any legal advice;
- whether fraud (suspected or proven) is involved;
- whether the case resulted from dereliction of duty;
- whether failure of supervision is involved;
- whether appropriate legal and/or disciplinary action has been taken against those involved including supervisors, and, if not, why not;
- whether those primarily involved will be required to bear any part of the loss; and
- whether the investigation has shown any defects in the existing systems of control and,
- if so, what action will be taken.

Losses and claims records

A.4.10.7 Public sector organisations should maintain a record of losses, in which losses of all kinds should be recorded as soon as possible. The record should show:

- the nature, gross amount (or estimate where an accurate value is unavailable), and cause of each loss;
- the action taken, total recoveries and date of write-off where appropriate; and
- the resource account in which each loss is to be noted.

A.4.10.8 A losses statement is required in resource accounts where total losses exceed £250,000. Individual losses of more than £250,000 should be noted separately. Losses should be reported on an accruals basis.

A.4.10.9 Where efforts are still being made to secure recovery of cash losses formally written off, charged to the accounts and noted, public sector organisations should consider including them in a record of claims to ensure that recovery is not overlooked.

Accounting for cash losses

A.4.10.10 Cash losses should initially be accounted for as debtors in resource accounts pending recovery or write-off.

A.4.10.11 Once cash losses are definitely identified, they should be charged to the appropriate RfR subheads. Missing cash received as an appropriation in aid which was lost after receipt (but before being brought to account), should be charged as incidental expenses with a contra credit to appropriations in aid.

A.4.10.12 Where a cash loss is wholly or partly recovered by reducing the amounts of pay or pension¹⁹ which would otherwise be due, or under statutory or other specific powers²⁰, only the resulting outstanding balance is treated as a loss for writing-off. The sum(s) are charged to the relevant RfR as if they had been paid to the individual concerned who then used the money to pay the claim.

A.4.10.13 Similarly, where the loss is wholly or partly met by voluntary payments by the person responsible or by a payment from an insurance company or other non-public source, only the net loss is written off. If, however, there are no powers to apply the sums withheld by non-issue of pay etc, the gross amount of the loss is written off.

A.4.10.14 Generally, no note is necessary if the net loss is nil by the time the resource account is finalised. There may, however, be exceptions (eg losses arising from culpable causes) where the circumstances of the loss are such as to make it proper to bring them to the notice of Parliament by inclusion in the Losses Statement.

Stores losses

A.4.10.15 Stores losses are, in effect, money spent without the authority of Parliament. In establishing the amount of the loss, and hence whether the resource account should be noted, the net value of the loss after crediting any sums recovered will be the determining factor.

A.4.10.16 Losses of stores arising from culpable causes should be noted in departmental records, in accordance with normal practice. Such losses should also be noted in the resource account, to ensure that such losses are brought to the attention of Parliament in the appropriate manner, and to aid departmental management in managing and accounting for stores.

A.4.10.17 Where there is an identifiable claim against some person, the loss need not be noted immediately. However, if the department subsequently decides to waive the claim, or finds that it cannot be presented or enforced, the loss should be treated as an abandoned claim (see paragraph A.4.10.24) and noted accordingly.

A.4.10.18 Any loss recoverable from a third party, but in respect of which recovery is waived because of a knock for knock agreement, should be noted as a stores loss.

A.4.10.19 Where stores are to be written off, gifted, or transferred to other departments, they should be valued in accordance with the FReM, unless circumstances justify exceptional treatment, or other arrangements have been agreed²¹.

Fruitless payments

A.4.10.20 A fruitless payment is a payment which cannot be avoided because the recipient is entitled to it even though nothing of use to the department will be received in return. Some examples are in box A.4.10C.

A.4.10.21 As fruitless payments will be legally due to the recipient, they are not regarded as special payments. However, as due benefit has not been received in return, they should be treated as losses, and brought to the attention of Parliament in the same way as stores losses.

¹⁹ Tax must be deducted from pay or pension subject to PAYE withheld in settlement of a loss, to arrive at the amount attributed to debt repayment.

²⁰ For example, Queen's Regulations.

²¹ Stores held by the Ministry of Defence may be valued according to their estimated supply price.

box A.4.10C examples of fruitless payments

A **fruitless payment** is a payment for which liability ought not to have been incurred, or where the demand for the goods and services in question could have been cancelled in time to avoid liability, for example:

- forfeitures under contracts as a result of some error or negligence by the department;
- payment for travel tickets or hotel accommodation wrongly booked, or for goods wrongly ordered or accepted;
- the cost of rectifying design faults caused by a lack of diligence or defective professional practices; and
- extra costs arising from failure to allow for foreseeable changes in circumstances.

Constructive losses

A.4.10.22 A constructive loss is a similar form of payment, but one where procurement action itself caused the loss. For example, stores or services might be correctly ordered, delivered or provided, then paid for as correct; but later, perhaps because of a change of policy, they might prove not to be needed or to be less useful than when the order was placed.

A.4.10.23 Constructive losses need not be noted in the Losses Statement in the resource accounts unless they are significant.

Claims waived or abandoned

A.4.10.24 Losses may arise if claims are waived or abandoned because, though properly made, it is decided not to present or pursue them. Some examples are in box A4.10D.

box A.4.10D examples of waived and abandoned claims

- where it is decided to reduce the rate of interest on a loan, and therefore to waive the right to receive the amount of the reduction;
- claims actually made and then reduced in negotiations or for policy reasons;
- claims which a department intended to make, but which could not be enforced, or were never presented;
- failure to make claims or to pursue them to finality, e.g. owing to procedural delays allowing the Limitations Acts (annex 4.11.1) to become applicable;
- claims arising from actual or believed contractual or other legal obligations which are not met (whether or not pursued), e.g. under default or liquidated damages clauses of contracts;
- amounts by which claims are reduced by compositions in insolvency cases, or in out-of-court settlements, other than reductions arising from corrections of facts;
- claims dropped on legal advice, or because the amounts of liabilities could not be determined;
- remission of interest on voted loans.

A.4.10.25 The following should not be treated as claims waived or abandoned:

- any claims wrongly identified or presented, whether in error or otherwise. A claim should not, however, be regarded as withdrawn where there is doubt as to whether it would succeed if pursued in a court of law, or if the liability of the debtor has not or cannot be accurately assessed;
- waivers or remission of tax. HMRC have special rules about remissions of tax. Other departments should consult the Treasury about treatment when a case arises; or
- a claim for a refund of an overpayment which fails or is waived. This should be regarded as a cash loss.

A.4.10.26 Waivers should be noted in resource accounts in accordance with the FreM. In addition:

- a claim not presented should normally be noted at its original figure;
- where more than one department is involved, each should note its records to the extent of its interest, without attempting spurious accuracy.

A.4.10.27 There is no need to note resource accounts if claims between departments are waived or abandoned. These are domestic matters.

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ANNEX 4.II OVERPAYMENTS

This annex discusses how, and how far, public sector organisations should seek to recover overpayments – one case of special payments outside normal Parliamentary process (section 4.II). In difficult cases it is important to act on legal advice.

A.4.II.1 Even good payment systems sometimes go wrong. Most organisations responsible for making payments will sometimes discover that they have made overpayments in error.

A.4.II.2 In principle public sector organisations should always pursue recovery of overpayments, irrespective of how they came to be made. In practice, however, there will be both practical and legal limits to how cases should be handled. So each case should be dealt with on its merits. Some overpayment scenarios are outlined in box A.4.II.A.

box A.4.II.A possible reasons for overpayment

Contractors and suppliers

Overpayments in business transactions should always be pursued, irrespective of cause. It is acceptable to recover by abating future payments if this approach offers value for money and helps preserve goodwill. If the contractor resists, the overpaying organisation should consider taking legal action, taking account of the strength of the case, and of legal advice.

Grants and subsidies

Overpayments to persons or corporate bodies, should be treated as business transactions and a full refund sought. The overpaying organisation should ask recipients to acknowledge the amount of the debt in writing.

Pay, allowances, pensions

Overpayments to:

- civil servants
- members of the armed forces
- employees of NDPBs
- retired teachers and NHS employees
- and the dependants of any of these

should be pursued, taking proper account of how far recipients have acted in good faith. Similar cases should be treated consistently. After warning recipients, recovery through deduction from future salary or pension is often convenient. Legal advice is often wise to make sure that proper account has been taken of any valid defence against recovery recipients may have.

A4.11.3 When deciding on appropriate action, taking legal advice, organisations should consider:

- the type of overpayment;
- whether the recipient accepted the money in good or bad faith;
- the cost-effectiveness of recovery action;
- any relevant personal circumstances of the payee, including defences against recovery;
- the length of time since the payment in question was made; and
- the need to deal equitably with overpayments to a group of people in similar circumstances.

Payments made with Parliamentary authority

A4.11.4 Sometimes overpayments are made using specific legal powers but making mistakes of fact or law. These are legally recoverable, subject to the provisions of the Limitation Acts and other defences against recovery (see below). The presumption should always be that recovery should be pursued, irrespective of the circumstances in which it arose.

Good faith

A4.11.5 The decision on how far recovery of an overpayment should be pursued in a particular case will be influenced by whether the recipient has acted in good or bad faith:

- where recipients of overpayments have acted in good faith, eg genuinely believing that the payment was right, they may be able to use this as a defence (though good faith alone is not a sufficient defence);
- where recipients of overpayments have acted in bad faith, recovery of the full amount overpaid should always be sought.

A4.11.6 Recipients may be inferred to have acted in bad faith if they have wilfully suppressed material facts or otherwise failed to give timely, accurate and complete information affecting the amount payable. Other cases, eg those involving recipients' carelessness, may require judgement. And some cases may involve such obvious error, eg where an amount stated is very different from that paid, that no recipient could reasonably claim to have acted good faith.

A4.11.7 In forming a judgement about whether payments have been received in good faith, due allowance should be made for:

- the complexity of some entitlements, eg to pay or benefits;
- how far the payment depended on changes in the recipient's circumstances of which he or she was obliged to tell the payer;
- the extent to which generic information was readily available to help recipients understand what was likely to be due.

Fraud

A.4.11.8 If a public sector organisation is satisfied that the circumstances of an overpayment involved bad faith on the part of the recipient, it should automatically consider the possibility of fraud - in addition to recovery action. For example, the recipient may have dishonestly given false information or knowingly failed to disclose information. If there is evidence of fraudulent intent, prosecution or disciplinary action should be undertaken where appropriate and practicable. A criminal conviction in such a case will not eliminate the public debt which had resulted from the overpayment, and so recovery of the debt should also be pursued by any available means.

Cost-effectiveness

A.4.11.9 Public sector organisations should take decisions about their tactics in seeking recovery in particular cases on the strength of cost benefit analysis of the options. Decisions not to pursue recovery should be exceptional and taken only after careful appraisal of the relevant facts, taking into account the legal position. The option of abating future payments to the recipient should always be considered.

Defences against recovery

A.4.11.10 Defences which may be claimed against recovery include:

- the length of time since the overpayment was made;
- change of position;
- estoppel;
- good consideration;
- hardship.

Lapse of time

A.4.11.11 There can be time limitations on recovery. In England and Wales, a recipient might plead that a claim is time-barred under the provisions of the Limitation Acts. Proceedings to recover overpayments must generally be instituted within six years (twelve years if the claim is against the personal estate of a deceased person) of discovery of the mistake or the time when the claimant could, with reasonable diligence, have discovered it.

A.4.11.12 If someone claims that they have overpaid a public sector organisation, they should be told promptly if the claim is time barred. But if, on its merits, the recipient organisation decides that there is a case for an ex gratia payment, it should obtain Treasury consent if the amount involved is outside the organisation's delegated powers. Similarly, there may be a case for ex gratia payments to make good underpayments to government employees unless they were dilatory in making their claims.

A.4.11.13 When public sector organisations claim against a private sector organisation or people who ignore or dispute the claim, the organisation should take legal advice about proceeding with the claim in good time so that it does not become time barred.

Change of position

A.4.11.14 The recipient of an overpayment may seek to rely on change of position if he or she has in good faith reacted to the overpayment by relying on it to change their lifestyle. It might then be inequitable to seek to recover the full amount of the overpayment. The paying organisation's

reaction should depend on the facts of the case. The onus is on the recipient to show that it would be unfair to repay the money. This defence is difficult to demonstrate.

Estoppel

A.4.11.15 A recipient who has changed his or her position may also be able to rely on the rule of evidence estoppel if the paying organisation misled the recipient about his or her entitlement, even if the overpayment was caused by a fault on the part of the recipient. However, a mistaken payment will not normally of itself constitute a representation that the payee can keep it. There must normally be some further indication of the recipient's supposed title other than the mere fact of payment.

A.4.11.16 The paying organisation can be prevented from recovery even where it has made no positive statement to the payee that the latter is entitled to the money received. If, following a demand for repayment, the recipient can give reasons why repayment should not be made, then silence from paying organisation would almost certainly entitle the recipient to conclude that the reply was satisfactory and that he or she could keep the money.

A.4.11.17 It is essential for public sector organisations to seek legal advice where change of position or estoppel are offered as defence against recovery.

Good consideration

A.4.11.18 Another possible defence against recovery is where someone makes a payment for good consideration, i.e. where the recipient gives something in return for the payment. For example, payment might be made to discharge a debt; or where the payment is part of a compromise to deal with an honest claim. If such payments are later found to be more than was strictly due, the extent to which the paying organisation was acting in good faith should be taken into account.

Hardship

A.4.11.19 Public sector organisations may waive recovery of overpayments if it would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment of itself does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family.

Collective overpayments

A.4.11.20 If a group of people have all been overpaid as a result of the same mistake, the recipients should be treated in the same way, except that:

- it is not sensible to pursue recovery against any individuals who can claim one of the legitimate defences discussed in paragraphs A.4.11.10 to A.4.11.19; and
- it may be disproportionately expensive to enforce recovery against some individuals, for example if they are hard to trace or unable to pay.

A.4.11.21 Public sector organisations should decide how best to handle collective overpayments so that they do not inhibit the maximum recovery possible. If it is deemed impractical to pursue recovery from some members of an equivalent group, there should be no inhibition on pursuing others who may be able to pay. There is no obligation to inform the group generally about what action is being taken against particular members since all have the same legal obligation. Any differential treatment should be based on advice.

A.4.11.22 If a public sector organisation is minded to forgo recovery of the whole or any of a collective overpayment, it should consult the Treasury (or its sponsor department, as the case may be) before telling the recipients of the overpayments. The Treasury will need to be satisfied that a collective waiver is defensible in the public interest or as value for money. And any such waivers should be exceptional.

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A ANNEX 4.12

GIFTS

This annex explains how departments should notify Parliament of gifts, both given and received. It is important to assure Parliament that propriety has been respected through transparent reporting.

A.4.12.1 A gift is something voluntarily donated, with no preconditions and without the expectation of any return. In this document, the term gift includes all transactions which are economically indistinguishable from gifts: see box A.4.12A.

A.4.12.2 It is also important to be clear about transactions which do not score as gifts. For example:

- transfers of assets between government departments should generally be at full current market value; assets transferred under a transfer of functions order to implement a machinery of government change are generally made at no charge. In neither case are such transfers regarded as gifts;
- grants and grants-in-aid are not gifts as they are made under legislation, subject to conditions, with some expectation that the government will receive value through the furtherance of its policy objectives.

box A.4.12A definition of gifts

Gifts include all transactions economically equivalent to free and unremunerated transfers from departments to others, such as:

- loan of an asset for its expected useful life
- sale or lease of assets at below market value (the difference between the amount received and the market value is the value of the gift)
- donations by departments
- transfers of land and buildings, or assignment of leases, to private sector bodies at less than market price (the gift is valued at the difference between the price agreed and the market price)

Approval

A.4.12.3 Treasury approval is needed for all gifts valued at more than £250,000, and any other gifts not covered by a department's delegated authorities.

A.4.12.4 As Parliament does not provide for gifts when voting Estimates or passing specific legislation, Parliamentary approval for gifts worth more than £250,000 should be sought. Ideally this should be through Estimates. Alternatively, where time does not permit, a Minute should be laid in Parliament.

Reporting

A.4.12.5 If the Estimates timetable permits, departments planning to make a gift worth more than £250,000 should notify Parliament in their Estimates (Main or Supplementary depending on timing), providing details of the gift and its cost.

A.4.12.6 Departments wishing to make a gift over £250,000, who have been unable to include it in their Estimates, should notify Parliament by laying a Minute. This should happen even if Parliamentary authority will be sought in a subsequent Estimate for funds to replace an existing asset to be given. Treasury approval must be obtained before a departmental Minute is laid.

A.4.12.7 The Minute must then be laid before the House of Commons at least fourteen parliamentary sitting days before the department proposes to make the gift. In cases of special urgency, it is permissible, exceptionally, for all or part of the fourteen day notice period to fall during an adjournment or recess, or for a shorter notice period to be given. In such cases, with Treasury approval, the reasons for urgency should be explained in the Minute.

A.4.12.8 The Minute must contain the standard opening and closing paragraphs in box A4.12B. These terms have the PAC's endorsement and can be changed only with Treasury approval.

box A.4.12B standard paragraph for a departmental gift Minute

Opening paragraph:

It is the normal practice when a government department proposes to make a gift of a value exceeding £250,000, for the department concerned to present to the House of Commons a Minute giving particulars of the gift and explaining the circumstances; and to refrain from making the gift until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

Closing paragraph:

The Treasury has approved the proposal in principle. If, during the period of fourteen parliamentary sitting days beginning on the date on which this Minute was laid before the House of Commons, a Member signifies an objection by giving notice of a Parliamentary Question or of a Motion relating to the Minute, or by otherwise raising the matter in the House, final approval of the gift will be withheld pending an examination of the objection.

A.4.12.9 The Minute should also set out briefly the nature of the gift, its value, the circumstances in which it is being given, and the recipient. Where the gift is to be replaced, the Minute should contain information about the cost and nature of the replacement, when it is expected to be acquired, and the Estimate and subhead to which the expenditure will be charged. In the case of non-voted expenditure, the Minute should quote the account to which the replacement cost will be charged.

Parliamentary objections

A.4.12.10 Members of Parliament may object to gifts by letter, Parliamentary Question or through an Early Day Motion. In such cases, departments may wish to advise their ministers to take the initiative by making contact with the MP concerned. This may be particularly appropriate if it is proposed to make the gift urgently or promptly on expiry of the waiting period.

A.4.12.11 Where an objection is raised, the gift should not normally be made until the objection has been answered. In the case of an Early Day Motion, the MP should be given an opportunity to make a direct personal representation to the Minister. The Treasury should be notified of the outcome of any representations made by MPs.

Noting resource accounts

A.4.12.12 Resource accounts should include a note on gifts made by departments if their total value exceeds £250,000. Gifts with a value of more than £250,000 should be noted individually, with a reference to the appropriate departmental Minute. Exceptionally, where gifts are made between government departments, the receiving department should notate its accounts, not the donor.

Gifts received

A.4.12.13 Departments should maintain a register detailing gifts they have received, their estimated value and what happened to them (whether they were retained, disposed of, etc). Gifts received need not be noted in resource accounts unless the Treasury or department concerned considers there is a special need for them to be brought to Parliament's attention.

A.4.12.14 Donations, sponsorship or contributions, eg from developers should also be treated as gifts.

A.4.12.15 Guidance on gifts made to individual civil servants is in the [Civil Service Management Code](#).

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A ANNEX 4.13

SPECIAL PAYMENTS

This annex explains how public sector organisations should approach current transactions outside the usual planned range. It is often right, or essential, to consult the Treasury beforehand. In some cases, it is also important to notify Parliament.

A.4.13.1 In voting money or passing specific legislation, Parliament does not and cannot approve special payments outside the normal range of departmental activity. Such transactions are therefore subject to greater control than other payments.

A.4.13.2 Departments should authorise special payments only after careful appraisal of the facts and when satisfied that the best course has been identified. It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems; and whether they have been respected as expected. It is also important to take any necessary steps to put failings right.

A.4.13.3 Arm's length bodies should operate to similar standards as departments unless there are good reasons to the contrary, eg overriding requirements of the statutory framework for Companies Act companies. Departments should ensure that their oversight arrangements (see chapter 7) enable them to be satisfied that they arm's length bodies observe the standards.

Dealing with special payments

A.4.13.4 Departments should always consult the Treasury about special payments unless there are specific agreed delegation arrangements. So a department should seek Treasury approval, in advance, for any special payment for which it has no delegated authority, or which exceeds its authority. Similarly, NDPBs and many other arm's length bodies should consult their sponsor departments in comparable circumstances. In turn, the department may need to consult the Treasury.

A.4.13.5 The special payments on which the Treasury may need to be consulted are summarised in box A.4.13A. The list is not exclusive. If a department is in doubt, it is usually better to consult the Treasury.

A.4.13.6 In particular, it is important to consult the Treasury about any cases, irrespective of delegations, which:

- involve important questions of principle;
- raise doubts about the effectiveness of existing systems;
- contain lessons which might be of wider interest;
- might create a precedent for other departments; or
- arise because of obscure or ambiguous instructions issued centrally.

box A.4.13A special payments

- **extra-contractual payments:** payments which, though not legally due under contract, appear to place an obligation on a public sector organisation which the courts might uphold. Typically these arise from the organisation's action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the organisation's liability to pay, eg where the contract provides for arbitration but a settlement is reached without it. (A payment made as a result of an arbitration award is contractual.)
- **extra-statutory and extra-regulatory payments** are within the broad intention of the statute or regulation, respectively, but go beyond a strict interpretation of its terms.
- **compensation payments** are made to provide redress for personal injuries (except for payments under the Civil Service Injury Benefits Scheme), traffic accidents, damage to property etc, suffered by civil servants or others. They include other payments to those in the public service outside statutory schemes or outside contracts.
- **special severance payments** are paid to employees, contractors and others beyond above normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.
- **ex gratia payments** go beyond statutory cover, legal liability, or administrative rules, including:
 - payments made to meet hardship caused by official failure or delay
 - out of court settlements to avoid legal action on grounds of official inadequacy
 - payments to contractors outside a binding contract, eg on grounds of hardship.

A.4.13.7 The Treasury does not condemn all special payments out of hand. Each needs to be justified properly in the public interest against the key public sector principles set out in Chapter 1, box 1.1, with particular emphasis on value for money since there is no legal liability. Any proposal to keep a special payment confidential needs to be justified especially carefully since confidentiality could appear to mask underhand dealing. The Treasury's bottom line is usually to ask the department to establish that the responsible Accounting Officer(s) would feel able to justify the proposed payment in Parliament if challenged.

A.4.13.8 Departments should also consult the Treasury about proposals for special payments above the relevant delegated limits. They should explain:

- the nature and circumstances of the case;
- the amount involved;
- the legal advice, where appropriate;
- the management procedures followed;
- an assessment of the value for money of the case
- any non-financial aspects;
- whether the case in question could have wider impact.

Severance Payments

A.4.13.9 Special severance payments when staff leave public service employment should be exceptional. They always require Treasury approval because they are usually novel, contentious and potentially repercuessive. So departments should always consult the Treasury in advance when considering a special severance payment, whether or not the proposed amount falls within its delegated limit. Legal advice that a particular severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest.

A.4.13.10 The Treasury adopts a sceptical approach to proposals for special severance settlements. Precedents from other parts of the public sector may not be a reliable guide in any given case. And even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that particular settlement to the employer, it may still be desirable to take the case to formal proceedings. Winning such cases demonstrates that the government does not reward failure and should enhance the employer's reputation for prudent use of public funds.

A.4.13.11 Departments should not treat special severance as a soft option, eg to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. Box A4.13B sets out the factors the Treasury needs to evaluate in dealing with special severance cases. It is important to ensure that Treasury approval is sought before any offers, whether oral or in writing, are made. Any proposals for retrospective approval should contain the same level of detail as if the case had been brought to the Treasury in advance. A proforma for seeking Treasury approval is at http://www.hm-treasury.gov.uk/psr_mpm_annexes.htm.

box A.4.13B Factors to consider in special severance cases

Any case for special severance put to the treasury should explain:

- the circumstances of the case
- any scope for reference to a tribunal, with its potential consequences, including the legal assessment of the organisation's chances of winning or losing the case
- the management procedures followed
- the value for money offered by the possible settlement
- any non-financial considerations, eg where it is desirable to end someone's employment without dismissal, perhaps because of restructuring
- whether the case could have wider impact, eg for a group of potential tribunal cases

A.4.13.12 Particular care should be taken to:

- avoid unnecessary delays which might lead to greater severance payments than might otherwise be merited;
- avoid offering the employee concerned consultancy work after severance unless best value for money can be demonstrated;
- ensure any undertakings about confidentiality leave severance transactions open to adequate public scrutiny, including by the NAO and the PAC;
- ensure special severance payments to senior staff are transparent and negotiated avoiding conflicts of interest.

A.4.13.13 Organisations seeking retrospective Treasury approval for special severance payments should not take it for granted that approval will be provided, since such payments usually appear to reward failure and set a poor example for the public sector generally. Requests for retrospective approval will be considered as if the request had been made at the proper time.

Reporting

A.4.13.14 As Parliament does not provide for special payments when voting Estimates or passing specific legislation, special payments should be brought to Parliament's attention, usually through a note in the organisation's resource account. Any special severance payments for senior staff will in any case be itemised in resource accounts.

A.4.13.15 Notification is separate from accounting treatment, which will depend on the nature of the special payment. Special payments should be noted in the accounts even if they may be reduced by subsequent recoveries.

A.4.13.16 Special payments should be noted in resource accounts where total losses exceed £250,000.

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ANNEX 4.14 COMPLAINTS AND REMEDY

Prompt and efficient complaint handling is an important way of ensuring customers receive the service to which they are entitled and may save public sector organisations time and money by preventing a complaint escalating unnecessarily.

If their services have been found deficient, public sector organisations should consider whether to provide remedies to people or firms who complain. This is separate from administering statutory rights or other legal obligations, eg to make payments to compensate. Remedies may take several different forms and should be proportionate and appropriate.

Dealing with complaints

A.4.14.1 Public sector organisations should operate clear accessible complaints procedures. They are a valuable source of feedback which can help shed light on the quality of service provided, and in particular how well it matches up to policy intentions. So all complaints should be investigated. The Parliamentary and Health Service Ombudsman (PHSO) has published Principles of Good complaint Handling to help public bodies when dealing with complaints (see paragraph A.4.14.18).

A.4.14.2 Systems for dealing with complaints should operate promptly and consistently. Those making complaints should be told how quickly their complaints can be processed. Where groups of complaints raise common issues, the remedies offered should be fair, consistent and proportionate.

A.4.14.3 Public sector organisations should seek to learn from what their complaints reveal. If an internal or external review, or a PHSO investigation, shows there are systemic faults, defective systems or procedures should be overhauled and corrected.

Remedies

A.4.14.4 As section 4.12 explains, when public sector organisations have caused injustice or hardship because of maladministration or service failure, they should consider:

- providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly, and
- whether their policies and procedures need change, to prevent the failure reoccurring.

The remedies available

A.4.14.5 Remedies can take a variety of forms, including (alone or in combination):

- an apology;
- an explanation;
- correction of the error or other remedial action;
- an undertaking to improve procedures or systems; or
- financial payments, eg one off or as part of a structured settlement.

A.4.14.6 Financial remedies for individual cases are normally ex gratia payments. Where a pattern develops, and a number of cases raising similar points need to be dealt with, it may make sense to develop an extra statutory scheme (see annex 4.13). If any such scheme seems likely to persist, the organisation concerned should consider whether to bring forward legislation to set it on a statutory footing (see sections 2.3 and 2.4).

Designing remedies

A.4.14.7 The normal approach to complaints where no financial payment is called for is to offer an apology and an explanation. This may be a sufficient and appropriate response in itself. People complaining may also want reassurance that mistakes will not be repeated.

A.4.14.8 It may be more difficult to judge whether financial compensation is called for, and if so how much, especially if there is no measurable financial detriment. Great care should be taken in designing financial compensation schemes since they may set expensive precedents.

A.4.14.9 Where financial remedies are identified as the right approach to service failure, they should be fair, reasonable and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.

A.4.14.10 Public sector organisations deciding on financial remedies should take into account all the relevant factors. Some which are often worth considering are outlined in box A.4.14A. The list may not be exhaustive.

box A4.14A factors to consider in deciding financial compensation

- Whether a loss has been caused by failure to pay an entitlement, eg to a grant or benefit.
- Whether someone has faced any additional costs as a result of the action or inaction of a public sector organisation, eg because of delay.
- Whether the process of making the complaint has imposed costs on the person complaining, eg lost earnings or costs of pursuing the complaint.
- The circumstances of the person complaining, eg whether the action or inaction of the public sector organisation has caused knock on effects or hardship.
- Whether the damage is likely to persist for some time.
- Whether any financial remedy would be taxable when paid to the person complaining.

A.4.14.11 If a compensation payment includes an element because the person complaining has had to wait for their award, it should be calculated as simple interest. The interest rate to be applied should be appropriate to the circumstances and defensible against the facts. Some rates worth considering are the rate HMRC pays on tax repayments and the rate used in court settlements.

A.4.14.12 When a public sector organisation recognises that it needs a scheme for a set of similar or connected claims after maladministration or service failure, it should ensure that the arrangements chosen deal with all potential claimants equitably. It is important that such schemes take into account the Ombudsman's Principles of Good Administration (see annex 4.3). They must be well designed since costs can escalate if a problem turns out to be more extensive than initially expected.

A.4.14.13 If those seeking compensation have suffered injustice or hardship in a way which is likely to persist, it may not be appropriate to pay compensation as a lump sum. Instead it may make sense to award a structured settlement with periodic (eg monthly or annual) payments. Public sector organisations considering such settlements should seek both legal and actuarial advice in drawing them up.

A.4.14.14 Essentially, designing a compensation scheme is no different from designing other services. Good management, efficiency, effectiveness and value for money are key goals. The checklist in box 4.7 is therefore a sound general guide. Some specific issues which may require special care for compensation schemes are outlined in box A.4.14.B.

box A.4.14b issues to consider in designing compensation schemes

- Clarify the coverage of the scheme.
- Set clear scheme rules, with supporting guidance, to implement the policy intention.
- Make the remedies fair and proportionate, avoiding bias, discrimination or prejudice.
- Ensure the scheme's systems work, eg through pilot testing.
- Design in sufficient flexibility to cope with the characteristics of the claimant population.
- Check that the administration cost is not excessive – or simplify the scheme.
- If the scheme sets a precedent, make sure that it is acceptable generally.
- Inform Parliament appropriately, eg through a written statement and/or in the resource accounts.
- Plan to evaluate the scheme at suitable point(s).
- Provide for closure of the scheme, unless there is good reason not to.

Consulting the Treasury

A.4.14.15 When considering making individual remedy payments, departments need to consult the Treasury (and sponsored bodies need to consult their sponsor departments) about cases which:

- fall outside their delegated authorities; or
- raise novel or contentious issues; or
- could set a potentially expensive precedent or cause repercussions for other public sector organisations.

A.4.14.16 Public sector organisations developing schemes to pay remedies should consult the Treasury before finalising them. Proposed schemes drawn up in response to a PHSO recommendation also require Cabinet Office approval. Once a scheme is agreed, it is only necessary to consult the Treasury further about cases outside the agreed boundaries for the scheme, or the delegated authority applying to it.

Reporting ex gratia payments

A.4.14.17 Departments should ensure that ex gratia payments have Estimate cover, and that the ambit of the vote concerned is wide enough for the purpose. Ex gratia payments score as special

payments in departments' resource accounts. Departments and agencies should include summary information on compensation payments arising from maladministration in their annual reports.

The PHSO's principles

A.4.14.18 The PHSO has published Principles of Good Complaint Handling to help public bodies when dealing with complaints (box A.4.14c); and Principles for Remedy for use in deciding cases (box A.4.14d). These are of wider application. Fuller details are available at www.ombudsman.org.uk complaints; and www.ombudsman.org.uk/improving_services/remedy/index.html

box A.4.14c: The PHSO's Principles of Good Complaint Handling

Good complaint handling by a public body means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, and with due regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure clearly, in the right way and at the right time.

2. Being customer focused

- Having simple and clear procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including, co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying them to produce reasonable, fair, and proportionate results in all the circumstances of the case. The Ombudsman will adopt a similar approach when considering the standard of complaint handling by public bodies in her jurisdiction..

box A.4.14d: The PHSO's Principles for Remedy

Good practice with regard to remedies means:

1. Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2. Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3. Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4. Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate
- Treating people without bias, unlawful discrimination or prejudice.

5. Putting things right

- If possible returning the complainant and, where appropriate, others who have suffered similar injustice or hardship, to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action, or financial compensation).
- Providing the appropriate remedy in each case

6. Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair, and proportionate remedies in all the circumstances. The Ombudsman will adopt a similar approach in recommending remedies.

A ANNEX 4.15 THE SIC

Each Accounting Officer makes a Statement on internal Control (SIC) in the resource accounts, setting out the key challenges and opportunities facing the organisation.

A.4.15.1 As chapter 3 explains, each Accounting Officer is responsible for maintaining a sound system of internal control. Risk management is a key component of this. It should be integrated into the organisation's financial management.

A.4.15.2 The Statement on internal Control (SIC) is the standard way of bringing risk management within an organised structure for reporting and also for internal use. It should support the organisation's policies, aims and objectives whilst safeguarding its assets. The FReM has a proforma and guidance on completion.

A.4.15.3 In drawing up the SIC, it is important to remember that an organisation's assets include assets such as information which may have limited financial value on the balance sheet but which should be handled accurately and securely. All information used for operational purposes and financial reporting purposes needs to be captured and processed accurately and to an appropriate quality standard, particularly where it is used by third parties or relied on by other parts of government. Personal and other sensitive information requires additional safeguards. The Accounting Officer and the board need comprehensive and reliable assurance from managers, internal audit and other assurance providers that risks, including information risks are being managed effectively.

A.4.15.4 Material changes to the system of internal control during the year should be reflected in the SIC. If an element of the strategic risk management process has been absent for a material period of time in the year it should be reflected.

Significant internal control issues

A.4.15.5 The SIC should cover all the organisation's significant control issues. The Accounting Officer should use his or her judgement to distil the organisation's key concerns. Some tests are suggested in box A.4.15A, but the Accounting Officer's assessment should be paramount. The SIC should describe the action taken or proposed to correct weaknesses.

box A.4.15A factors to consider in assessing candidates for the SIC

- Might the issue seriously prejudice or prevent achievement of a PSA target?
- Could the issue have a material impact on the accounts?
- Could the issue divert resources from another important aspect of the business?
- Does the Audit Committee advise it is significant?
- Does internal or external audit regard it as significant?
- Could the issue, or its impact, attract significant public interest, or seriously damage the reputation of the organisation?

A.4.15.6 If there is a special investigation about a significant internal control issue, and disclosure might prejudice its outcome, the SIC should record that full disclosure is not possible and explain why. In such cases, the organisation should tell its external auditor what might have been included.

External Audit

A.4.15.7 The SIC is reviewed by external auditors as part of their financial statement audit to ensure it is consistent with the financial statements and the evidence gathered during their work. Where it is not, or where it is not compiled in accordance with the relevant guidance they will report that fact.

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ANNEX 5.I GRANTS TO THIRD PARTIES

This annex sets out how government departments should arrange and control grants to third parties, including to arm's length bodies such as NDPBs.

A.5.I.1 Central government departments may offer two kinds of financial support to third parties, using statutory powers:

- **grants:** made for specific purposes, under statute, and satisfying specific conditions, eg about project terms, or with other detailed control;
- **grants in aid:** providing more general support, usually for an NDPB, with fewer specific, but more general controls on the body, and less oversight by the funder.

Payment

A.5.I.2 Grants should be paid on evidence of need or qualification, depending on the terms of the grant scheme. For example:

- the recipient may need to submit a claim with evidence of eligibility;
- the recipient may need to show that it meets the conditions of the scheme, eg a farmer may need to disclose details of his or her business;
- there may be a timing condition;
- small third sector organisations may need to demonstrate a clear operational requirement for project funding to be made before grant is paid (see Improving financial Relationships with the Third Sector: Guidance to Funders and Purchasers www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm).

A.5.I.3 Grants in aid should also match the recipient's need. Significant sums should be phased through the year in instalments designed to echo the recipient's expenditure pattern. In this way the recipient organisation need not carry significant cash balances, which would be an inefficient use of public money (see section 5.8).

Control

A.5.I.4 Payment of both grants and grants in aid normally requires specific empowering legislation as well as cover in Estimates. There is scope for temporary ex gratia grant schemes to be financed on the authority of the Appropriation Act alone provided that the scheme meets the standard conditions (see section 2.3).

A.5.I.5 The Accounting Officer of the funder is responsible for ensuring that grant recipients are eligible and use the grant in the way envisaged in the founding legislation. For grants in aid, it is often convenient to arrange this by setting out terms and conditions in a framework document sent to recipients to explain their responsibilities. Such framework documents should strike an appropriate balance among:

- ensuring prudent management of grant in aid funds;
- achieving value for money;
- assuring funders that grants are used as envisaged; while
- allowing recipients reasonable freedom to take their own decisions.

However, care needs to be taken as general and wide ranging conditions attached to grant in aid can transfer control of a body to a funder for public sector classification purposes.

A.5.1.6 Departments which provide grants of either kind to an arm's length body should document how the recipient is expected to handle the funds. See annex 7.4 for more.

A.5.1.7 Departments should ensure that the Comptroller and Auditor General has formal access rights to all grant recipients.

Protecting the Exchequer

A.5.1.8 If public sector organisations provide grants to private sector organisations to acquire or develop assets, suitable and proportionate steps should be taken to safeguard both their financial interests and those of the Exchequer. Donors should consider setting grant conditions designed to ensure that the Exchequer's interest is not overlooked if the asset is not used as expected (more in annex 5.2).

Endowments

A.5.1.9 Grants and grants in aid are normally paid to meet the needs of the recipients. Exceptionally, there may be a case for funding by way of endowment or dowry, ie a one-off grant to enable the recipient to set up a fund from which to draw down over several years. The recipient may then be able to make a clean break with the need for support.

A.5.1.10 Departments contemplating such funding arrangements should consult the relevant Treasury spending team (and in turn arm's length bodies should consult their sponsor departments). The Treasury will need to consider the value for money case for this form of funding, including:

- the opportunity cost of locking public funds into a particular endowment, using investment appraisal techniques;
- the value of the particular programme or project against others. The Treasury will need to be satisfied that such funding would not protect any low-value programmes or projects from proper expenditure scrutiny;
- the sustainability of the funded body and whether such funding will decrease future reliance on public funding;
- whether there are clear objectives, outputs and outcomes of the funding; and
- the risk of further call on public funds.

A.5.1.11 Any such endowment should:

- reflect genuine need for capital funding;
- be made only to recipients with the competence to manage the endowment over time; and
- avoid skewing public funding away from other projects that have genuine cash needs.

A.5.1.12 The terms of an endowment should:

- be clear that the funded body should not subsequently approach the donor for annual funding;
- maintain clear boundaries between the funder and recipient.

A ANNEX 5.2

PROTECTING PUBLIC INVESTMENTS

This annex discusses how public sector organisations which provide grants to the private sector and others should protect their investments where grants are used to buy or improve assets.

Clawback

A.5.2.1 Public sector organisations providing funds to others to acquire or develop assets should take steps to make sure that public sector funds are used for the intended purposes for which the grant is made. It is usual to consider setting conditions on such grants, taking into account the value of the grant, the use of the asset to be funded and its future value.

A.5.2.2 The standard grant condition is clawback. This is achieved by setting a condition on the grant that gives the funding body a charge over the asset so that, if the recipient proposes to sell or change the use of the asset acquired with the grant, it must:

- consult the funder;
- return the grant to the funder; or
- yield the proceeds of sale (or a specified proportion) to the funder.

A.5.2.3 However, a charge over the asset is not always essential. Some ground rules are suggested in box A.5.2A.

Box A.5.2A when to consider clawback

clawback desirable

- tangible or intangible assets, including intellectual property rights, crown copyright, patents, designs and database rights, financed directly, whether wholly or partly by grants or grants in aid;
- tangible or intangible assets developed by the funded body itself, financed indirectly by a grant for a related purpose or by grant in aid

clawback not always necessary

- procurement of goods and services, where any liability is adequately discharged once the goods and services have been provided
- where a grant has been provided for research and not specifically for the creation of physical asset, the successful conclusion of the research might be adequate return

A.5.2.4 Because funders, recipients and circumstances can vary so much, there is no single model for clawback. Bespoke terms are often desirable. They should allow as much flexibility as seems sensible. The aim should be to help recipients develop and provide services over the longer term while securing value for public funds. Drawing on the ideas in box 7.2, funders should always settle the terms of each grant with its recipient at the start of the relationship, consistent with its objectives.

Designing clawback conditions

A.5.2.5 The design of clawback conditions for a grant should take account of its circumstances, the underlying policy objective(s) and the funder's approach to risk. A checklist of some common factors to consider is in box A.5.2B. Using this tailored approach can mean different organisations take very different approaches to the same risks.

box A.5.2B: factors to consider in designing clawback terms

- the nature and purpose of the grant
- how the asset will help secure the policy objectives behind the grant
- the expected life of the asset
- the extent to which the recipient is financed out of public funds
- how the asset will be used by the recipient, eg scope for appreciation or generating profit
- how long the funder should retain an interest in the asset
- whether the asset may be sold, with any restrictions on disposal, eg as to price or purchaser
- whether there is sense in reassessing after a certain period or on a given trigger
- whether the terms of clawback should vary according to a factor such as the asset value (in which case the terms may need to provide for periodic valuations)
- when the policy objectives should be delivered
- the funder's legal powers and the recipient's legal position (eg as a company or charity)
- any other relevant legal factors, eg EU rules on state aids

A.5.2.6 In setting terms and conditions for grants, funders should consider what could happen if things do not proceed as intended, notably what should happen if:

- the recipient does not behave as expected; or
- external conditions are very different to plans; or
- the recipient goes into liquidation (eg should the funder take priority over unsecured creditors).

Duration of charge

A.5.2.7 It can make sense to relate the funder's right to clawback to the policy objectives of making the grant rather than allowing it to persist indefinitely unchanged. Some policy options are outlined in box A.5.2C. If the clawback is linked to the value of an asset which is likely to appreciate, there is a risk that the recipient may face a disincentive to participate, so care and sensitivity may be needed.

A.5.2.8 However, it can also make sense to moderate grants conditions by using terms such as:

- a break clause allowing the funder and recipient to consider whether the objectives of the funding have been achieved, triggering the end or reduction of the funder's interest in the asset;
- a review clause allowing scope to retain the charge and review the clawback period if the project has not met the agreed objectives;
- releasing the funder's interest in the asset (and so permitting its disposal or use as collateral) at the end of the agreed charge or clawback period.

box A.5.2C options for clawback duration or assets as collateral

- keying it to the objectives of the grant
- relating it to the period over which the intended benefits are to be delivered
- settling clawback rights on a declining scale, eg falling to zero by the end of an agreed period, or the asset's useful life, or by when the policy objectives are deemed delivered
- allowing the recipient to use as collateral the difference between the market value of the asset and the original grant

A.5.2.9 It is common to prohibit recipients from using the assets they acquire or improve using grants as collateral in borrowing transactions. This is because the public sector funder might be forced to take up the recipient's legal liability to service debt should it fail. However, if a funder agrees that a recipient may use assets acquired or developed with grants as collateral, it should consider carefully what conditions it should apply. Some freedom of this kind may help the recipient make the transition to viability or independence. For example, a funder might allow a recipient to retain income generated by using spare capacity in the funded asset.

A.5.2.10 But normally it is important for the funder to retain some control over any use of the funded asset outside the grant conditions. Typically the funder will require the recipient to obtain the funder's consent before raising funds on any part of a funded asset so long as the clawback period continues. Any further conditions should be proportionate, striking a proper balance between encouraging the recipient to be self-supporting and allowing the recipient to use public funds for its own purposes.

Enforcing a claim on a funded asset

A.5.2.11 Where appropriate, funders should secure a formal legal charge on funded assets. This may be particularly important for high risk projects or to prevent the funder becoming exposed to assuming the recipient's debts. It is usual to take a registered charge on land under the Land Registration Act 2002 and its Rules. If the recipient is a Companies Act company, it may make sense to secure a registered charge on the company's book debts.

A.5.2.12 The form and intended duration of any charge should be recorded in the founding documents charting the relationship between the funder and recipient. Both parties will need legal advice, eg covering the statutory background, any relevant EU rules (eg on state aids) and on how the charge would be enforceable. Both parties should also keep track of their outstanding charges. It is good practice to register a land charge, so that it will automatically be taken into account during any sale process.

A.5.2.13 Sometimes a funder may decide not to enforce clawback when a funded asset is sold, even though the agreed clawback period is still in force. Funders should take any such decision consciously on its merits, not letting it go by default. Reasons why a funder might take this approach include:

- the objectives of the grant may have been achieved;
- the recipient may propose to use the funded asset in an acceptable way different from the original purpose;
- the recipient may intend to finance an alternative asset or project within the objectives of the grant scheme out of the proceeds of the sale;
- the funder might agree to abate future grants to the recipient instead of taking the proceeds of sale.

A.5.2.14 If a department decides to waive a clawback condition, it should consider whether it needs to report that waiver as a gift. If so, it should follow the gift reporting requirements in annex 4.12.

A.5.2.15 If it is proposed to sell a grant recipient with a live charge, the funder should take legal advice on whether it can enforce the charge on the proceeds of the sale. The funder should consider the legal position of the proposed purchaser of the grant recipient, and in particular whether its objectives (eg charitable or as a social enterprise) are in line with the original grant conditions. If the funder becomes aware that such a sale is possible at the time the grant is awarded, it would usually be appropriate to require the recipient to obtain its consent before proceeding. And any request for endorsement of a sale should be evaluated objectively.

A ANNEX 5.3

INCOME AND RECEIPTS

The rules on use of income and receipts are designed to control the circumstances in which they can finance use of public resources.

A.5.3.1 Parliament controls departments' use of income and receipts, just as it controls the raising of tax, since both may finance use of public resources. Departments should ensure that all income and associated cash is recorded in full and collected promptly.

A.5.3.2 Most cash receipts must be paid into the Consolidated Fund. Sometimes specific legislation requires this for certain income streams; for many others the Civil List Act 1952 classifies them as hereditary revenues to be paid into the Consolidated Fund.

A.5.3.3 Hereditary revenue is:

- virtually all non-statutory receipts;
- cash receipts received by virtue of statutory authority; and
- receipts where statute does not say.

Unless it can be established that a particular type of receipt or surplus cash is not hereditary revenue, the default position is that it is, and that the Civil List Act 1952 requires it to be paid into the Consolidated Fund.

A.5.3.4 The main categories of income and associated receipts are shown in Box A.5.3A.

box A.5.3A the different kinds of central government income

- the proceeds of taxation: paid into the Consolidated Fund
- repayment of principal and interest on NLF loans: paid direct to the NLF
- sums due under bespoke legislation: paid as specified, eg the proceeds of national insurance contributions paid into the National Insurance Fund
- receipts of trading funds: treated as specified in the founding legislation
- sums due to departments financed through Estimates:
 - either paid into the Consolidated Fund as CFERs
 - or appropriated in aid to finance Estimate provision.

A.5.3.5 Specific legislation, with Treasury approval, is normally required to authorise use of income directly to meet resource consumption, ie to appropriate it in aid. In effect this process means that the department needs to seek less finance through Estimates because part of the cost of the service is met from receipts. Parliament has an interest because otherwise resource consumption would require specific approval through the Estimates process.

A.5.3.6 The Treasury may also direct that an income stream may be appropriated in aid by laying a Treasury Minute before both Houses of Parliament (see *Estimates Manual* www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf). This power of direction is only ever used to allow departments to appropriate income in aid of resources or capital expenditure where there is a direct relationship between the two. Where there is no such relationship, the income is normally surrendered as Consolidated Fund extra receipts (CFERs).

A.5.3.7 Sometimes departments have excess appropriations in aid, ie more income than the expenditure stream it matches, or more income than was anticipated in the Estimate. When this happens the surplus is treated as CFERs.

Controls over use of income as appropriations in aid

A.5.3.8 Appropriation Acts limit the amounts of income which may be appropriated in aid against each Request for Resources (RfR) of the underlying Estimate. Each RfR has limits on operating appropriations in aid (income financing resource expenditure), but non-operating appropriations in aid (income financing capital) are set as a single limit for the Estimate as a whole. If income appropriated in aid is projected to be higher during the year, financing higher expenditure, the responsible department should seek Treasury approval and then present a Supplementary Estimate showing the revised figures. The relevant Appropriation Act will then have increased limits.

A.5.3.9 Pending approval of the Supplementary Estimate, departments may use excess operating and non-operating income to finance excess resource or capital expenditure respectively. The amounts and types should accord with the existing Estimate and should match.

A.5.3.10 Departments may generally offset excess appropriation in aid income on individual subheads against shortfalls of income in other subheads. This is acceptable where the excess arises as a result of reasonable estimating variations. Similarly, departments may use excess income to offset excess resources or capital expenditure in the same year pending the approval by Parliament of an Excess Vote. But income and receipts should match: eg excess non-operating appropriations in aid cannot be used to offset shortfalls in operating appropriations in aid. Nor can excess operating appropriations in aid in one RfR be used to offset shortfalls in other RfRs.

Net and gross subheads

A.5.3.11 Net subheads are used in Estimates only in carefully defined circumstances, notably for trading funds, which for example can obtain and repay short term voted loans several times during a single financial year. Otherwise all subheads of Estimates should show amounts to be spent gross, with appropriations in aid financing them specified where appropriate.

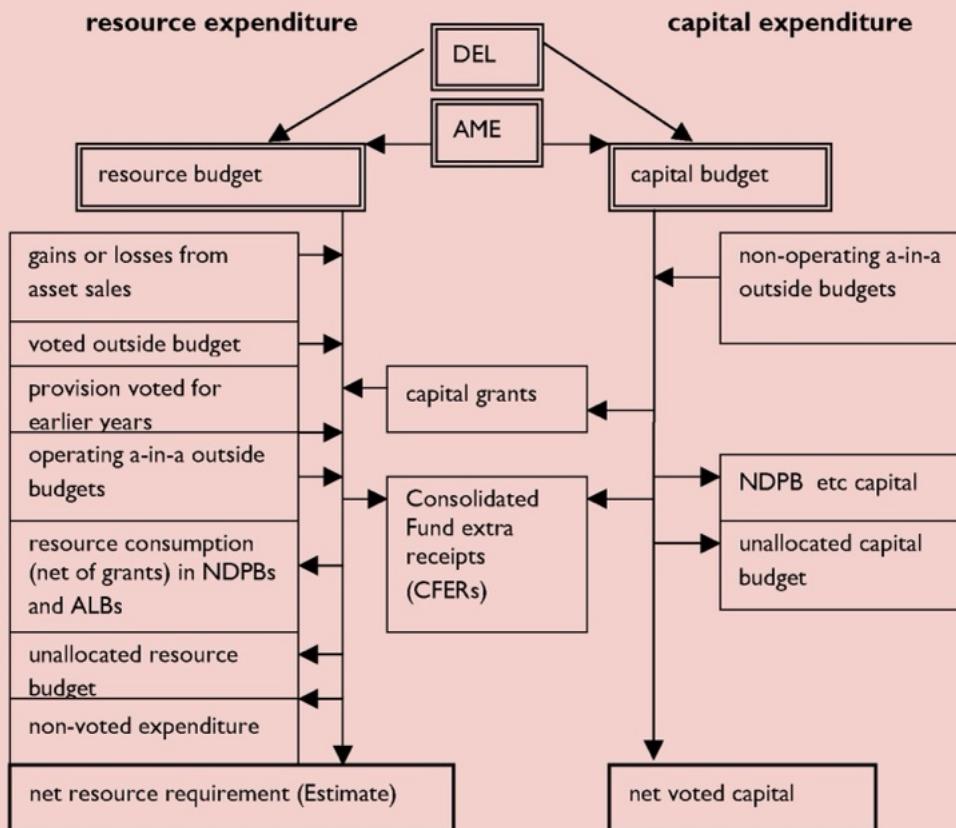
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ANNEX 5.4 ESTIMATES AND BUDGETS RELATIONSHIPS

The annual expenditure which Parliament authorises in Estimates is not the same as the related budgets. This annex shows how the two are related.

A.5.4.1 The table below identifies the key differences between Estimates and Budgets.

box A.5.4A how Estimates provision is derived from departmental budgets



Notes

Budget provision for departments is composed of allowances for capital and resources, spanning several years. Amounts requested from Parliament in Estimates for each year are the sums expected to be consumed in the year. The adjustments displayed above show how

Estimate figures for a given year in cash are derived from budget plans for a run of years.

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A ANNEX 5.5 LIABILITIES

Parliament expects advance notice of any commitments to future use of public funds for which there is no active request for resources through Estimates. This annex discusses how a number of different kinds of liability should be dealt with.

A.5.5.1 As with expenditure, ministers may enter into liabilities – in effect, conditional commitments to future expenditure – without explicit Parliamentary authority. But Parliament expects to be notified of the existence of these commitments when they are undertaken. Should they eventually give rise to the need for public expenditure, they will require the authority of an Appropriation Act and frequently also specific enabling legislation.

A.5.5.2 Because the Crown is indivisible, ministers (and their departments) cannot give guarantees to each other. They can, however, enter into commitments to conditional support with the same effect – though this is rare.

A.5.5.3 Some liabilities are uncertain. These contingent liabilities recognise that future expenditure may arise if certain conditions are met or certain events happen. That is, the risk of a call on Exchequer funds in the future will depend on whether or not certain circumstances arise. For example, payment under a government guaranteed loan would only be required if the body covered by the guarantee was unable to repay the loan.

A.5.5.4 Arm's length bodies (ALBs) sponsored by departments do not generally have powers to take on liabilities, because these would in effect bind their sponsoring departments. So the documentation governing the relationship between a department and an ALB (see chapter 7 and annex 7.4) should require the ALB to gain the sponsor department's agreement to any commitment, including borrowing, into which it proposes to enter. Departments should ensure that ALBs have systems to appraise and manage liabilities to the standards in this annex, so that they can report to Parliament any liabilities assumed by ALBs in the same way as they would their own.

Need for statutory powers

A.5.5.5 It is good practice to enter into liabilities on the strength of specific statutory powers – as with items of expenditure. This is essential if a regular scheme of loan guarantees or other support is intended. Departments should consult the Treasury about proposals for such legislation, which should include arrangements for reporting new liabilities to Parliament. It is usual to put a statement to both Houses when statutory liabilities are undertaken. Provision in budgets and Estimates should be scored as the department's best assessment of the need to pay out in support of the liabilities.

A.5.5.6 In the nature of giving liabilities, many will arise with little notice. Departments should report these to Parliament at the earliest opportunity. There is a standard procedure for doing this: see paragraphs A.5.5.21 to A.5.5.35 of this annex.

A.5.5.7 If a liability taken on in this way seems likely to persist, the department concerned should consider backing it with statutory cover. This is because any expenditure which arises because of it is subject to the same Parliamentary expectations about statutory powers as any other expenditure (see section 2.1). If a contingent liability could give rise to a loan, the organisation should ensure that there is reasonable likelihood of the loan being serviced and repaid (see section 5.6).

A.5.5.8 There is an exception to the need for statutory powers for accepting liabilities. Commitments taken on in the normal course of business do not need specific cover, just as routine administrative expenditure does not (see para 2.3.2). The standard conditions for treating liabilities as undertaken in the normal course of business are set out in box A.5.5A, with some common examples.

box A.5.5A liabilities in the normal course of business

In order to treat a liability as arising in the normal course of business, the organisation concerned should be able to show that:

- the activity is an unavoidable part of its business and/or
- Parliament could reasonably be assumed to have accepted that such liabilities can rest on the sole authority of the Appropriation Act.

Examples of common liabilities arising in the normal course of business include:

- liabilities arising in the course of the purchase or supply of goods and services in the discharge of the department's business
- contractual commitments to make payments in future years arising under long-term contracts, eg major building works
- commitments to pay grants in future years under a statutory grant scheme
- contingent liabilities resulting from non-insurance (see annex 4.5).

A.5.5.9 If procurement in the normal course of business gives rise to proposals for liabilities outside the normal range (eg a cap on the contractor's liabilities), the public sector organisation should consider renegotiating. The acid test is whether two private sector bodies would use the same terms. In cases of doubt, the Treasury should be consulted.

A.5.5.10 PFI contracts are a special case of procurement and so can cause departments to take on liabilities. For these, departments should use the standard terms in the Treasury Taskforce publication *Standardisation of PFI Contracts* www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_standardised_contracts.cfm.

Departments should report details of use of these standard terms to OGC so that it can provide an annual consolidated report to Parliament. There is no need to notify use of standard PFI terms to Parliament, but any use of non-standard terms should be reported like any other.

A.5.5.11 There are additional conditions for taking on non-statutory liabilities, namely:

- the need must be urgent and unlikely to be repeated; and
- it would be in the national interest to act even though there is no statutory authority.

Taking on liabilities

A.5.5.12 Before accepting any liability, the organisation should appraise the proposal using the *Green Book* www.hm-treasury.gov.uk/Economic_Data_and_Tools/greenbook/data_greenbook_index.cfm, to secure value for money, just like a proposal to undertake any other project. The liability should be

designed to restrict exposure to the minimum, eg by imposing conditions about duration. Other possible features to limit liabilities might include:

- a commitment fee from the beneficiary (though this does not remove the need for appraisal of the proposition) and/or
- arrangements to lift the liability if the beneficiary no longer needs it.

A.5.5.13 Similarly, it is not good practice to take on liabilities to contractors which would indemnify them in the event of their own negligence or that of a sub-contractor. But it may be reasonable to give an indemnity to a private sector body against damage to property it owns arising out of government use, eg if a public sector organisation uses a private sector body's premises or equipment. Any such indemnity should of course exclude damage caused by the body's own staff or contractors.

A.5.5.14 Subject to the statutory powers of the public sector organisation and its delegated authorities, it is important for an organisation contemplating assuming a new liability to consult the Treasury (or the sponsor department, as the case may be) before assuming it. Departments' delegated authorities for incurring liabilities should include the liabilities of any sponsored bodies which should not exceed £1m for any single transaction.

Types of liability

A.5.5.15 Public sector organisations may take on liabilities by:

- issuing specific guarantees, usually of loans;
- writing a letter or statement of comfort; or
- providing indemnities.

A.5.5.16 It is important to remember that any of these instruments issued by a minister may be legally enforceable.

A.5.5.17 Guarantees should normally arise using statutory powers. They typically involve guarantees against non-payment of debts to third parties.

A.5.5.18 Letters of comfort, however vague, give rise to moral and sometimes legal obligations. They should therefore be treated in the same way as any other proposal for a liability. Great care should be taken with proposals to offer general statements of awareness of a third party's position, or oral statements with equivalent effect. Creditors could easily take these to mean more than intended and threats of legal action could result. Treasury approval is normally essential.

A.5.5.19 It is common to give certain kinds of indemnity to members of boards of central government departments or of NDPBs; or to civil servants involved in legal proceedings or formal enquiries as a consequence of their employment, perhaps by acting as a board member of a company. The standard form is set out in box A.5.5B, in line with the Civil Service Management Code www.civilservice.gov.uk/publications/doc/csmc_june06.doc. This cover is comparable to what is obtainable on the commercial insurance market. So it excludes personal criminal liability, reckless acts or business done in bad faith.

A.5.5.20 Liabilities of this kind to individuals do not normally need to be reported to Parliament unless they go beyond the standard form or are particularly large or risky.

box A.5.5B standard indemnity for board members

The government has indicated that an individual board member who has acted honestly and in good faith will not have to meet out of his or her personal resources any personal civil liability which is incurred in the execution or the purported execution of his or her board functions, save where the board member has acted recklessly.

A.5.5.21 The rules for notifying Parliament of liabilities are very similar to those for public expenditure:

- there is no need to tell Parliament about:
 - new liabilities arising under statutory powers unless the legislation calls for it;
 - liabilities taken on in the normal course of business, except for those not in standard form and above £250,000;
- departments should notify Parliament of:
 - statutory liabilities, in the form expected by the legislation;
 - any liability outside the normal course of business and above £250,000, or of a non-standard kind undertaken in the normal course of business;
 - any liability which is novel, controversial or significant in relation to the organisation's (or the particular programme) expenditure, which is large and unquantifiable.

A.5.5.22 It is important to note that undertakings in the normal course of business should be judged against the department's normal business pattern authorised by Parliament. So what may be normal for some departments may not be normal for others. In cases of doubt it is best to report.

A.5.5.23 Non-statutory liabilities which need to be reported to Parliament should be notified using a standard form of Minute (see box A.5.5C). Treasury approval is required before going ahead. It is sometimes necessary, with Treasury agreement, to adapt the form of wording, eg if the liability arises immediately.

A.5.5.24 Such Minutes should be laid in the House of Commons and should:

- describe the amount and expected duration of the proposed liability, giving an estimate if precision is impossible;
- explain which bodies are expected to benefit, and why;
- if applicable, explain why the matter is urgent and cannot observe the normal deadlines (paragraph A5.5.25);
- use the standard wording for the opening and closing passages, which has been agreed with the PAC (box A.5.5C);
- explain that authority for any expenditure required under the liability will be sought through the normal Estimates procedure;
- be copied to the chairs of both the PAC and departmental committee;

- in cases of particularly large or unusual liabilities, be accompanied by a ministerial statement.

A.5.5.25 The indemnity should not go live until 14 Parliamentary sitting days, excluding weekends, after the Minute has been laid. Every effort should be made to ensure that the full waiting period falls while Parliament is in session.

A.5.5.26 If an MP objects by letter, Parliamentary Question or Early Day Motion, the indemnity should not normally go live until the objection has been answered. In the case of an Early Day Motion, the Member(s) should be given an opportunity to make direct personal representations to the minister, eg proactively arranging a meeting with them. The Treasury should be kept in touch with representations made by MPs and of the outcome.

A.5.5.27 If, exceptionally, the guarantee or indemnity would give rise to an actual liability, the department should consult the Treasury about the wording of the Minute. The department should discuss the implications for the actual liability on its budget, Estimate and resource accounts.

box A.5.5C standard text for departmental Minutes on liabilities

Opening passage

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £250,000 for which there is no specific statutory authority, for the department concerned to present to Parliament a Minute giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

The **body of the Minute** should include:

If the liability is called, provision for any payment will be sought through the normal Supply procedure.

Closing passage

The Treasury has approved the proposal in principle. If, during the period of fourteen parliamentary sitting days beginning on the date on which this Minute was laid before Parliament, a Member signifies an objection by giving notice of a Parliamentary Question or by otherwise raising the matter in Parliament, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.

Non-standard notification

A.5.5.28 Sometimes it is not possible to give details of a contingent liability with full transparency. In such cases the department should write to the chairs of both the PAC and departmental committee to provide the same details as those outlined in paragraph A5.5.24, with the same notice period. The letters should explain the need for confidentiality. Any objection by either chair should be approached in the same way as MPs' objections (paragraph A.5.5.26).

A.5.5.29 Sometimes departments want to report an urgent contingent liability providing less than the required 14 days notice. In such cases, the department should follow the procedure in paragraph A.5.5.24 and explain the need for urgency.

A.5.5.30 Departments may also want to report a contingent liability at short notice, ie less than 14 days before the end of the session. In such cases the contingent liability should only go live after lying before Parliament during 14 sitting days, ie some days after the start of the next session. If

the proposal is more urgent than this rule would allow, the department should write to the chairs of the PAC and the departmental committee, giving the information in paragraph A.5.5.24 and explaining the need for urgency. As a matter of record, when Parliament reconvenes, a Minute should be laid explaining what has happened, including any liabilities undertaken.

A.5.5.31 The same procedure as in paragraph A.5.5.29 should be used to report liabilities during a Parliamentary recess. In such cases the notice period should be 14 working days notice, ie excluding weekends and bank holidays.

A.5.5.32 Similarly, it is possible that a department might want to undertake a non-statutory contingent liability when Parliament is dissolved. Every effort should be made to avoid this, since members cease to be MPs on dissolution, and committees will be reconstituted in the new Parliament. If the department nonetheless considers the proposed liability to be essential, it should consult the Treasury.

Reporting liabilities publicly

A.5.5.33 Any changes to existing liabilities should be reported in the same way as they were originally notified to Parliament, explaining the reasons for the changes. If an originally confidential liability (see paragraph A5.5.28) can be reported transparently, the standard Minute (paragraph A.5.5.24) should be laid.

A.5.5.34 Departments should report all outstanding single liabilities, or schemes of liabilities, in their resource accounts unless they are confidential. Any which would fall as a direct charge on the Consolidated Fund should be reported in the Consolidated Fund accounts. The conventions in the FrEM should be used.

A.5.5.35 Estimates should similarly be noted with amounts of any contingent or actual liabilities. The figures quoted should be the best assessments possible at the time of publication. Actual liabilities should appear as provisions. The rubric should refer back to notification of Parliament.

A.5.5.36 When the conditional features of contingent liabilities are met, it is good practice to wait until Parliament has approved the relevant Estimate before providing the necessary resources. But if providing support is more urgent, departments should apply for an advance from the Contingencies Fund (see Annex 2.5 and the Estimates Manual www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf) under the usual conditions. If an advance is approved, a statement to Parliament should explain what is happening, and in particular how the crystallised liability is to be met.

International agreements

A.5.5.37 International treaties, agreements or commercial commitments which mean the UK incurring specific contingent liabilities should follow the parliamentary reporting procedures as far as possible whether or not the agreement is covered by legislation. Even if an international agreement does not require legislation for ratification, it should nevertheless be laid before Parliament, accompanied by an explanatory memorandum, for 21 sitting days before it is ratified (the Ponsonby rule).

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ANNEX 5.6

DEPARTMENTAL LENDING

Government departments may borrow from the NLF and then on-lend to third parties. There are some key disciplines required to protect the Exchequer from loss. It is also important to keep Parliament informed, especially about risk exposures.

A.5.6.1 The government provides loan finance to public sector (and some private sector) bodies through the National Loans Fund (NLF) and departmental Estimates. The broad principles of this annex also apply to Public Dividend Capital (PDC) and government loan guarantees.

Statutory authority

A.5.6.2 The NLF needs specific statutory authority to lend to each of its borrowers. Similarly, departments must normally have specific statutory authority to make voted loans. Box A.5.6A identifies the provisions which should be specified in the enabling legislation. Departments setting up new powers should consult their Treasury spending team early in the drafting process. If NLF lending is intended, they should also consult the Treasury's Exchequer Funds and Accounts team (EFA).

box A.5.6A powers in legislation enabling lending

NLF loans

- that the Secretary of State or Minister may lend to relevant bodies;
- that the Treasury may issue funds from the NLF to the Secretary of State;
- the purpose for which loans may be made;
- a limit on total lending outstanding;
- (sometimes) a power to raise this limit by order within a further absolute ceiling;
- a requirement for interest and principal repayments collected by departments to be surrendered to the NLF;
- a requirement to present an annual account to Parliament, prepared by the sponsor department, of loans made and repaid.

voted loans

- the circumstances in which loans may be made;
- conditionality associated with the loans;
- a borrowing limit, sometimes including a power to raise this limit by order within a further absolute ceiling specified in the primary legislation;
- the terms and conditions to be attached to loans and how interest rates are to be determined;
- that repayment of principal and interest should be made to the Consolidated Fund.

Loans from the NLF

A.5.6.3 The Treasury is accountable for the management of the NLF. In turn departments responsible for on-lending are accountable for the specific advances they make. So they should ensure that the conditions for their loans are satisfied and that repayments of interest and principal are received on time.

A5.6.4 The NLF cannot lend at a loss²². Interest on NLF loans must therefore be sufficient to cover the cost of government borrowing, on the same terms and for the same period. This makes sure that lending is unsubsidised and that no final charge rests on the NLF.

A5.6.5 Similarly, NLF loans can only be made where there is a reasonable expectation that they will be serviced and repaid on the due dates. Lending departments should consider whether to take security in order to fully protect the NLF's position. And if a lending department becomes concerned about the security of any of its loans to third parties, it should discuss them with the Treasury at an early stage.

Interest on NLF loans

A5.6.6 Interest on temporary NLF loans of up to 6 months is fixed and repayable with the principal on maturity.

A5.6.7 Long-term NLF loans may be issued at fixed or variable rates. Fixed rate loans may be repaid by:

- equal instalments of principal (EIP) throughout the life of the loan, normally twice a year; or
- equal repayments (ER) comprising varying proportions of interest and principal over the life of the loan, normally twice a year; or
- exceptionally, in full with interest at maturity.

A5.6.8 The length and type of loan should be matched to the type of asset being acquired and the expected payback period. Variable rate loans can be rolled over at one, three, or six monthly intervals. Penalty interest may be charged if a payment of interest or principal repayment is not received on time.

A5.6.9 The Treasury sets all NLF interest rates (including on appropriate rollover dates for variable rate loans) for the different maturities available in the light of prevailing interest rates. Interest rates for long-term loans are set out on the website of the Public Works Loan Board²³ (PWLB – www.pwlb.gov.uk).

A5.6.10 There are special arrangements for interest rates on new loans to commercial bodies in the public sector competing against private sector companies operating in a similar commercial environment. See DAO13/04.

Early repayment of NLF loans

A5.6.11 As the government lends at very competitive rates, it is not usually possible for borrowers to repay loans early in order to refinance on more advantageous terms. If this were possible, any savings the borrower might make would be at the expense of the NLF, probably leaving the public sector as a whole worse off.

A5.6.12 However, there may be a case for early repayment (other than for temporary loans) where there are genuinely surplus funds (eg from the sale of assets or trading activities). Similarly, it may also be possible to refinance existing loans where material, demonstrable and sustained changes (eg in asset life or technological changes) make a different maturity period more appropriate. Proposals for such changes should be discussed with EFA.

²² S5, NLF Act 1968.

²³ The PWLB is an NDPB which lends NLF funds to local authorities and others.

A.5.6.13 Any proposals for early repayment must be agreed with the Treasury beforehand. If agreement can be reached, the borrower pays:

- interest up to the day before the loan is prematurely repaid; plus
- a sum, calculated by the Treasury, equal to the present value of all future repayments of principal and interest on the original schedule. This sum may be higher or lower than the total of the sums due on the loan for the outstanding period under the original schedule. The difference (ie the discount or premium) then scores as an adjustment to interest in the resource accounts.

Write off or repayment of NLF loans by grant

A.5.6.14 Departments should consult the Treasury about proposals for a capital reconstruction involving repayment or write off of NLF loans. It requires primary legislation to write off NLF loans. Interest remains payable on debts up to the day before repayment or write off.

A.5.6.15 Capital reconstruction of the debts of an organisation which will remain in the public sector also requires specific statutory powers. Typically the legislation achieves capital reconstruction of its assets and liabilities by issuing it with voted grants to repay its NLF debt.

A.5.6.16 Capital reconstruction ahead of privatisation is different. Departments should consult EFA.

Accounting for NLF loans

A.5.6.17 Legislation authorising a sponsored body to borrow from the NLF normally specifies that its sponsor department should prepare its annual accounts. Sponsor departments should also account for NLF transactions in their resource accounts in accordance with the FReM. As principal and interest payments must be paid into the NLF, such sums are not treated as appropriations in aid or CFERs.

Voted loans

A.5.6.18 Like NLF loans, voted loans should only be made where there is a reasonable expectation of their being properly serviced and repaid. Departments making voted loans should ensure that the conditions in the enabling legislation are met and that the Estimate provides for advances of principal. If the legislation leaves the lending department with discretion over terms and conditions, interest rates should be set to reflect the cost to the government of borrowing. Otherwise the same disciplines apply to voted loans as to NLF loans (paras A.5.6.3-10).

A.5.6.19 Voted loans are technically assets of the Consolidated Fund. So payments of interest and principal should normally be surrendered to the Consolidated Fund as CFERs. However if there is related expenditure within the same Request for Resources and same part of the budget as the receipt, such payments may be appropriated in aid.

Repaying early and writing off voted loans

A.5.6.20 The Treasury should be consulted about any proposals for the early repayment of voted loans. The rules applying to early repayment of NLF loans (A.5.6.11) normally apply.

A.5.6.21 Treasury approval is required to write off loans of more than £20m. The department concerned should notify Parliament in a Treasury Minute using the standard opening and closing paragraphs in box A.5.6B. If it is not possible for the Minute to be laid allowing fourteen days of Parliamentary time, the Minute should explain why.

A.5.6.22 Should a Member of Parliament object to the write-off, the minister responsible should give the MP the opportunity to make a personal representation about his or her objections. Only when this dialogue has been concluded will the Treasury be able to give consent to the write-off.

A.5.6.23 Treasury agreement is also required for smaller write offs unless specific delegations have been agreed. Departments writing off loans should follow the procedure in annex 4.10 to notify Parliament.

box A.5.6B Treasury Minute on loan write-offs: standard paragraphs

Opening paragraph:

When a government department proposes to write off the repayment of an Exchequer loan whose principal outstanding exceeds £20 million, it is the normal practice for the Treasury to present to the House of Commons a Minute giving particulars of the write-off. This minute explains the circumstances. Except in cases of special urgency, Treasury consent is withheld until fourteen Parliamentary sitting days after the issue of the Minute.

Closing paragraph:

The Treasury has approved the proposal in principle. If, during the period of fourteen Parliamentary sitting days beginning on the date on which this Minute was laid before the House of Commons, a Member signifies an objection (for example by giving notice of a Parliamentary Question or of a Motion relating to the Minute), final Treasury approval of the remission will be withheld pending an examination of the objection.

External borrowing and government guarantees

A.5.6.24 Public sector organisations sometimes undertake limited, short-term borrowing from the private sector, for example through a bank overdraft, in order to meet very short term requirements not available through public sector lenders. Such borrowing should be explicitly guaranteed by the government to secure the finest terms unless there are good policy reasons otherwise.

A.5.6.25 Guarantees should normally only be given with an explicit statutory power, which should specify:

- the circumstances in which guarantees may be given and the terms and conditions to be attached;
- a limit on the total sum which may be covered by guarantees at any one time, which may include power to raise the limit by order within a further absolute ceiling specified in the primary legislation;
- a requirement for Parliament to be notified once the guarantee has been given; and
- authority for any costs resulting from the guarantee to be met from Estimates.

A.5.6.26 Even if the enabling legislation does not require the sponsor department to notify Parliament of new guarantees, the department should follow the standard procedure for notifying Parliament of contingent liabilities (annex 5.5).

A.5.6.27 In principle government guarantees may also be given for longer-term borrowing, including in foreign currencies. But such guarantees will only be considered where the guaranteed borrowing is on terms at least as fine as the government could obtain in its own name. This is a stringent test. Public sector borrowers cannot often meet it. Departments should therefore ensure that all their sponsored bodies consult them in advance about the terms of any proposed private sector or overseas borrowing. In no circumstances should any central government organisation borrow on terms more costly than those available to the government without Treasury approval.

A.5.6.28 As foreign borrowing may also have implications for the credit standing on the international money markets of the UK public sector as a whole, proposals for such borrowing must be cleared with the Treasury in advance. This applies not just to department's sponsored bodies, but also to their subsidiaries and associated any companies where sponsored bodies have majority shareholdings.

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A ANNEX 5.7

BANKING

Each public sector organisation should run its cash management and money transmission policies to minimise the cost to the Exchequer as a whole. This usually means using the Government Banking Service.

A.5.7.1 Together public sector organisations handle a very great deal of public money and carry out many financial transactions every working day. It is essential that these are handled in a way which is efficient and safe for the Exchequer as a whole. Accounting Officers are responsible for the credit risk to which public funds are exposed when held in commercial banks. It is important that they manage this risk actively, so that it is kept to a minimum.

A.5.7.2 For most public sector organisations, this means in practice using the Government Banking Service (GBS). It provides a ready way of sweeping any excess cash into the Exchequer pyramid accounts at the Bank of England both during and at the end of each working day. This enables the Debt Management Office (DMO) to manage the Exchequer's cash position efficiently by financing any net government overnight debt or investing any overnight balance. Any other arrangement would expose the government to increased credit risk and mean greater government borrowing, costing the Exchequer more overall.

Local banking policies

A.5.7.3 Each public sector organisation should establish a banking policy for its transmission of funds and deployment of its working balances. It should cover at least the features outlined in box A5.7.A.

box A.5.7A An organisation's banking policy

- Where the main account(s) are to be held and how they should be operated.
- How and where working overnight balances required for day to day operation are to be held, if different.
- How the risks of fraud and overpayments are to be prevented, countered systemically and managed when discovered.
- How any non-Exchequer funds should be managed and kept separate from public money.
- When and how payment by cheque, credit card or direct debit is acceptable.
- Record keeping, including frequent bank statement reconciliations.

A.5.7.4 Once established, this policy should be reviewed regularly to make sure that it remains appropriate and up to date. Any public sector organisation which chooses not to use the GBS as its primary banking service should justify that its policy offers value for money for the public sector as a whole. This stringent test can rarely be satisfied in practice and always needs to be cleared with the Treasury.

A.5.7.5 As part of its banking policy each public sector organisation may also need to operate one or more commercial bank accounts. Some guidelines for setting up and operating them are in box A.5.7B. For banking requirements in the UK, public sector organisations should use only

members of the relevant UK clearing bodies. Current membership of these bodies can be checked via the weblinks in box A.7.7C.

box A.5.7B Guidelines for using commercial bank accounts

- Select services which cannot be provided by the GBS or which offer better value for money for the Exchequer overall.
- Ensure that cleared funds will reach accounts as early as possible in the relevant clearing cycle.
- Obtain specific charges for money transmission and other services so that costs are transparent and comparable.
- Obtain gross interest on cleared credit balances, at rates as close as possible to the Bank of England's interbank rate or better (subject to credit risk and other liquidity considerations).
- Refuse arrangements that involve maintaining minimum balances since these increase Exchequer debt and raise Exchequer costs, even if the offer appears superficially attractive because of reduced charges.
- Negotiate with care any indemnities that commercial banks may seek to replace their normal arrangements (eg to protect the bank from incorrect Bacs debits), after taking legal advice and obtaining clearance from the Treasury.
- Surrender interest receipts as Consolidated Fund Extra Receipts.

A.5.7.6 When operating its bank accounts, each public sector organisation should minimise its balances without going overdrawn. It should hold enough to meet its immediate known requirements, normally in a GBS account.

box A.5.7C Members of relevant uk clearing bodies

- The following websites list the members:

<http://www.bacs.co.uk/BACS/Corporate/Corporate+overview/our+members/>

http://www.apacs.org.uk/uk_payment_schemes/cheque_credit_clearing.html

http://www.apacs.org.uk/uk_payment_schemes/chaps_clearing_1.html

Money transmission

A.5.7.7 Public sector organisations should generally use the cheapest, safest and quickest means of moving public funds, depending on the context. Generally this means adopting the hierarchy in box A.5.7D. Sometimes it is necessary to strike a balance among these desirable features to achieve the best outcome. For inward payments, it may be appropriate to apply credit controls or other safeguards. For outgoing payments where Bacs²⁴ is used public sector bodies should wherever possible use the system known as Bacs Grade 3 (Government Grade) user status as it guarantees that the funds are cleared on the third day.

²⁴ Bacs (formerly the Bankers' Automated Clearing Service) is the commonly used three-day electronic payments and receipts system

box A.5.7D Money transmission services ranked in order of choice

- Internal transfers (requests for fund transfers) within GBS. These are free of charge to GBS customers.
- Electronic methods (Bacs and CHAPS) in the commercial banking system including transfers to and from GBS accounts and direct debits:
 - where used for payments, with appropriate safeguards to prevent damage to the Exchequer;
 - where used for receipts, with arrangements for prompt credit.
- Credit and other payment cards: only where accepting such payments represents value for money, eg in terms of faster or more certain credit of funds, and usually with safeguards such as limits on value or circumstances compared to the cost of commissions to the card user.
- Where these are not possible, payable orders and cheques.

but not usually

- Cash, uncrossed cheques, order books or other methods involving high security risks.

Borrowing

A.5.7.8 Public sector organisations should not normally rely on obtaining finance by borrowing from commercial banks as it is almost always more expensive than relying on the government's credit rating. Any expenditure financed by such borrowing would be considered irregular.

A.5.7.9 Certain arm's length bodies, such as public corporations, trading funds and NHS Foundation Trusts may, however, borrow from commercial banks for short term needs. This is only possible if it has been agreed in the founding documentation for the body (see chapter 7).

Foreign exchange transactions

A.5.7.10 Some public sector organisations need to make foreign exchange transactions. Normally they should deal through the GBS for spot trades. Although transactions over £2m are actioned by the Bank of England, they should still be directed through GBS for authorisation.

A.5.7.11 If foreign exchange transactions form a substantial part of the business there may be a case for drawing up a forex management policy. This will need to be agreed with the Treasury if it involves any transactions other than spot trades. A possible outline is at box A5.7E.

box A.5.7E Forex policy

- An outline of the volumes and frequencies of forex transactions required by the organisation's business.
- Policy on dealing with receipts and payments: normally spot transactions.
- The case for holding any sums in forex accounts, identifying any seasonal or other macro factors affecting amounts, preferably through the GBS where the facilities are available.
- The case for any hedging transactions, designed to limit risk exposures (eg through forward purchases or options) with appropriate exposure limits.
- Routine for reviews, eg annually.

but not

- Letters of credit. These are essentially guarantees of the government's ability to pay and can be provided cheaper by ECGD, where needed.

A ANNEX 6.I

SETTING UP NEW SERVICES: CHECK LIST

This checklist identifies the main issues that need to be considered when introducing a new or updated charging service.

A.6.I.1 Organisations setting up or refreshing services that charge a fee may find this checklist helpful when deciding how to set the charge. It is not exhaustive; and some of the decisions are interdependent.

box A.6.I2A setting up a charge bearing service: issues to consider

- Define the service, and its rationale.
- Identify the users.
- Decide which organisation is to provide the service.
- How is the service to be provided – on line, telephone, personal or postal application, etc.
- Set the financial objective for the service.
- Carry out any necessary investment appraisal of options for delivery.
- Decide how capital and other start up costs are to be met.
- Decide which on-going costs are to be recovered.
- Decide whether the provider should retain any of the income from charges.
- Decide how the service is to be delivered and charged for.
- Clarify any public expenditure issues, eg providing start up costs.
- Check that the legal powers to provide the service are adequate.
- Decide the charging structure: eg a single service, or several sub-services.
 - If the service licences or registers people or organisations for an activity, decide whether there should be a single level of charge, or a scale of charges.
- Check that there are suitable costing processes in place, including tracking evolution of costs.
- Ensure that the performance of the service is monitored and reported to the leaders of the organisation responsible, with scope for feedback to change processes as need be.
- For commercial services, consider any competition law implications.
- Agree any special arrangements with specific users within the organisation or elsewhere in the public sector, eg service level agreements.
- Consult prospective users (or their proxies) as necessary
- Decide the timetable for introducing the new or adjusted service.
- Make sure that the finance team is content with the intended package.
- Check that Treasury approval has been given, where necessary.

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ANNEX 6.2

HOW TO CALCULATE FEES

This annex discusses how to calculate the cost of public services for which fees are charged.

A.6.2.1 With some exceptions, it is government policy that fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So to set many fees for public services it is essential to calculate the cost of providing them accurately.

A.6.2.2 The main features to be taken into account in measuring the annual cost of a service are set out in box A.6.2A. Not everything in the list will apply to every service and the list may not be exhaustive. It is important that the calculation is comprehensive, including all relevant overheads and non-cash items.

box A.6.2A elements to cost in measuring fees

- accommodation, including capital charges for freehold properties
- fixtures and fittings
- maintenance, including cleaning
- utilities
- office equipment, including IT systems
- postage, printing, telecommunications
- total employment costs of those providing the service, including training
- overheads, eg (shares of) payroll, audit, top management costs, legal services, etc
- raw materials and stocks
- research and development
- depreciation of start up and one-off capital items
- taxes: VAT, council tax, stamp duty, etc
- capital charges (if they were not met separately when the service was established)
- notional or actual insurance premiums
- fees to sub-contractors
- distribution costs, including transport
- advertising
- bad debts
- provisions

but not

- enforcement costs
- replacement costs of items notionally insured
- start up costs (those which can be capitalised in the accounts)

A.6.2.3 So far as possible the calculation should use actual costs, where they are known. For services just starting, there may be no alternative to using estimates, geared to estimated consumption patterns. Start up costs and the cost of fixed capital items should be scored in resource accounts (or their equivalent) in full, attributing to the cost of the service just the depreciated value each year.

A.6.2.4 For services which are charged at different rates, the same procedure should be used to set the different rates. That is, the cost of any premium service should be objectively justifiable by its additional cost (eg where faster shipping is offered); or conversely any discount should be justifiable by the saving to the supplier (eg using the internet rather than over the counter). Note, however, that sometimes the legislation permits differential pricing unrelated to the relative underlying costs – though even then there should be good policy reason for the difference.

Financial objectives

A.6.2.5 The standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery. It normally means recovering a 3.5% real charge for the cost of capital. Some exceptions are noted in box 6.1.

A.6.2.6 One such exception is commercial services, ie those sold into competitive markets. These should aim to recover full costs plus a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk. The normal range of rates is 5-10% but rates as high as 15% may be appropriate for the very highest risk businesses.

A.6.2.7 Great care should be taken in pricing competitive services where public sector suppliers have a natural dominant position. The market prices of competitors will often be a good guide to the appropriate rate of return if there is genuine competition in the market. Where there are limited numbers of buyers and sellers in a market, it may be better to take other factors into account as well. These might include past performance, the degree of risk in the underlying activity and issues bearing on future performance.

A.6.2.8 Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid year adjustment to fee levels if this is feasible.

A.6.2.9 It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing through a s102 order (see paragraph 6.2.3).

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ANNEX 6.3

CHARGING FOR INFORMATION

This annex discusses how public sector organisations should charge for information. There are exceptions to the general policy of charging at full cost.

A.6.3.1 It is government policy that much information about public services should be made available either free or at low cost, in the public interest. Anything originating in Crown bodies, including many public sector organisations, has the protection of Crown copyright. So people may need to pay if they want to duplicate or process (reuse) such material for profit.

A.6.3.2 Information products have an unusual combination of properties: typically, high cost of production combined with low cost of reproduction. So information products are frequently licensed for the use of many customers simultaneously rather than being sold or otherwise transferred. This can make for complex charging arrangements to recover costs accurately.

Rights to access

A.6.3.3 Most public organisations freely post information about their activities and services on the internet. It is good practice to make available recent legislation, public policy announcements, consultation documents and supporting material sufficient to understand the business of each public sector organisation. In addition, some of this information, eg about benefits and taxes, may also be available in free leaflets.

A.6.3.4 More extensive paper or IT (eg CD ROM) versions of information available on the internet may carry a charge to cover the cost of production. This should also apply to printed versions of material viewed for free in public offices. There should be no additional charge for material made available to meet the needs of particular groups of people, eg in Braille or other languages.

A.6.3.5 Most public sector organisations choose, as a matter of policy, to make available on the internet copies of information disclosed in response to requests under the Freedom of Information Act 2000 and Environment Information Regulations 2004.

Information carrying charges

A.6.3.6 A number of public sector organisations supply information for which charges are made. These include:

- services commissioned in response to particular requests;
- services where there are statutory powers to charge;
- information sold or licensed by trading funds (trading funds are free to choose how they allocate their fixed costs to their various products when pricing their information services);
- publications processing publicly gathered data for the convenience of the public, through editing, reclassification or other analysis;
- retrieval software, eg published as a key to using compiled data.

A.6.3.7 The terms on which this information are made available should be made clear at the point of sale or licensing. There is a clear public interest in maximising access to much public

sector material, and this should be borne in mind when deciding what charges should be levied. For this reason many publications can be reused by others free of charge. However, public sector organisations should take a careful policy view of the copyright issues, using legal advice as necessary.

A.6.3.8 However, public sector organisations can charge for supplying some information which recipients intend to process, eg for publication in another format. The norm is:

- **Raw data:** license and charge at marginal cost;
- **Value added data and information supplied by trading funds:** charge at full cost plus an appropriate rate of return (see paragraph A.6.2.6).

Licenses supplied in this way may take a number of forms, including royalties on each additional copy sold in the case of the most commercial applications.

A.6.3.9 Public sector organisations should maintain information asset registers as part of their asset management strategy. For further information see www.opsi.gov.uk , which includes links to public sector organisations' information asset registers listing the databases in existence. OPSI can also advise on compliance with the Re-use of Public Sector Information Regulations.

A ANNEX 6.4

COMPETITION LAW

Public sector organisations need to take care if they provide services which compete with private sector suppliers of similar services, or may do so. It is important that they respect the requirements of competition law.

A.6.4.1 UK competition law is founded in Articles 81 and 82 of the EU Treaty, applied through the Competition Act 1998. Together these prohibit business agreements that prevent, restrict or distort competition in trade in the UK and EU. They also disallow market abuse on the part of any business in a dominant position²⁵ in a market.

A.6.4.2 In particular, the following kinds of unfair competition are not allowed:

- very high prices that may exploit market power;
- very low prices that may exclude competitors;
- differential prices (or other terms and conditions of service) for the same product to different customers (except for objective reasons such as differences in quality or quantity) that distort competition; or
- refusing to supply competitors without objective justification such as poor customer credit worthiness.

Pricing in competitive markets

A.6.4.3 Services should be costed in line with the normal rules for full cost recovery. Charges should be set to achieve the appropriate financial objective, at least recovering full costs.

A.6.4.4 Some public sector organisations both supply data for use in providing public services and sell services using their data in competition with commercial firms. Such organisations need to take particular care not to abuse their competitive position in the market, especially if it is dominant. This could happen if a dominant supplier organisation allocated its costs in such a way that an efficient competitor could not operate profitably.

A.6.4.5 There can be circumstances which merit departing from the normal principle of full cost recovery. The justification is normally to achieve greater efficiency and sensitivity in responding to patterns of demand or cost, eg:

- if the service cannot be expanded, but customers are willing to pay more, there may be a case for increasing the price;
- if there is excess capacity and customers are not willing to pay the current charge, there may be a case for reducing the charge or reducing output;
- incentive charging, ie charging below cost to encourage demand, or above cost to discourage it.

²⁵ A business is deemed to be in a dominant position if it can generally behave independently of competitive pressures in its field.

A.6.4.6 If a public sector organisation decides not to recover full costs for a while, it should take care that:

- Its prices are not reduced in such a way as to stifle competition (a rapid cut in prices could be unfair to private sector competitors);
- Its products and services are not charged at less than their average variable costs or short run marginal costs (though this does not preclude charging at less than break even for a short period, eg to match competition);
- the charging strategy is compatible with full cost recovery over the medium term. This may mean ceasing to offer competitive service which has become unviable against the competition;
- any cross subsidies between services should not drive prices below average variable cost or short run marginal cost;
- if, exceptionally, a supplier charges below full cost because it has surplus capacity, there must be broader benefits and prices should not fall below average variable or short run marginal cost.

Delivering financial objectives

A.6.4.7 Public sector organisations should normally plan to achieve their financial objectives. If necessary this may mean adjusting prices or managing the cost structure of the supply to deliver adequate efficiency. In particular, if a public sector supplier forecasts a deficit, it should take remedial action promptly.

A.6.4.8 If a public sector supplier moves away from full cost charging, there may be a case for reviewing its financial objective. Normally any such change needs the agreement of both the responsible minister and the Treasury.

Taking things further

A.6.4.9 For further guidance please visit the OFT website, which has a number of useful guidance documents, listed at www.oft.gov.uk/advice_and_resources/publications/guidance/competition-act/.

A.6.4.10 Among these references the following may be particularly useful:

- the Competition Act and public bodies at www.oft.gov.uk/advice_and_resources/publications/guidance/competition-act/oft443
- agreements and concerted practices at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft401.pdf
- abuse of a dominant position at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft402.pdf.

A.6.4.11 More generally, it is good practice for bodies supplying goods or services into competitive markets to seek legal advice on the application of competition law at an early stage.

A ANNEX 7.I ARM'S LENGTH BODIES: GUIDANCE

This annex identifies the principal sources of guidance that departments should follow when establishing new arm's length bodies. It may also be useful when reviewing, reorganising or abolishing such bodies.

A.7.I.1 The principal guidance documents (see Box A.7.1A) cover:

- background to the public sector classification system, and key characteristics of different types of body;
- considerations in deciding the most appropriate type of body to the task;
- legislative and organisational requirements for setting up a new body;
- appropriate governance and accountability issues to be addressed;
- making and managing public appointments;
- budgeting, accounting and financial reporting requirements;
- review arrangements;
- dissolution arrangements.

box A.7.1A sources of guidance

Classification of Public Bodies: Guidance for Departments – public sector classification system and purpose and key characteristics of different organisational categories

www.civilservice.gov.uk/other/agencies/publications/pdf/classification_guidance_aug05.pdf

Executive Agencies: A Guide for Departments – identification of candidates for EA status, preparation for and launch of EA, review, merger, transfer and dissolution of EAs, and advice on preparation of Framework Documents

www.civilservice.gov.uk/other/agencies/publications/pdf/exec_agencies_guidance_oct06.pdf

Setting Key targets for Executive Agencies: A Guide

<http://www.civilservice.gov.uk/other/agencies/publications/pdf/setting-targets.pdf>

Guide to the Establishment and Operation of Trading Funds

www.hm-treasury.gov.uk/media/2F7/DA/Guide_to_the_Establishment_and_Operation_of_Trading_Funds.pdf

Public Bodies: A Guide for Departments – consideration of options for delivery, setting up, governance and accountability of NDPBs and public corporations, their review and dissolution

www.civilservice.gov.uk/other/agencies/guidance_for_departments/pb_guidance/index.asp

Better Government Services in the 21st Century: The Alexander Report – the 2002 Agency Review, setting out key principles to guide departments in their relationships with their agencies

www.civilservice.gov.uk/other/agencies/publications/pdf/opsr-agencies.pdf

Making and Managing Public Appointments

www.publicappointments.gov.uk/publications/

Corporate Governance in Central Government Departments: Code of Good Practice includes references to NDPBs and Agencies

www.hm-treasury.gov.uk/media/5DF/7D/corpgovernancecode_280705.pdf

Financial Reporting Manual – includes guidance for NDPBs and Agencies, including form of Annual Reports

www.financial-reporting.gov.uk/2006-07%20FreM.pdf

Consolidated Budgeting Guidance – includes guidance in relation to NDPBs and public corporations

www.hm-treasury.gov.uk/documents/public_spending_and_services/consolidated_budgeting_guidance.cfm

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ANNEX 7.2 SETTING UP NEW ALBs

This annex is to help those setting up new arm's length bodies (ALBs) decide which legal form is likely to be suitable for a new organisation. The guidelines are flexible and may evolve.

A.7.2.1 As chapter 7 explains, central government departments should maintain oversight of all their arm's length bodies, irrespective of their legal form. There are differences between the rights and responsibilities of agencies, non-ministerial departments and non-departmental government bodies (NDPBs). So it is sensible to choose a legal form that will best support the duties of the new organisation when setting up a new ALB.

A.7.2.2 In general terms, the main characteristics of the three main kinds of ALB are summarised in box A.7.2A.

box A.7.2A core descriptions of different kinds of ALB

- **Agencies** (sometimes called executive agencies or next steps agencies): each is either part of a government department, set up administratively, or, exceptionally, a department in its own right. An agency carries out a well defined business activity, usually with specific objectives, sufficiently close to the government's central direction that it is appropriate for a government minister to answer for its business in Parliament directly.
 - Examples: *Jobcentre Plus, Driver and Vehicle Licensing Agency (DVLA), the Courts Service.*
- **Non-ministerial departments**: are part of central government but do not require direct day to day ministerial oversight, though a minister retains policy control and will answer for them in Parliament if need be. They are normally established under bespoke legislation which may lay specific responsibility on the permanent head of the department. This form is particularly appropriate for bodies where ministers have responsibility for setting the framework for activities carried out in the public interest, but prefer to delegate day to day responsibility to an expert or professional cadre.
 - Examples: *the Government Actuaries Department (GAD), Food Standards Agency, Serious Fraud Office.*
- **(Executive) NDPBs**: carry out duties and functions in which central government has a legitimate public interest, but in fields where ministers do not find it necessary, or sometimes appropriate, to intervene directly. So they operate at some distance from central government, though perhaps funded largely or exclusively by public funds, perhaps through grant from a sponsor department or by using charging powers. Most are established under special purpose legislation (or its equivalent) and few are Crown bodies. Nearly all are governed by boards run largely by ministerially appointed office holders. Some may be charities, or operate with very little grant funding, or establish wholly owned trading subsidiaries. Ministers usually intervene only if they find it desirable to change an NDPB's direction, or in extremis to wind it up.
 - Examples: *the National Gallery, Arts Council England, Heritage Lottery Fund, Medical Research Council, Natural England.*

A.7.2.3 As the descriptions in box A.7.2A show, there are similarities as well as differences between these three kinds of ALB. It is good practice:

- first to evaluate the choice between an agency and an NDPB to see which fits better;
- to consider whether the ALB might evolve, eg an agency could be set up administratively as an embryonic NDPB in preparation for the passage of specific framework legislation;
- to consider the NMD option only if neither agency nor NDPB status seems suitable;
- if the NMD form is chosen, to define its remit very carefully

A.7.2.4 Decisions on the form of any particular ALB must ultimately be for ministers. They will depend in part on the public perceptions of the function in question, and on the extent to which ministers think it right to take a day to day interest in its affairs. For instance, NDPB status is often found appropriate for activities where it makes sense for well informed people to take decisions on matters of public interest where it is better for ministers not to intervene, or not to make the detailed choices, directly.

A.7.2.5 When an ALB is planned, it is essential to consult both the Treasury and the Cabinet Office about its powers, status and funding. The comparative checklist of features in box A.7.2B may help determine the choice among the different kinds of ALB.

A.7.2.6 Finally, it is worth remembering that the three kinds of ALB in box A.7.2A are only the most common ones. Others are possible. They include public corporations and various kinds of cooperative arrangements with the private sector or with third sector bodies, some fairly loose. And there is scope to establish one-off arrangements for special bodies where circumstances demand something different.

A.7.2.7 Whatever the legal status of an ALB, the Treasury will expect its sponsor department to have a mechanism for asserting an appropriate degree of control over it, especially in financial matters and in relation to issues of ethics in the use of public funds. In general, the greater the extent of public funding, the greater the degree of control called for. And it is always right to document how the relationship with the sponsor department should work in practice (see box 7.2), with scope for periodic review to take account of experience and the changing context.

box A.7.2B distinguishing characteristics of arms length bodies

type of ALB feature	agency	non-ministerial department (NMD)	non departmental public body (NDPB)
status	Part of department (or department in its own right). Part of central government Crown body	Department in its own right Part of central government Remit usually in legislation Crown body	Quasi-independent organisation Part of central government Not a Crown body (with rare exceptions) May be a company and/or a charity
established by	Administrative action (usually quick and easy)	Administrative action, often supplemented by primary legislation (if needed, may take time)	Usually bespoke primary legislation (may need to wait for a suitable legislative slot for some time)
ministerial accountability	A minister in the parent department makes key decisions on the agency's affairs	Rarely needed, but when necessary, a minister in the parent department decides	A minister in the sponsor department decides key matters, eg whether to adjust functions, whether to wind it up.
parent department	Has direct control	Remote and rarely interferes	Subject to formally agreed memorandum, may be light touch
funding	Estimates (usually own RfR) and/or fee income	Estimates (usually own RfR) and/or fee income	Grant(s) from department(s), and/or income from fees or levies
employees	Civil servants	Civil servants	Not usually civil servants
accounts etc	Publishes plans and resource accounts as part of parent department's	Publishes own plans and resource accounts	Publishes own plans and resource accounts
Parliamentary accountability	CEO is Additional Accounting Officer	Permanent Secretary is Accounting Officer	CEO is normally the Accounting Officer
business profile	administration, typically implementation of central policy	advice or administration, typically professional, expert or regulatory functions	Advice, administration or regulatory role, especially matters best not decided by ministers

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ANNEX 7.3 TRADING FUNDS

This annex discusses how sponsor departments should assess proposals for trading fund status, control and monitor their trading funds, and deal with public dividend capital (PDC).

Proposals for trading fund status

A.7.3.1 Bodies seeking trading fund status will usually need two years or so to get their proposals agreed. They will need to demonstrate that their income will largely sustain their operations and that they have the capacity to control and manage their business effectively. It is usual to establish a trading fund to begin on 1 April with a trading year to coincide with the government's financial year, ending at end March. The key steps are set out in box A.7.2A.

A.7.3.2 Further guidance may be found in the Treasury's *Guide to the Establishment and Operation of Trading Funds* (www.hm-treasury.gov.uk/mediastore/otherfiles/guideto_tradingfunds.PDF)).

Public dividend capital

A.7.3.3 Trading funds are normally established with deemed capital in the form of public dividend capital (PDC) though often no cash transaction takes place. PDC may include an allowance for working capital. Once established, the trading fund should pay a dividend on the PDC and to service any loan capital from the NLF.

A.7.3.4 Under resource budgeting arrangements, sponsor departments score their trading funds' PDC as an asset. They also incur a cost of capital charge on the value of the net assets of bodies in which they have an investment, including trading funds. This charge is offset by the receipt of dividends on the PDC and interest on any loan capital. So if the trading fund is unable to pay a dividend, the sponsor department may need to find offsetting savings.

Monitoring and control

A.7.3.5 Sponsor departments should monitor the performance of their trading funds, as any other part of their departments or ALBs. They should take an active part in assessing the (annual) corporate plans prepared by their trading funds, which should be agreed with the relevant departmental minister.

A.7.3.6 The trading fund's corporate plan should be supplemented by a more detailed annual business plan against which the sponsor department should measure performance monthly. In some cases, the Shareholder Executive may act for or advise the sponsor department.

A.7.3.7 The Treasury takes a strategic role. It needs to be confident that the department has adequate procedures for monitoring and controlling its trading funds. It may take a more direct role if particular questions or problems arise.

box A.7.3A main steps in processing applications for trading fund status

Any body proposing to become a trading fund should be part of a department or a department in its own right.

Sponsor departments should:

- consider whether the body really will get most of its income from trading;
- assess whether trading fund status will improve the body's efficiency and effectiveness in managing its activities;
- obtain the agreement of both departmental ministers and the Chief Secretary to the body's outline business case;
- prepare a detailed business case, including financial forecasts, financing arrangements (eg loans or PDC), valuation of specialised assets, and determination of financial targets;
- arrange independent assessment of the business case (perhaps by private sector consultants), including a fitness to trade review where goods or services are not currently charged for. The review will need to confirm that the systems are adequate to identify costs of goods or services provided, make necessary charges to customers, control debtors, manage incoming cash, and maintain adequate accounting and reporting systems;
- consult and advise customers, staff and other stakeholders about the proposal to establish a trading fund (the results of the consultation will eventually be laid before Parliament);
- consult the Treasury about:
 - the capitalisation of the trading fund, eg a cash injection, NLF loans or PDC
 - arrangements for monitoring the financial performance of the trading fund
 - financial targets
 - appointment of the Accounting Officer for the trading fund
 - the Framework Document
 - the draft Trading Fund order;
- seek final approval of both departmental ministers and the Chief Secretary;
- arrange the necessary Parliamentary debate.

The Treasury

- agrees the basic business case and capitalisation of the trading fund;
- issues a direction under the Government Trading Funds Act 1973 setting out how the assets and liabilities to be appropriated to the trading fund are to be valued;
- directs the trading fund to be guided by the FReM and by standard directions on its report and accounts.

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ANNEX 7.4 FRAMEWORK DOCUMENT FOR EXECUTIVE NDPBS

Departments need arrangements to monitor and understand their NDPBs' strategy, performance and delivery, usually built around a framework document. This annex offers an outline of how this can be drawn up, with a possible specimen, though this is not the only way in which a framework document can be drafted.

This annex contains an outline menu of terms suitable for inclusion in the framework document for an executive non-departmental public body (NDPB). Each NDPB will need a bespoke specification suited to its specific responsibilities. The document should focus clearly on its relationship with the sponsor department, and with any other departments with interest(s) in the NDPB's business.

While the document is based on a typical executive NDPB, it could be adapted or used as a basis for framework documents for other arms length bodies. Those drawing up framework documents are not bound to follow the specimen, which is offered by way of illustration. The paragraph numbering in the specimen framework document follows that of the outline menu.

FRAMEWORK DOCUMENT FOR AN EXECUTIVE NDPB: outline menu

Purpose of the NDPB

1. Statement of:

- the NDPB's statutory (and/or other) duties
- its strategic aims
- any mission statement or equivalent.

Governance and accountability

2. Statement of the legal origin(s) of the NDPB's powers and duties.
3. Statement of the aims for the NDPB set by the sponsor department's minister and any other ministers.
4. Statement of which minister will account for the NDPB's business in Parliament.
5. Statement of the responsibilities of the Accounting Officer in the sponsor department, especially:
 - regular monitoring and general oversight over the NDPB's business
 - accounting for any disbursements of grant to the NDPB
 - sponsorship of the NDPB's aims in central government
 - relationship with any other department(s) with an interest in the NDPB's business.

6. Statement of the responsibilities of the NDPB's Accounting Officer (usually the chief executive) to account to:
 - Parliament
 - the sponsor department
 - the NDPB's board
 - other stakeholders.
7. Statement of the responsibilities of the NDPB's:
 - board
 - chairman
 - individual board members.
8. Specification of the essential publications of the NDPB, including
 - annual report and resource accounts
 - any statutory reports
 - statement of the NDPB's corporate governance arrangements
 - any bespoke requirements for the NDPB, eg related to its business sector.
9. Statement of internal audit arrangements, including access by sponsor department's internal audit service.
10. Statement of the external audit arrangements for the NDPB, including:
 - the auditor (usually the C&AG)
 - the accounts direction (issued by the Secretary of State with the concurrence of the Treasury)
 - value for money audits by the C&AG.

Management and financial responsibilities

11. Statement that the NDPB should follow the standards, rules, guidance and advice in Managing Public Money, referring any difficulties or potential bids for exceptions to its sponsor department in the first instance. Specification of any standard exceptions to or elaborations of this general requirement.
12. Details of corporate governance arrangements.
13. Details of risk management procedures and arrangements.
14. Requirements for developing and revising the NDPB's corporate plan, with the expected frequency, and arrangements for clearance with the sponsor department.
15. Details of budgeting procedures.
16. Details of the terms and conditions of payment of the grant-in-aid and any ring-fenced grants to the NDPB made by the sponsor or other departments.

17. Details of reporting to the sponsor department, with the expected frequency, including:
 - the NDPB's main activities;
 - its financial performance;
 - its expenditure against its DEL and AME budget allocations;
 - other monitoring information;
 - working level liaison arrangements.
18. Specification of the activities of, and changes within, the NDPB which require clearance from the sponsor department, including delegated limits for new activities and capital projects.
19. NDPB staff.
20. Arrangements for review of the NDPB's status.
21. Procedures for winding up.

APPENDIX TO ANNEX 7.4**NDPB FRAMEWORK DOCUMENT: specimen**

This framework document has been drawn up by [the department] in consultation with [the named NDPB]. This document sets out the broad framework within which the [named NDPB] will operate. The document does not convey any legal powers or responsibilities. It is signed and dated by [the department] and [the NDPB]. Copies of the document and any subsequent amendments have been placed in the Libraries of both Houses of Parliament and made available to members of the public on the [NDPB] website.

Purpose of the [named NDPB]

1.1 Under the [Name] Act 2006, the [name of NDPB] has been set up in order to support the strategic aims and current Public Service Agreement of the [sponsor] department(s). Its main aim is to [...].

1.2 Its statutory duties are to:

- [short summary of overarching statutory duties]

1.3 The [NDPB's] strategic aims are to:

- [explain big picture aims] Aim 1
- Aim 2

1.4 Its mission statement (if any) is:

Governance and accountability**2 [NDPB] legal origins of powers and duties**

2.1 The [NDPB's] powers and duties stem from sections [?] and [Schedule?] of the [establishing legislation], include both primary and secondary legislation, as necessary.

3 Overall aims

3.1 The Secretary of State/responsible Minister(s) has agreed that, subject to 1.3, the aims of [the NDPB] should be as follows:

- i)
- ii)
- iii)

4 Ministerial responsibility

4.1 The [name or office of the responsible and successor minister] will account for the NDPB's business in Parliament.

5 Sponsor department's Accounting Officer's specific accountabilities and responsibilities

5.1 The sponsor department's Accounting Officer (PAO) has designated the Chief Executive as [the NDPB's] Accounting Officer. (The respective responsibilities of the AO and Accounting Officers for NDPBs and other arm's length bodies are set out in Chapter 3

of Managing Public Money which is sent separately to the NDPB Accounting Officer on appointment.)

5.2 The sponsor department's AO is accountable to Parliament for the issue of any grant-in-aid to [the NDPB]. The AO is also responsible for advising the responsible minister:

- on an appropriate framework of objectives and targets for [the NDPB] in the light of the department's wider strategic aims and current PSA;
- on an appropriate budget for the NDPB in the light of the sponsor department's overall public expenditure priorities; and
- how well the NDPB is achieving its strategic objectives and whether it is delivering value for money.

5.3 The sponsor department's AO is also responsible for ensuring arrangements are in place in order to:

- monitor the NDPB's activities on a continuous basis;
- address significant problems in the NDPB, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks both to the department and NDPB objectives and activities;
- inform the NDPB of relevant government policy in a timely manner; and
- bring concerns about the activities of the NDPB to the full (NDPB) board, requiring explanations and assurances that appropriate action has been taken.

5.4 [Named team] in the sponsor department is the primary contact for the NDPB. They are the main source of advice to the responsible minister on the discharge of his or her responsibilities in respect of the NDPB. They also support the sponsor department's AO on his or her responsibilities toward the NDPB.

6 Responsibilities of the Chief Executive as NDPB Accounting Officer

General

6.1 The Chief Executive as Accounting Officer is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the [named NDPB]. In addition, he or she should ensure that the [named NDPB] as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in Box 3.1 to Managing Public Money.

Responsibilities for accounting to Parliament

6.2 The accountabilities include:

- signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Secretary of State;

- signing a Statement of Accounting Officer's responsibilities, for inclusion in the annual report and accounts;
- signing a Statement on Internal Control regarding the system of internal control, for inclusion in the annual report and accounts;
- ensuring that effective procedures for handling complaints about the NDPB are established and made widely known within the NDPB;
- acting in accordance with the terms of this document, Managing Public Money and other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office;
- giving evidence, normally with the AO of the sponsor Department, when summoned before the PAC on the NDPB's stewardship of public funds.

Responsibilities to the [named sponsor department]

6.3 Particular responsibilities to [named sponsor department] include:

- establishing, in agreement with the department, the [named NDPB's] corporate and business plans in the light of the department's wider strategic aims and current PSA(s);
- informing the department of progress in helping to achieve the department's policy objectives and in demonstrating how resources are being used to achieve those objectives; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the department; that the department is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the department in a timely fashion.

Responsibilities to the board

6.4 The chief executive is responsible for:

- advising the board on the discharge of the [named Board's] responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the board on the [named NDPB's] performance compared with its aim[s] and objectives;
- ensuring that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed;
- taking action as set out in paragraphs 3.7.5 of Managing Public Money if the board, or its chairman, is contemplating a course of action involving a transaction which the chief executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, questionable feasibility, or is unethical.

7 The [named NDPB] Board

7.1 The board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The board must set up an Audit Committee chaired by an independent non-executive member to provide independent advice. The board is expected to assure itself of the effectiveness of the internal control and risk management systems.

7.2 The board is specifically responsible for:

- establishing and taking forward the strategic aims and objectives of the NDPB consistent with its overall strategic direction and within the policy and resources framework determined by the Secretary of State;
- ensuring that the responsible minister is kept informed of any changes which are likely to impact on the strategic direction of the [named NDPB] or on the attainability of its targets, and determining the steps needed to deal with such changes;
- ensuring that any statutory or administrative requirements for the use of public funds are complied with; that the board operates within the limits of its statutory authority and any delegated authority agreed with the sponsor department, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Board takes into account guidance issued by the sponsor department;
- ensuring that the board receives and reviews regular financial information concerning the management of the [named NDPB]; is informed in a timely manner about any concerns about the activities of the [named NDPB]; and provides positive assurance to the department that appropriate action has been taken on such concerns;
- demonstrating high standards of corporate governance at all times, including by using the independent audit committee to help the Board to address key financial and other risks;
- [where applicable] appoint [with the responsible minister's approval] a chief executive and, in consultation with the department, set performance objectives and remuneration terms linked to these objectives for the chief executive which give due weight to the proper management and use and utilization of public resources.

The chairman's personal responsibilities

7.3 The chairman is responsible to the named minister. Communications between the [named NDPB] board and the responsible minister should normally be through the chairman. He or she is responsible for ensuring that policies and actions support the responsible minister's [and where relevant other ministers'] wider strategic policies and that its affairs are conducted with probity. Where appropriate, these policies and actions should be clearly communicated and disseminated throughout the NDPB.

7.4 In addition, the chairman has the following leadership responsibilities:

- formulating the board's strategy;

- ensuring that the board, in reaching decisions, takes proper account of guidance provided by the responsible minister or the department;
- promoting the efficient and effective use of staff and other resources;
- delivering high standards of regularity and propriety; and
- representing the views of the board to the general public.

7.5 The chairman also has an obligation to ensure that:

- the work of the board and its members are reviewed and are working effectively;
- the board has a balance of skills appropriate to directing the [named NDPB] business, as set out in the Government Code of Good Practice on Corporate Governance;
- board members are fully briefed on terms of appointment, duties, rights and responsibilities;
- he or she, together with the other board members, receives appropriate training on financial management and reporting requirements and on any differences that may exist between private and public sector practice;
- the responsible minister is advised of [named NDPB] needs when board vacancies arise;
- he or she assesses the performance of individual board members when being considered for re-appointment;
- there is a code of practice for board members in place consistent with the Cabinet Office model Code.

Individual board members' responsibilities

7.6 Individual board members should:

- comply at all times with the *Board Members' Code of Practice* and with the rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the board's rules on the acceptance of gifts and hospitality, and of business appointments;
- act in good faith and in the best interests of the [named NDPB].

8 Annual report and accounts

8.1 The [named NDPB] must publish an annual report of its activities together with its audited accounts after the end of each financial year. The [named NDPB] shall provide the department its finalised (audited) accounts by [30 June] each year.

8.2 The annual report must:

- cover any corporate, subsidiary or joint ventures under its control;

- comply with the Treasury's Financial reporting Manual (FrEM);
- outline main activities and performance during the previous financial year and set out in summary form forward plans.

8.3 Information on performance against key financial targets is within the scope of the audit and should be included in the notes to the accounts. The report and accounts shall be laid in Parliament and made available on the [named NDPB's] website, in accordance with the guidance in the FrEM. A draft of the report should be submitted to the department [two weeks] before the proposed publication date. The accounts should be prepared in accordance with the relevant statutes and specific accounts direction issued by the department as well as the FrEM.

9 Internal audit

9.1 [Named NDPB] shall:

- establish and maintain arrangements for internal audit in accordance with the Treasury's Government Internal Audit Standards (GIAS) (http://www.hm-treasury.gov.uk/...gia_guidance.cfm);
- ensure the sponsor department is satisfied with the competence and qualifications of the Head of Internal Audit and the requirements for approving appointments in accordance with GIAS 5.2;
- set up an audit committee of its board in accordance with the Cabinet Office's Guidance on Code of Practice for Public Bodies and the Audit Committee Handbook;
- forward the audit strategy, periodic audit plans and annual audit report, including the [named NDPB] Head of Internal Audit opinion on risk management, control and governance as soon as possible to the sponsor department; and
- keep records of, and prepare and forward to the department an annual report on fraud and theft suffered by the [named NDPB] and notify the sponsor department of any unusual or major incidents as soon as possible.

9.2 The sponsor department's internal audit service has a right of access to all documents prepared by the NDPB internal auditor, including where the service is contracted out.

10 External audit

10.1 The Comptroller & Auditor General (C&AG) audits the [named NDPB] annual accounts and lays them before Parliament, together with his report.

In the event that the [named NDPB] has set up and controls subsidiary companies, the [named NDPB] will [in the light of the provisions in the Companies Act 2006] ensure that the C&AG is appointed auditor of those company subsidiaries that it controls and/or whose accounts are consolidated within its own accounts. The NDPB shall discuss with the sponsor department the procedures for appointing the C&AG as auditor of the companies.]

10.2 The C&AG:

- will consult the department and the NDPB on whom – the NAO or a commercial auditor – shall undertake the audit(s) on his behalf, though the final decision rests with the C&AG;
- has a statutory right of access to relevant documents, including by virtue of section 25(8) of the Government Resources and Accounts Act 2000, held by another party in receipt of payments or grants from the [named NDPB];
- will share with the sponsor department information identified during the audit process and the audit report (together with any other outputs) at the end of the audit, in particular on issues impacting on the Department's responsibilities in relation to financial systems within the [named NDPB];
- will, where asked, provide departments and other relevant bodies with Regulatory Compliance Reports and other similar reports which departments may request at the commencement of the audit and which are compatible with the independent auditor's role.

10.3 The C&AG may carry out examinations into the economy, efficiency and effectiveness with which the NDPB has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983. In addition, the NDPB shall provide, in conditions to grants and contracts, for the C&AG to exercise such access to documents held by grant recipients and contractors and sub-contractors as may be required for these examinations; and shall use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

Right of access

10.4 The department has the right of access to all NDPB records and personnel for any purpose including, for example, sponsorship audits and operational investigations.

Management and financial responsibilities

II Managing Public Money and other government-wide corporate guidance and instructions

II.1 Unless agreed by the department and, as necessary, HM Treasury, [Named NDPB] shall follow the principles, rules, guidance and advice in Managing Public Money, referring any difficulties or potential bids for exceptions to [named team] in [department] in the first instance. A list of guidance and instructions with which the NDPB should comply is in Appendix [?].

II.2 Once the budget has been approved by the sponsor department [and subject to any restrictions imposed by statute][the responsible minister's instructions][this document], the NDPB shall have authority to incur expenditure approved in the budget without further reference to the sponsor department, on the following conditions:

- the NDPB shall comply with the delegations set out in Appendix 2. These delegations shall not be altered without the prior agreement of the sponsor department;
- the NDPB shall comply with Managing Public Money regarding novel, contentious or percussive proposals;

- inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- the NDPB shall provide the sponsor department with such information about its operations, performance individual projects or other expenditure as the sponsor department may reasonably require.

12 Corporate governance

Board appointments - the chairman and board members

12.1 The NDPB chairman and board members are appointed for a period of [three] years by the responsible minister. Such appointments will comply with the Code of Practice of the Office of the Commissioner on Public Appointments (www.ocpa.gov.uk/the_code_of_practice.aspx).

Board appointments – the chief executive

12.2 The chief executive is appointed by the responsible minister in consultation with [with the agreement of] the chairman.

Composition of the board

12.3 In line with the government's Code of Practice on Corporate Governance (http://www.hm-treasury.gov.uk/...governance_corporate.cfm), the Board will consist of a chairman, together with [number] of executive members that have a balance of skills and experience appropriate to directing the NDPB's business. For [named NDPB] there should be members who have experience of [add/delete as necessary or appropriate] its business, operational delivery, corporate services such as HR, IS, technology, property asset management, estate management, communications and performance management. The board should include [number] of independent non-executive members to ensure that executive members are supported and constructively challenged in their role.

13 Risk management

13.1 The [named NDPB] shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop a risk management strategy, in accordance with the Treasury guidance Management of Risk: Principles and Concepts (<http://www.hm-treasury.gov.uk/...risk>). It should adopt and implement policies and practices to safeguard itself against fraud and theft, in line with the Treasury's guide: Managing the Risk of Fraud (http://www.hm-treasury.gov.uk/...fraud_guide_for_managers.pdf). It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to give grant or grant-in-aid.

14 Corporate and business plans

14.1 [By date] the [named NDPB] shall submit annually to the sponsor department a draft of the corporate plan covering [three] years ahead. The draft should be submitted by [date]. The NDPB shall agree with the department the issues to be addressed in the plan and the timetable for its preparation. The plan shall reflect the NDPB's statutory duties and, within those duties, the priorities set from time to time by the responsible minister (including decisions taken on policy and resources in the light of wider public expenditure

decisions). The plan shall demonstrate how the NDPB contributes to the achievement of the department's PSA targets.

14.2 The first year of the corporate plan, amplified as necessary, shall form the business plan. The business plan shall be updated to include key targets and milestones for the year immediately ahead and shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the department. Subject to any commercial considerations, [a digest of] the corporate and business plans should be published by the NDPB on its website and separately be made available to staff.

14.3 The following key matters should be included in the plans:

- key objectives and associated key performance targets for the forward years, and the strategy for achieving those objectives;
- key non-financial performance targets;
- a review of performance in the preceding financial year, together with comparable outturns for the previous [2-5] years, and an estimate of performance in the current year;
- alternative scenarios and an assessment of the risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast; and
- other matters as agreed between the department and the NDPB.

15 Budgeting procedures

15.1 Each year, in the light of decisions by the department on the updated draft corporate plan, the department will send to the NDPB [by date]:

- a formal statement of the annual budgetary provision allocated by the department in the light of competing priorities across the department and of any forecast income approved by the department; and
- a statement of any planned change in policies affecting the NDPB.

15.2 The approved annual business plan will take account both of approved funding provision [where this applies] and any forecast receipts, and will include a budget of estimated payments and receipts together with a profile of expected expenditure and of draw-down of any departmental funding and/or other income over the year. These elements form part of the approved business plan for the year in question.

16 Grant-in-aid and any ring-fenced grants

16.1 Any grant-in-aid provided by the department for the year in question will be voted in the department's Supply Estimate and be subject to Parliamentary control.

16.2 The grant-in-aid will normally be paid in monthly instalments on the basis of written applications showing evidence of need. The [named NDPB] will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of the NDPB. Grant-in-aid not drawn down by the end of the financial year shall lapse. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash

balances at the year-end, the department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.

16.3 [In the event that the department provides the NDPB separate grants for specific (ring-fenced) purposes, it would issue the grant as and when the NDPB needed it on the basis of a written request. The NDPB would provide evidence that the grant was used for the purposes authorised by the department. The NDPB shall not have uncommitted grant funds in hand, nor carry grant funds over to another financial year.]

17 Reporting performance to the department

17.1 The NDPB shall operate management, information and accounting systems that enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the corporate and business plans. The NDPB shall inform the sponsor department of any changes that make achievement of objectives more or less difficult. It shall report financial and non-financial performance, including performance in helping to deliver ministers' policies, and the achievement of key objectives on a regularly [specify]. The NDPB's performance shall be formally reviewed by the department twice a year. The responsible minister will meet the [board] [chairman] [chief executive] once a year.

Providing monitoring information to the department

17.2 As a minimum, the NDPB shall provide the department with information monthly that will enable the department satisfactorily to monitor:

- the NDPB's cash management;
- its draw-down of grant-in-aid;
- forecast outturn by resource headings;
- other data required for the Combined On-line Information System (COINS).

NDPB/Department working level liaison arrangements

17.3 Officials of [named] team in the sponsor department will liaise regularly with NDPB officials to review [NDPB] financial performance against plans, achievement against NDPB targets and the NDPB expenditure against its DEL and AME allocations. The [team] will also take the opportunity to explain wider policy developments that might have an impact on the NDPB.

18 Delegated authorities

18.1 The NDPB's delegated authorities are set out in [appendix 2]. The NDPB shall obtain the department's prior written approval before:

- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the NDPB's annual budget as approved by the department;
- incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the department;

- making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principles, rules, guidance and advice in Managing Public Money.

19 NDPB staff*Broad responsibilities for NDPB staff*

19.1 Within the arrangements approved by the responsible minister [and the Treasury] the NDPB will have responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff are to ensure that:

- the rules for recruitment and management of staff create an inclusive culture in which diversity is fully valued; appointment and advancement is based on merit: there is no discrimination on grounds of gender, marital status, sexual orientation, race, colour, ethnic or national origin, religion, disability, community background or age;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness;
- the performance of its staff at all levels is satisfactorily appraised and the NDPB performance measurement systems are reviewed from time to time;
- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the NDPB objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;
- whistle-blowing procedures consistent with the Public Interest Disclosure Act are in place;
- a code of conduct for staff is in place based on the Cabinet Office's Model Code for Staff of Executive Non-departmental Public Bodies <http://www.civilservice.gov.uk/modelcode> .

Staff costs

19.2 Subject to its delegated authorities, the NDPB shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

Pay and conditions of service

19.3 [NB the department should have regard to chapter 5 of the Cabinet Office Guide to Public Bodies that provides guidance on staff issues in public bodies (www.civilservice.gov.uk/other/agencies/guidance_for_departments/pb_guidance/index.asp.)] NDPB staff are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure approved by the sponsor department [and the Treasury]. The NDPB has no delegated power to amend these terms and conditions.

19.4 If civil service terms and conditions of service apply to the rates of pay and non-pay allowances paid to the staff and to any other party entitled to payment in respect of travel expenses or other allowances, payment shall be made in accordance with the Civil Service Management Code (www.civilservice.gov.uk/publications/doc/csmc_jun06.doc) except where prior approval has been given by the department to vary such rates.

19.5 Staff terms and conditions should be set out in an Employee Handbook, which should be provided to the department together with subsequent amendments.

19.6 The NDPB shall operate [a performance-related pay scheme that shall form part of the annual aggregate pay budget approved by the department or the general pay structure approved by the department and the Treasury whichever is applicable].

19.7 The travel expenses of board members shall be tied to the rates allowed to senior staff of the NDPB or departmental rates [whichever is applicable]. Reasonable actual costs shall be reimbursed.

19.8 The NDPB shall comply with the EU Directive on contract workers – the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations.

Pensions, redundancy and compensation

19.9 NDPB staff shall normally be eligible for a pension provided by [its own scheme][state second pension][PCSPS][LGPS][other]. Staff may opt out of the occupational pension scheme provided by the NDPB, but that employers' contribution to any personal pension arrangement, including stakeholder pension shall normally be limited to the national insurance rebate level. [Note that there is an exception for NDPBs covered by the PCSPS partnership arrangement, and for PCSPS by-analogy versions.]

19.10 Any proposal by the NDPB to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the department. Proposals on severance must comply with the rules in chapter 4 of Managing Public Money.

20 Review of NDPB status (and winding-up arrangements)

20.1 The NDPB will be reviewed every [5] years. The date of the next review will be in 20[?].

21 Arrangements in the event that the NDPB is wound up

21.1 The sponsor department shall put in place arrangements to ensure the orderly winding up of the NDPB. In particular it should ensure that the assets and liabilities of the NDPB are passed to any successor organisation and accounted for properly. (In the event that there is no successor organisation, the assets and liabilities should revert to the sponsor department.) To this end, the department shall:

- ensure that procedures are in place in the NDPB to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residuary body;
- specify the basis for the valuation and accounting treatment of the NDPB's assets and liabilities;
- ensure that arrangements are in place to prepare closing accounts and pass to the C&AG for external audit, and that funds are in place to pay for such audits. It shall

be for the C&AG to lay the final accounts in Parliament, together with his report on the accounts;

- arrange for the most appropriate person to sign the closing accounts. In the event that another NDPB takes on the role, responsibilities, assets and liabilities, the succeeding NDPB AO should sign the closing accounts. In the event that the department inherits the role, responsibilities, assets and liabilities, the sponsor department's AO should sign.

21.2 The NDPB shall provide the department with full details of all agreements where the NDPB or its successors have a right to share in the financial gains of developers. It should also pass to the department details of any other forms of claw-back due to the NDPB.

LIST OF APPENDICES TO THE SPECIMEN DOCUMENT

Appendix 1 - List of delegated authorities (not attached)

Appendix 2 - List of government-wide corporate guidance instructions (attached)

Signed.....

Signed.....

Date.....

Date.....

(On behalf of the department)

(On behalf of the NDPB)

APPENDIX 2 TO SPECIMEN DOCUMENT

Compliance with government-wide corporate guidance and instructions

The NDPB shall comply with the following general guidance documents and instructions:

- this document;
- Appropriate adaptations of sections of Corporate Governance in Central Government Departments: Code of Good Practice http://www.hm-treasury.gov.uk/.../governance_risk/psr_governance_corporate.cfm;
- Managing Public Money (MPM);
- Government Internal Audit Standards, http://www.hm-treasury.gov.uk/...gia_guidance.cfm;
- Management of Risk: Principles and Concepts: (www.hm-treasury.gov.uk/media/3/5/FE66035B-BCDC-D4B3-11057A7707D2521F.pdf);
- Managing the Risk of Fraud, (www.hm-treasury.gov.uk/media/C/3/managing_the_risk_fraud_guide_for_managers.pdf);
- Government Financial Reporting Manual (FReM), www.financial-reporting.gov.uk/;
- Fees and Charges Guide, Chapter 6 of MPM;
- Departmental Banking: A Manual for Government Departments, annex 5.7 of MPM ;
- relevant Dear Accounting Officer letters;
- Regularity, Propriety and Value for Money, www.hm-treasury.gov.uk/media/A/2/Reg_Prop_and_VfM-November04.pdf;
- The Parliamentary Ombudsman's Principles of Good Administration www.ombudsman.org.uk/improving_services/good_administration/index.html ;
- Consolidation Officer Memorandum, and relevant DCO letters;
- relevant Freedom of Information Act guidance and instructions (Ministry of Justice);
- Model Code for Staff of Executive Non-departmental Public Bodies (Cabinet Office);
- other relevant guidance and instructions issued by the Treasury in respect of Whole of Government Accounts;
- other relevant instructions and guidance issued by the central Departments;
- specific instructions and guidance issued by the sponsor Department;

- recommendations made by the Public Accounts Committee, or by other Parliamentary authority, that have been accepted by the Government and relevant to the NDPB.

A ANNEX 7.5 PRIVATE FINANCE INITIATIVE

Private Finance Initiative (PFI) deals offer public sector organisations a structured way of contracting with a supplier to construct a facility and then purchase associated services of a specified quality over a sustained period. Because the private sector contractor puts its own funds at risk, it has powerful incentives to deliver to time and cost, and can thus offer value for money. PFI procurement is a flexible, versatile and often effective technique. But it is not appropriate for every project.

A.7.5.1 PFI is a method of procuring capital infrastructure, although it is not suited to all types of procurement. But used effectively, it can offer a number of strengths in delivering public infrastructure (see box A.7.5A). These stem from:

- sharing risk in delivering public projects within a structure in which the private sector contractor puts its own capital at risk;
- incentivising contractors through contractual penalties and bonuses, reinforced by the due diligence requirements imposed by the lenders financing them.

box A.7.5A strengths of PFI

- the desired service standards are maintained
- new services are more likely to start on time
- projects are more likely to be completed on budget
- contractors are motivated to deliver the required service over the whole life of the asset
- transfer of risk to the party best placed to manage it

A.7.5.2 PFI does not suit every project. It works best where:

- the structure of the project allows the public sector to define its needs after construction as service outputs that can be adequately contracted for in a way that ensures an effective and accountable delivery of long-term public services;
- there is experience (or reasonable expectation) of PFI offering better value for money for the public sector compared with other forms of procurement (see annex 4.6). For PFI contracts in the public sector there is a standardised form of VFM analysis;
- PFI projects should not be at the expense of staff terms and conditions. This is covered by the standard PFI contract (see paragraph A.7.5.6)

A.7.5.3 Conversely, PFI is not usually suitable for:

- individual projects too small to justify the transaction costs; or
- large innovative IT projects, since it is rarely practical to specify the requirements sufficiently firmly in advance.

A.7.5.4 The main procurement principles continue to apply when developing PFI deals. It is important that the output to be achieved is clearly specified rather than the method to be used in carrying out the contract, so that the supplier can innovate and manage risk effectively. However, it is sensible to clarify key areas of design early on, to prevent false starts and later misunderstandings.

A.7.5.5 Using standard forms of contract can aid the negotiation process, giving confidence to both parties and helping avoid mistakes. For public sector PFI contracts, the Treasury has produced a standard set of terms and conditions known as the *Standardisation of PFI contracts*. (www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_standardised_contracts.cfm) Any departure from these must be approved by the Treasury.

A.7.5.6 The use of such contracts does not, however, suggest that PFI deals can be entered into unthinkingly. Public sector organisations should strive to be intelligent customers, providing incentives to stimulate enough competition to achieve good value in procurement costs. Public sector organisations need to be conscious that their own reputations may be at risk when PFI contracts are carried out.

A.7.5.7 Once a major asset has been constructed, it may be possible for the private sector partner to refinance the project more cheaply. The contract should specify how the financial benefit should be shared with the public sector purchaser. The Treasury has a standard refinancing protocol to achieve this.

A.7.5.8 Further information including the standard PFI contract can be found on the Treasury Website www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_index.cfm.

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ANNEX 7.6 WIDER MARKET ACTIVITIES

Wider markets activity is part of good asset management in the public sector. When public bodies have assets which are not fully used but are to be retained, it is good practice to consider exploiting the spare capacity to generate a commercial return in the public interest.

A.7.6.1 The Wider Markets Initiative encourages public sector organisations to adopt an entrepreneurial approach to making the most effective and efficient use of public assets by exploiting their commercial potential. Wider market activities are described in box A.7.6A.

box A.7.6A wider market activities

- not statutory except where the enabling power gives authority to charge commercially
- discretionary, using capacity not needed for statutory services
- charged commercially, with a financial objective to produce revenue, not to deliver public policy objectives
- sold into a competitive market
- must comply with general competition law, avoiding distortions

A.7.6.2 Exploiting the commercial potential of assets can take many forms including:

- selling existing goods and services;
- developing new goods and services from existing assets;
- licensing;
- leasing arrangements; or
- sponsorship activities.

A.7.6.3 Public sector organisations should seek out and implement wider market opportunities. However, the case for acquiring any new assets should not be pursued at the expense of delivering the organisation's core objectives. Nor should public bodies deliberately acquire or retain more assets than they need with the aim of producing a future income stream.

Developing a wider markets opportunity

A.7.6.4 The process and resources needed to develop and implement a wider market opportunity will vary depending on the specifics of the opportunity. Partnerships UK has produced a guidance note *Assessment of Potential* (www.partnershipsuk.org.uk/newsAttachments/documents/WMAssessment_guidance3.pdf) which outlines tools and techniques to help public bodies conduct an assessment of potential for wider markets activity.

A.7.6.5 Public sector organisations should subject all proposals to a thorough commercial appraisal in developing any business case. Some of the factors to be addressed are identified in box A.7.6B. Guidance on all aspects of developing wider market projects is available from Partnerships UK (www.partnershipsuk.org.uk/).

box A.7.6B factors to consider in the development of wider market projects

- should the project be accommodated within the existing structure; a new unit or body within the public sector; or a public private partnership
- how will the activity be managed and staffed to ensure public services are not adversely affected
- the costs involved in start up and the ongoing costs, including any investment constraints
- pricing and revenue assumptions, within the appropriate pricing constraints, and targets to ensure they can expect to secure an adequate return
- the degree and nature of the risks involved (including financial, legal and reputational risks) and how they can be managed
- appropriateness, propriety and legality
- the financial return the project could deliver
- compliance with competition law (see annex 6.4)

A7.6.6 All wider market projects where the full annual cost is £1m or more, or where the income is projected above 5% of the body's total, require Treasury approval. So do any projects that have the potential to be contentious or repercussive.

A7.6.7 Public sector organisations undertaking wider market activities should agree their budgeting and accounting treatment with the Treasury.

A ANNEX 7.7

WORKING WITH THE THIRD SECTOR

This annex discusses the working relationships between central government organisations and third sector bodies, with pointers to further guidance.

A.7.7.1 The third sector encompasses a diverse community of voluntary and community organisations, charities, social enterprises, mutuals and co-operatives. The 1998 *Compact on Relations Between the Government and Voluntary and Community Sector in England* and its associated *Codes of Good Practice* aims to improve their working relationship.

A.7.7.2 The *Compact* is a framework for partnership working between government and the third sector. It provides a template for designing or reviewing working relationships and understanding their impact on both sectors. It applies to all the public sector.

A.7.7.3 Supporting the *Compact* is a series of codes, including the *Funding and Procurement Code*. The *Compact* and its supporting Codes should be read with this document as it is important that public resources are not misused, and that good value for money is delivered. At the same time it is important to recognise that restrictive terms can frustrate the ability of funded bodies to deliver the objectives in the round. So some flexibility is called for in designing the terms of working relationships between public sector and third sector organisations in the delivery of public and community services, provided that good value for public money can be secured. Box A.7.7A identifies some key factors to consider.

box A.7.7A partnerships with third sector organisations: considerations

- **Proportionality:** controls over payments, information requirements, monitoring, evaluation, reporting arrangements, external inspection and audit should always be proportional to the level of, and risk to, the funds involved.
- **Risk management:** public sector funders should be aware of the dangers of excessive caution in making funding decisions. They should assess prospective partners' risk profiles and adjust the framework of control accordingly to share risk fairly.
- **Attention to outcomes:** public sector funders need to seek assurance through appropriate appraisal, evaluation and audit, but without damaging the value for money of projects.

A.7.7.4 *Improving financial relationships with the third sector: Guidance to funders and purchasers* sets out best practice and guidance on effective and efficient use of public funds provided to the third sector consistent with proper public accountability. All public bodies should seek to follow this guidance, including where they are acting as agents for EU funding.

A.7.7.5 Box A.7.7B provides links to other useful sources of information in dealing with third sector bodies.

box A.7.7B sources of guidance

- Compact - www.thecompackt.org.uk
- The Compact Funding and Procurement Code, March 2005
www.thecompackt.org.uk/information/100023/100219/publications/
- Working with the Third Sector, National Audit Office, 2005
www.nao.org.uk/publications/nao_reports/05-06/050675.pdf
- Improving Financial Relationships with the Third Sector: Guidance to Funders and Purchasers www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm
- Financial relationships with third sector organisations: a decision support tool for public bodies in England, NAO, 2006 www.nao.org.uk/better%5funding/
- The Role of the Voluntary and Community Sector in Service Delivery: A Cross Cutting Review, HM Treasury, 2002 www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_voluntary.cfm
- Exploring the role of the third sector in public service delivery and reform: A discussion document, HM Treasury, 2005 www.hm-treasury.gov.uk/media/34C/1D/vcs_thirdsector210205.pdf
- Independent Review of Public Sector Efficiency: Releasing resources to the front line, Sir Peter Gershon OBE, July 2004 www.hm-treasury.gov.uk/spending_review/spend_sr04/associated_documents/spending_sr04_efficiency.cfm
- Think Smart, think voluntary sector, OGC and Home Office, June 2004
www.cabinetoffice.gov.uk/third_sector/documents/voluntary_and_community/funding_guidance/think_smart.pdf
- Partnership in Public Services: An action plan for third sector involvement, Office of the Third Sector, December 2006
www.cabinetoffice.gov.uk/third_sector/documents/public_service_delivery/psd_action_plan.pdf

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