POL00363159

HM Treasury

Managing Public Money

May 2023

POL00363159

POL00363159

HM Treasury

Managing Public Money

May 2023

POL00363159



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries GRO

ISBN 978-1-915596-90-1
PU 3309

POL00363159

POL00363159

Contents

Foreword		8
Chapter 1	Responsibilities	9
Chapter 2	Use of Public Funds	13
Chapter 3	Accounting Officers	19
Chapter 4	Governance and Management	29
Chapter 5	Funding	41
Chapter 6	Fees, charges and levies	49
Chapter 7	Working with others	55
Annex 1.1	Communications with Parliament	67
Annex 1.2	The Comptroller and Auditor General	74
Annex 2.1	Treasury approval of legislation	76
Annex 2.2	Delegated authorities	80
Annex 2.3	The PAC Concordat of 1932	85
Annex 2.4	New services	87
Annex 3.1	The Governance Statement	91
Annex 4.1	Finance Directors	95
Annex 4.2	Use of models	99
Annex 4.3	Risk	101
Annex 4.4	Insurance	106
Annex 4.5	Senior Responsible Owner Accountability	112
Annex 4.6	Procurement	114
Annex 4.7	Subsidies	120
Annex 4.8	Expenditure and payments	121
Annex 4.9	Fraud	123
Annex 4.10	Losses and write offs	126
Annex 4.11	Overpayments	132
Annex 4.12	Gifts	137
Annex 4.13	Special payments	140
Annex 4.14	Remedy	145
Annex 4.15	Asset management	149
Annex 5.1	Grants	155
Annex 5.2	Protecting the Exchequer interest (clawback)	159
Annex 5.3	Treatment of income and receipts	164
Annex 5.4	Contingent liabilities	168
Annex 5.5	Lending	177

POL00363159

Annex 5.6	**Banking and managing cash**	**183**
Annex 6.1	**How to calculate charges**	**191**
Annex 6.2	**Charging for information**	**195**
Annex 6.3	**Competition law**	**198**
Annex 7.1	**Forming and reforming ALBs**	**200**
Annex 7.2	**Framework documents**	**205**
Annex 7.3	**Government Companies, Public Corporations, and Trading Funds**	**208**
Annex 7.4	**Using private finance**	**214**

POL00363159

Foreword

This document sets out the main principles for dealing with resources in public sector organisations in the UK. Some of the specifics, especially those in the annexes, relate to England 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.

The key themes remain unchanged from previous version of this document and its predecessors. They are the fiduciary duties of those handling public resources to work to high standards of probity; and the need for the public sector to work in harmony with Parliament.

These principles are invariant.

However, the law, business practices, and public expectations all change. Public sector organisations can and should innovate in carrying out their responsibilities, using new technology and adopting good business practice. Throughout, Parliament always expects the government and its public servants to meet the demanding standards set out in this document.

The Treasury stands ready to help anyone who needs help in thinking through the issues.

The Treasury will revise this document from time to time as the need arises. Where necessary, the Treasury will also issue “Dear Accounting Officer” letters, to provide specific advice on issues of accountability, regularity and propriety, value for money and annual accounting exercises. The content of those letters carries the same force as the material contained in this document.

Above all, nothing in this document should discourage the application of sheer common sense.

POL00363159

Chapter 1
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 implement government policies, and deliver public services, through public servants; but are able to do so only where 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 for managing public resources run through many diverse organisations delivering public services in the UK. The requirements for the different kinds of body reflect their duties, responsibilities and public expectations. The demanding standards expected of public services are set out in box 1.1.

Box 1.1: standards expected of all public services

The standards expected of all public services are *honesty*, *impartiality*, *openness*, *accountability*, *accuracy*, *fairness*, *integrity*, *transparency*, *objectivity* and *reliability*. All should be carried out in the spirit of, as well as to the letter of the law, in the public interest, to high ethical standards and achieving value for money.

1.1.2 The principles in this handbook complement the guidance on good governance in the *Corporate Governance Code*[1] applying to central government departments. Some of the detail applies to England only, or just to departments of state. There is separate guidance for the devolved administrations. Where restrictions apply, they are identified.

1.1.3 Much of this document is about meeting the expectations of Parliament. These disciplines also deliver accountability to the general public, on whose behalf Parliament operates. The methods of delivery used should 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 and conducive to efficiency.

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 practices and conventions. This mix may of course change from time to time.

[1] The Corporate Governance Code – see https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments

POL00363159

1.2.2 As the Corporate Governance Code[1] makes clear, the minister in charge of a department is responsible for its policy and business as part of the broad sweep of government policy determined in Cabinet. They:

- determine the policies of the departmental group
- chair the departmental board
- allocate responsibilities among the ministers in the department
- choose which areas of business to delegate to officials, and on what conditions
- look to the department's accounting officer (see chapter 3) to delegate within the department to deliver the minister's decisions and to support the minister in making policy decisions and handling public funds
- also have general oversight of other bodies on whose behalf they may answer in Parliament, including the department's arms length bodies (ALBs).

1.2.3 The Ministerial Code[2] requires ministers to heed the advice of their accounting officers about the proper conduct of public business. See section 3.6 below for how the minister may direct the accounting officer to proceed with a policy if a point of this kind cannot be resolved.

1.2.4 The minister in charge of a department may delegate defined areas of its business, or of its parliamentary work, to their junior ministers. Ministers have wide powers to make policies and to instruct officials.

1.2.5 Only ministers can propose legislation to Parliament to raise public revenue through taxation, or to use public funds to pursue their policy objectives. Specific primary legislation is normally required to spend public funds (see section 2.1).

1.2.6 Similarly, taxes may be collected, and public funds may be drawn, only with parliamentary authority; and only as Parliament has authorised.

1.2.7 It is not normally acceptable for a private sector organisation to be granted powers to raise taxes, nor to distribute their proceeds. Parliament expects these responsibilities to fall to ministers, using public sector organisations.

1.3 Parliament

1.3.1 Parliament approves the legislation which empowers ministers to carry out their policies. It also allows finance for services when it approves each year's Estimates. See the Estimates Manual[3] for more.

1.3.2 From time to time Parliament may examine government activity. Select committees examine policies, expenditure, administration and service delivery in defined areas. The Committee of Public Accounts (PAC - see section 3.7) examines financial accounts, scrutinises value for money and generally holds the government and its public servants to account for the quality of their past administration.

1.3.3 To enable the effective scrutiny of the use of public funds, Parliament requires departments and public bodies to notify it of certain events or the publication of

---

2 https://www.gov.uk/government/publications/ministerial-code

3 https://www.gov.uk/government/publications/supply-estimates-guidance-manual

POL00363159

material. Those notification requirements are set out in the relevant chapters of this document, but also brought together in Annex 1.1.

1.4 The Treasury

1.4.1 Parliament looks to the Treasury to make sure that:

- that departments use their powers only as it has intended
- 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
- 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, value for money and feasibility (see box 3.2). The Treasury:

- designs and runs the financial planning system[4] and oversees the operation of the agreed multiyear budgets to meet ministers' fiscal policy objectives
- oversees the operation of the Estimates through which departments obtain authority to spend year by year
- sets the standards to which central government organisations publish annual reports and accounts in the Financial Reporting Manual (FReM). This adapts International Financial Reporting Standards (IFRS) to take account of the public sector context
- sets Accounts Directions for the different kinds of central government organisations whose accounts are laid in Parliament
- may also work through the Cabinet Office to set certain standards applicable across central government, for example functional standards[5].

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, and supported by their boards, to control and account for the department's business.

1.5.2 A departmental board, chaired by the senior minister, leads each department. Boards can bring to bear skills and experiences from elsewhere in, and outside of, the public sector (see section 4.1).

1.5.3 Within each department, there shall be adequate delegations, controls and reporting arrangements to provide assurance to the board, the accounting officer[6] and ultimately ministers about what is being achieved, to what standards and with what

[4] See the Consolidated Budgeting Guidance for more - https://www.gov.uk/government/collections/consolidated-budgeting-guidance

[5] See Functional Standards - https://www.gov.uk/government/collections/functional-standards

[6] 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 accounts, using assurances as necessary.

POL00363159

effect. These arrangements shall provide timely and prompt management information to enable plans to be adjusted as necessary. Similarly ministers should have enough evidence about the impact of their policies to decide whether to continue, modify or end them. This is discussed further in chapter 4.

1.5.4 In supporting ministers, civil servants 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[7]).

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

1.6 The Comptroller and Auditor General

1.6.1 Supported by the National Audit Office (NAO), the Comptroller and Auditor General (C&AG) operates independently to help Parliament scrutinise how public funds have been used in practice. Further information about the role of the NAO is available on their website[8] and in annex 1.2.

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

- financial audit of the accounts of departments and arms length bodies (ALBs), covering:
  i. assurance that accounts have been properly prepared and are free of material misstatements[9]
  ii. 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 programme of these reviews covers a variety of subjects over a period, taking account of the risks to value for money and Parliament's interests.

1.6.3 The C&AG has a general right to inspect the records of a wide variety of public organisations to further these investigations. When the NAO investigates any public sector organisation, it should get full cooperation in provision of papers and other information. It is good practice to draw the NAO's attention to the confidentiality of any sensitive documents provided in this process. It is then for the independent C&AG to judge what material can be published in the public interest.

1.6.4 In addition, the C&AG publishes other independent reports to Parliament. The PAC (see section 3.7) may hold hearings to examine evidence on any of these reports and on other related matters.

---

[7] https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code

[8] The NAO website address is http://www.nao.org.uk

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

POL00363159

Chapter 2
Use of Public Funds

This chapter explains the process for parliamentary authorisation of public resources. Parliament consents in principle to the use of public funds through legislation to enable specified policies. It then approves use of public resources to carry out those policies year by year by approving Estimates. Only rarely can lesser authority suffice. At the close of each financial year, Parliament expects a clear account of the use of the public funds it has authorised. Parliament expects the Treasury to oversee the operation of these controls. The PAC may investigate specific issues further.

2.1 Introduction

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 powers to administer their operations or continue business as usual.

2.1.2 Ministers also need parliamentary authority for use of public funds before each year's expenditure can take place. The full list of requirements is set out in box 2.1.

Box 2.1: requirements for use of public funds

- budget cover in the collectively agreed multi-year budgets
- with a few exceptions[10], parliamentary authorization for each year's drawdown of funds through an Estimate, which is then approved as a Supply and Appropriation Act (see section 2.2)
- adequate Treasury consents (see section 2.3)
- assurance that the proposed expenditure is regular and proper (see section 2.4)
- sufficient legal powers – though see section 2.5 for some limited exceptions

2.1.3 The Treasury runs the control process because Parliament expects the Treasury to control public expenditure as part of fiscal policy. The primary means through which the Treasury controls public expenditure is multi-year budgets, agreed collectively at spending reviews. The Consolidated Budgeting Guidance sets out the rules for their use. (See also chapter 4). Further, Parliament expects the statutory powers granted to be exercised in line with the wider spending framework set by the Treasury: for example, spending powers must be exercised in line with the delegations set by Treasury or a sponsor department, and powers to set remuneration must be exercised in line with central pay controls unless alternative delegations have been agreed.

[10] See section 5.3.

POL00363159

2.2 Using the Estimate

2.2.1 The requirements in box 2.1 are to some extent interrelated. The accounting officer of a department (see also chapter 3) is responsible for ensuring that:

- the Estimate(s) presented to Parliament for the department's annual expenditure (consolidating its ALBs) are within the statutory powers and within the government's expenditure plans
- use of resources is within the ambit of the vote and consistent with the Estimate(s)
- they answer to Parliament for stewardship of these responsibilities.

2.3 Treasury Consents

2.3.1 Departments must have Treasury consent before undertaking expenditure or making commitments which could lead to expenditure, or have other fiscal implications (this includes legislation with spending implications - see annex 2.1). Usually the Treasury agrees some general approvals delegating consent for each department subject to clear limits and/or exclusions.

2.3.2 Some common approaches to setting delegations are shown in box 2.2 and are discussed further in annex 2.2. It is good practice to review delegations from time to time to make sure that they remain up to date and appropriate. Delegations can be tightened or loosened at reviews, depending on experience.

Box 2.2: examples of approaches to delegated authorities

- A delegated limit, below which consent is delegated to the department, and above which spending proposals still require specific Treasury consent
- objective criteria for exceptions requiring specific Treasury scrutiny or approval
- a sampling mechanism to allow specimen cases to be examined

2.3.3 In turn departments should agree with each of their arm's length bodies (ALBs - the public sector organisations they sponsor or finance) a similar set of delegations appropriate to their business[11] (see also chapter 7).

2.3.4 There is an important category of expenditure commitments for which the Treasury cannot delegate responsibility. It is transactions which set precedents, are novel, contentious or could cause repercussions elsewhere in the public sector. Box 2.3 gives examples. Treasury consent to such transactions must always be obtained before proceeding, even if the amounts in question lie within the delegated limits.

2.3.5 It is improper for a public sector organisation to spend or make commitments outside the agreed delegations and if occurs will likely result in a finding that that spend is irregular. The Treasury may subsequently agree to give retrospective consent, but only if the expenditure in question would have been agreed if permission had been sought at the right time.

2.3.6 Sometimes legislation calls for explicit Treasury consent, e.g. for large or critical projects. There are also Whitehall wide controls on key progress points for the very

[11] Delegations to ALBs should never be greater than the delegated limits agreed between the Treasury and the sponsor department.

POL00363159

largest projects[12]. In such cases it is unlawful to proceed without Treasury consent - and Treasury consent cannot be given retrospectively.

Box 2.3: examples of transactions requiring explicit Treasury consent

- extra statutory payments similar to but outside statutory schemes
- ephemeral ex gratia payment schemes, e.g. payments to compensate for official errors
- extra statutory payments similar to but outside statutory schemes
- special severance payments, e.g. compromise agreements in excess of contractual commitments
- non-standard payments in kind
- unusual financial transactions, e.g. imposing lasting commitments or using tax avoidance
- unusual schemes or policies using novel techniques

2.3.7 Where proposals have public expenditure implications, the Treasury should be consulted before they are submitted for approval by collective agreement at cabinet level, either in person, by write-round or via a cabinet sub-committee. Where the department proposing the policy and the Treasury cannot agree in advance, any proposal for collective ministerial consideration should record the Treasury's position in terms which are acceptable to them. Policy proposals with public expenditure implications will not be agreed unless Treasury ministers are content.

2.4 Regularity and Propriety

2.4.1 The concepts of regularity and propriety, fundamental to the right use of public funds, are set out in box 2.4. The term regularity and propriety is often used to convey the idea of probity and ethics in the use of public funds – that is, 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[13] - 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.

Box 2.4: regularity and propriety

Regularity: compliant with the relevant legislation and wider legal principles such as subsidy control and procurement law, delegated authorities and following the guidance in this document.

Propriety: meeting high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency.

[12] Through the Major Projects Authority, http://www.cabinetoffice.gov.uk/content/major-projects-authority] using powers delegated by the Treasury.

[13] http://www.public-standards.gov.uk/

POL00363159

2.4.2 Each departmental accounting officer shall make sure that ministers in their department appreciate:

- the importance of operating with regularity and propriety
- the need for efficiency, economy, effectiveness and prudence in the administration of public resources, to secure value for public money[14].

2.4.3 Should a minister seek a course of action which the accounting officer cannot reconcile with any individual aspect of these requirements, they should seek instructions in writing from the minister before proceeding (see chapter 3).

2.4.4 Should departments need to resolve an issue about regularity or propriety, they should consult the relevant Treasury spending team. Similarly, ALBs should consult their sponsor departments about such issues, and the department concerned may in turn consult the Treasury.

2.4.5 Neither improper nor irregular expenditure achieves the standards that Parliament expects. So any such expenditure must be noted in the department's annual report and accounts. If the discrepancy is material it can result in a qualification to the accounts. When any expenditure of this kind comes to light, it should be drawn to the attention of both the NAO and the Treasury. The immediate follow up action is to identify the source of any systematic problems so that there is no recurrence. The PAC may also call the accounting officer to explain the matter at a public hearing.

2.5 Securing adequate legal authority

2.5.1 Parliament usually authorises spending on a specific policy or service by approving bespoke legislation setting out in some detail how it should work. It is not normally acceptable to use a royal charter as an alternative to primary legislation, for this approach robs Parliament of its expected opportunity for control and accountability. Departments shall ensure that both they and their ALBs have adequate legal cover for any specific actions they undertake.

2.5.2 The Treasury takes this requirement seriously. It is fundamental to the trust and understanding between the government and Parliament on which management of the public finances is founded. In the Concordat of 1932 (see annex 2.3), the Treasury undertook that departments would not spend without adequate legal authority.

2.5.3 There are some general exceptions. These kinds of expenditure do not require specific legislation in order to avoid burdening parliamentary time:

- routine matters covered by common law (the main examples are in box 2.5)
- a very limited range of Consolidated Fund Standing Services (see section 5.3)
- projects or services which are modest or temporary (see box 2.6). This exception cannot be used to plug a gap in spending authority before specific legislation for an ongoing service is passed. The temporary services derogation only applies to initiatives lasting no more than two years in total, and it is therefore important to note that this does not provide a two-year grace period for spending on a new, ongoing service before specific legislation is required.

[14] 5 A more detailed description of value for money is at annex 4.4

POL00363159

Box 2.5: expenditure which may rely on a Supply and Appropriation Act

- routine administration costs: employment costs, rent, cleaning etc
- lease agreements, e.g. for photocopiers, lifts
- contractual obligations to purchase goods or services (e.g. where single year contracts might be bad value)
- expenditure using prerogative powers such as defence of the realm and international treaty obligations

2.5.4 In all the three cases in paragraph 2.5.3, departments may rely on the sole authority of a Supply and Appropriation Act (the culmination of the Estimates process) without the need for specific legal authority, provided that the other conditions in box 2.1 are met.

Box 2.6: modest or temporary expenditure which may rely on a Supply and Appropriation Act

Either services or initiatives lasting no more than two years, e.g. a pilot study or one off intervention

Or expenditure of no more than £1.75m a year (amount adjusted from time to time)

Provided that there is no specific legislation covering these matters before Parliament and existing statutory restrictions are respected.

These conditions are demanding. Treasury consent is required before they may be relied on.

2.6 New Services

2.6.1 When ministers decide on a new activity, all the conditions in box 2.1 must be met before it can begin. In practical terms this means that most significant new policies which are intended to persist require specific primary legislation.

2.6.2 Sometimes ministers want to start early on a new policy which is intended to continue but whose enabling legislation has not yet secured royal assent. It may be possible to make limited preparation for delivery of the new service before royal assent, but to do so it will usually be necessary to consider borrowing from the Contingencies Fund (see annex 2.4). Access to this Fund is controlled by the Treasury, subject to the conditions in box 2.7. Specific Treasury consent is always required.

Box 2.7: conditions for access to the contingencies fund (see also annex 2.4)

- the proposed expenditure must be urgent and in the public interest, i.e. with wider benefits to outweigh the convention of awaiting parliamentary authority (political imperative is not enough)

POL00363159

- the relevant bill must have successfully passed second reading in the House of Commons
- the legislation must be certain, or virtually certain, to pass into law with no substantive change in the near future, and usually within the financial year
- the department responsible must explain clearly to Parliament what is to take place, why, and by when matters should be placed on a normal footing

.

POL00363159

Chapter 3
Accounting Officers

This chapter sets out the personal responsibilities of all accounting officers in 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 Introduction

3.1.1 Each organisation in central government – department, agency, trading fund, NHS body, non-departmental public body (NDPB) or arm's length body – must have an accounting officer. This person is usually its senior official. The accounting officer in an organisation shall be supported by a board structured in line with the Corporate Governance Code.

3.1.2 Formally the accounting officer in a public sector organisation is the person who Parliament calls to account for stewardship of its resources. The standards the accounting officer is expected to deliver are summarised in box 3.1. The equivalent senior business managers of other public sector organisations are expected to deliver equivalent 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.

3.2.3 In turn the principal accounting officer of each department normally appoints the permanent heads:

- of its executive agencies, as agency accounting officers for their agencies
- of other ALBs (including all NDPBs), as accounting officers for these bodies
- at their discretion, additional accounting officers for defined part(s) of the department's business.

3.2.4 In the case of appointment of principal accounting officers of departments and accounting officers of trading funds, the relevant department should send a draft letter of appointment directly to the Treasury Officer of Accounts team via TOAEnquiries@ GRO for the signature of the Treasury Permanent Secretary. This should be done at least fourteen calendar days before the accounting officer is due to take up their role.

3.2.5 In the case of appointment of an accounting officer for an arm's length body, the body should liaise with its sponsoring department to arrange a letter of

POL00363159

appointment from the principal accounting officer. Again, this should be done at least fourteen calendar days before the accounting officer is due to take up their role. The private office of the principal accounting officer should then promptly notify the TOA team.

3.2.6 These actions ensure that the register of accounting officers is kept up to date and that appropriate training can be arranged.

3.2.7 If the timeframes above cannot be met, or in the event of a temporary gap between the standing down of an accounting officer and the appointment of a new accounting officer, the department should contact the TOA team to discuss the appropriate mechanism to ensure accountability arrangements are maintained.

3.2.8 Template letters of appointment can be found on gov.uk. The TOA team is happy to assist in the preparation of these letters.

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 they manage delivers the standards in box 3.1. In particular, the accounting officer must personally sign: the accounts; the annual report the governance statement (see annex 3.1); and having been satisfied that they have been properly prepared to reflect the business of the organisation, must personally approve: voted budget limits; 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 they are responsible, the accounting officer shall ensure that the organisation, and any ALBs it sponsors, 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
- work cooperatively with partners in the public interest
- operate with propriety and regularity in all its transactions
- treat its customers and business counterparties fairly, honestly and with integrity
- offer appropriate redress for failure to meet agreed customer standards
- give timely, transparent and realistic accounts of its business and decisions, underpinning public confidence

Decision-making:

- support its ministers with clear, well-reasoned, timely and impartial advice

POL00363159

- make all its decisions in line with the strategy, aims and objectives of the organisation set by ministers and/or in legislation
- take a balanced view of the organisation's approach to managing opportunity and risk
- impose no more than proportionate and defensible burdens on business

Financial management:

- use its resources efficiently, economically and effectively, avoiding waste and extravagance
- plan to use its resources on an affordable and sustainable path, within agreed limits
- carry out procurement and project appraisal objectively and fairly, using cost benefit analysis and generally seeking good value for the Exchequer as a whole
- use management information systems to gain assurance about value for money and the quality of delivery and so make timely adjustments
- avoid over defining detail and imposing undue compliance costs, either internally or on its customers and stakeholders
- have practical documented arrangements for controlling or working in partnership with other organisations, as appropriate use internal and external audit to improve its internal controls and performance

3.3.2 The accounting officer of a corporate arm's length body shall arrange for a board member to sign the accounts as well as signing them himself or herself, if (unusually) they are not a member of the board.

3.3.3 There are several other areas where accounting officers shall take personal responsibility:

- Regularity and propriety (see box 2.4), including securing Treasury approval for any expenditure outside the normal delegations or outside the subheads of Estimates
- Affordability and sustainability: respecting agreed budgets and avoiding unaffordable longer-term commitments, taking a proportionate view about other demands for resources
- Value for money: ensuring that the organisation's procurement, projects and processes are systematically evaluated to provide confidence about suitability, effectiveness, prudence, quality, good value judged for the Exchequer as a whole, not just for the accounting officer's organisation (e.g. using the Green Book[15] to evaluate alternatives)
- Control: the accounting officer shall personally approve and confirm their agreement to all Cabinet Committee papers and major project or policy initiatives before they proceed

[15] https://www.gov.uk/government/collections/the-green-book-and-accompanying-guidance-and-documents

POL00363159

- 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 (e.g. through managing projects and programmes using techniques such as PRINCE2), and from right across the public sector
- Accounting accurately for the organisation's financial position and transactions: to ensure that its published financial information is transparent and up to date; and that the organisation's efficiency in the use of resources is tracked and recorded.

3.3.4 In the case of principal accounting officers, these responsibilities apply to the business of the whole departmental group.

3.4 Accounting officer assessments

3.4.1 Accounting officers shall routinely scrutinise significant policy proposals or plans to start or vary major projects and then assess whether they measure up to the standards in box 3.2.

Box 3.2: the standards expected for projects and proposals

Regularity: the proposal has sufficient legal basis, parliamentary authority, and Treasury authorisation; and is compatible with the agreed spending budgets.

Propriety: the proposal meets the high standards of public conduct and relevant Parliamentary control procedures and expectations.

Value for money: in comparison to alternative proposals or doing nothing, the proposal delivers value for the Exchequer as a whole.

Feasibility: the proposal can be implemented accurately, sustainably, and to the intended timetable.

3.4.2 A systematic written accounting officer assessment helps to ensure good decision making and provides positive assurance that the four standards have been properly considered.

3.4.3 An accounting officer assessment shall be produced for projects or programmes which form part of the Government Major Projects Portfolio (GMPP):

- alongside the request for the accounting officer's approval of the Outline Business Case (or at the point when it enters the GMPP if this is later)
- at subsequent stages of the project if it departs from the four standards or the agreed plan – including any contingency – in terms of costs, benefits, timescales, or level of risk, which informed the accounting officer's previous approval
- if the Senior Responsible Owner (SRO) of the project decides one is merited at any other stage of the project.

3.4.4 In addition, it is good practice to prepare an accounting officer assessment for each significant novel and contentious transaction or proposal involving the use of public funds. This may be particularly useful where it is not possible to produce a fully developed business case, for example due to lack of time and/or data, or the risk environment is higher than usual. The Treasury often asks spending departments and

POL00363159

organisations for such analyses before clearing them to proceed, as will the National Audit Office (NAO) when conducting any review of the issue.

3.4.5 Beyond that, in many cases, the normal governance procedures, such as production and approval of business cases, should provide sufficient assurance against the accounting officer standards, without need for a bespoke accounting officer assessment.

3.4.6 All draft accounting officer assessments must be signed off by the organisation's senior officer for finance (usually Finance Director, Chief Financial Officer or Director General for Finance) or alternate senior member of the finance function within the department before being submitted to the accounting officer for final sign off.

3.4.7 Whenever an accounting officer assessment is produced for a GMPP project, a summary of the key points shall also be prepared and published.

3.4.8 Accounting officers may also choose to publish similar information from assessments made in other circumstances at their discretion.

3.4.9 When an accounting officer assessment for a GMPP project is completed, the summary assessment should be published promptly on the department's pages of gov.uk. The Treasury maintains a collection page titled 'Accounting Officer Assessments'[16] that links to these publications. Departments should ensure that their page is added to this collection page once they publish it.

3.4.10 Copies should be deposited in the Library of the House of Commons, and sent to the Chair of the PAC, the Comptroller and Auditor General and the Treasury Officer of Accounts. It should also be copied to the Principal Accounting Officer if prepared by another accounting officer in the department or one of its arm's length bodies.

3.4.11 Where an accounting officer decides the public interest is best served by delaying publication of a summary assessment, they should nevertheless share the summary on a confidential basis with the chairs of the PAC and the relevant departmental select committee, as well as the Comptroller & Auditor General and the Treasury Officer of Accounts[17].

3.4.12 Further guidance on producing and publishing accounting officer assessments can be found in Accounting Officer Assessments: guidance[18].

3.5 Working with other organisations

3.5.1 It often makes sense for two or more departments to work together to deliver public services. In such circumstances, each accounting officer remains personally responsible for the resources of their own organisation. It is good practice for participating bodies to document their respective responsibilities, for example by way of a memorandum of understanding. Further details are set out in Chapter 7.

---

[16] https://www.gov.uk/government/collections/accounting-officer-assessments-collection

[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1090958/DAO_0422_Accounting_officer_assesments_and_framework_documents.pdf

[18] www.gov.uk/government/publications/accounting-officer-assessments

POL00363159

3.5.2 It may also be the case that, in assessing a project or proposal, the accounting officer will want to draw on expertise from another department or public body. Where this happens, the accounting officer may ask the organisation to provide written assurances of the robustness of the analysis and any underlying methodology. However, the ultimate judgement in each case lies with the accounting officer personally.

3.6 Directions

3.6.1 The accounting officer cannot simply accept the minister's aims or policy without examination. Each departmental accounting officer shall take care to bring to the attention of their minister(s) any conflict between the minister's instructions and the standards set out in box 3.2.

3.6.2 Where a departmental accounting officer determines that a proposal does not meet one or more of these standards, the best next step is to consider whether the policy or proposed course of action can be modified to make it fit. If not, and the minister decides it is nevertheless appropriate to continue with the proposal, the accounting officer shall ask their senior minister for a formal written direction to proceed. An oral direction shall be confirmed promptly in writing.

3.6.3 Before finalising a direction request, it is good practice for accounting officers to discuss the matter with the Treasury. Often, by their nature, issues that might call for a ministerial direction are novel, contentious, or repercussive, and therefore require explicit Treasury consent. Where this is the case, Treasury consent should be obtained before the direction request is finalised. Treasury consent does not remove the need for a direction if the requirements of box 3.2 are not met.

3.6.4 As always, the ultimate judgement in each case must lie with the accounting officer personally. The acid test is whether the accounting officer could justify the proposed activity if asked to defend it.

3.6.5 There is no set form for requesting a direction, though the accounting officer shall be specific about their nature and the standard or standards that is/are not satisfied.

3.6.6 When a direction is made, the Accounting Officer shall:

- follow the minster's direction without further ado
- promptly copy the direction request, the direction and other papers the accounting officer considers relevant to Public Accounts Committee, the Comptroller and Auditor General and the Treasury Officer of Accounts
- unless it is in the public interest that the matter is kept confidential, arrange for the direction request and direction itself to be published on the gov.uk website promptly, notifying the chairs of the PAC and the relevant departmental select committee as soon as this occurs
- where confidentiality is required, in addition to copying to the Comptroller and Auditor General and the Treasury Officer of Accounts as usual, share the direction request and the direction with the chairs of the PAC and the relevant departmental select committee, along with an explanation of when they expect the need for confidentiality to fall away and publication to take place

POL00363159

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

3.6.7 A direction on regularity or propriety ground does not change that position – that is it does not make the action regular or proper. It is important to note that a direction does not permit unlawful action and does not protect against a court finding unlawfulness.

3.6.8 Where a direction has been issued, this does not represent a continuing mandate to dispense with the accounting officer standards. The AO has a responsibility to ensure the standards set out in box 3.2 are met on an ongoing basis. The AO should seek to bring the policy in line with standards at the earliest opportunity if possible, and if circumstances change should consider whether the existing direction provides sufficient cover to justify the policy. It may be appropriate to revisit with the Minister if the direction is still supported at appropriate stages of policy implementation.

3.7 Public Accounts Committee

3.7.1 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 NAO seeks to agree the text of these reports with the accounting officer(s) concerned so there is a clear undisputed evidence base for PAC scrutiny.

3.7.2 Witnesses to PAC hearings sometimes find that there is supplementary material which would be helpful to the committee, in addition to the NAO report. When this happens it is good practice to submit it to the Committee with adequate time to consider it, clearing it first with the NAO. If time does not permit this, witnesses or their representatives should discuss the best approach with the Clerk to the Committee.

3.7.3 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, an accounting officer may send a substitute. The PAC may also invite other witnesses who may not be public servants to give insight into the background of the subject in hand.

3.7.4 In answering questions, the accounting officer shall take responsibility for the organisation's business, even if it was delegated or if the events in question happened before they were appointed accounting officer. In response to specific PAC or Select Committee requests, previous accounting officers may also attend relevant PAC hearings. Recalls of this kind should be assessed case by case, depending on the circumstances. They are acceptable if the business in issue was recent, and where the former accounting officer has had an opportunity to comment before publication on any NAO report which the PAC is to investigate.

3.7.5 The PAC expects witnesses to give clear, accurate and complete evidence. If evidence is sensitive, witnesses may ask to give it in private. Witnesses may offer supplementary notes if the information sought is not to hand at the meeting. Any such notes should be provided within one week unless the PAC is willing to grant an extension. They should do so without delay.

3.7.6 The Treasury Officer of Accounts (or an alternate) attends all PAC hearings. This enables the PAC to explore any more general issues arising out of the hearing.

POL00363159

3.7.7 The evidence given by accounting officers at public hearings often feeds into reports published by the PAC. These reports detail its findings, conclusions and recommendations.

3.7.8 For each PAC report, the government responds to recommendations by means of Treasury Minutes presented to Parliament by a Treasury minister, indicating those the government accepts and those it does not accept. For those it accepts, Treasury Minutes will include target implementation dates. For those it does not accept, they will set out reasons for non-acceptance.

3.7.9 In addition, government departments and organisations are required to report twice annually to Parliament on progress in implementing Committee recommendations accepted by government. Treasury Minute Progress Reports are used for this purpose.

3.7.10 The PAC expects the government to respond promptly and transparently through both the initial Treasury Minute and subsequent Progress Reports. Accounting officers shall ensure the internal clearance processes within their organisation, including any ministerial clearances the accounting officer decides are needed, are arranged to fit with deadlines for responses.

3.7.11 In addition, if a department determines it is necessary to revise the target date for implementing an agreed recommendation, the accounting officer shall write immediately to the PAC, copied to the Treasury Officer of Accounts, and provide a detailed explanation for the deferral. Departments shall not leave notification of the delay in implementation until the publication of the next Treasury Minutes Progress Report.

3.8 When an accounting officer is not available

3.8.1 Each public sector organisation must have an accounting officer available for advice or decision as necessary at short notice. When the accounting officer is absent and cannot readily be contacted, another senior official should deputise.

3.8.2 If a significant absence is planned, the principal accounting officer may invite the Treasury to appoint a temporary acting accounting officer.

3.8.3 In these circumstances, a temporary acting accounting officer stands in the shoes of the principal accounting officer. They are not acting on behalf of the Principal Accounting Officer but are personally responsible to Parliament in their own right. Their decisions are not subject to ratification by the principal accounting officer and their role shall only be activated if the principal accounting officer is unable to fulfil their obligations. To all intents and purposes the temporary acting accounting officer replaces the principal accounting officer.

3.8.4 A similar logic can also apply for an accounting officer in an arm's length body (ALB), whereby the arrangement must be agreed and formalised between the department and the ALB.

3.9 Conflicts of interest

3.9.1 Sometimes an accounting officer faces an actual or potential conflict of interest. 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:

POL00363159

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

3.10 Arm's length bodies

3.10.1 The responsibilities of accounting officers in departments and in arm's length bodies (ALBs) are essentially similar. 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 terms of the framework document agreed with the sponsor department. See chapter 7 for more details.

3.10.2 The framework document (or equivalent) agreed between an ALB and its sponsor always provides for the sponsor department to exercise meaningful oversight of the ALB's strategy and performance, pay arrangements and/or major financial transactions, e.g. by monthly returns, standard delegations and exception reporting. The sponsor department's accounts consolidate those of its ALBs so its accounting officer must be satisfied that the consolidated accounts are accurate and not misleading.

3.10.3 Overall, the accounting officer of a sponsor department shall make arrangements to satisfy himself or herself that that the ALB has systems adequate to meet the standards in box 3.1. Similarly, the accounting officer of an ALB with a subsidiary shall have meaningful oversight of the subsidiary sufficient to exercise their AO responsibilities. It is not acceptable to establish ALBs, or subsidiaries to ALBs, in order to avoid or weaken parliamentary scrutiny. If an ALB does not possess this level of control, it will most likely be necessary for the sponsor department's PAO to appoint the chief executive of the subsidiary as an AO in their own right. In this case, the subsidiary's AO is directly responsible to the PAO, although the sponsor department may delegate some sponsorship functions to the original ALB. All AOs must be appointed by and responsible to the sponsor department's PAO.

3.10.4 Exceptionally, the accounting officer of a sponsor department may need to intervene if an ALB drifts significantly off track, e.g. if its budget is threatened, its systems are badly defective or it falls into disrepute. This may include replacing some or all of the leaders of the ALB, possibly even its accounting officer.

3.10.5 There are sensitivities about the role of the accounting officer in an ALB which is governed by an independent fiduciary board, e.g. a charity or company. The ALB's accounting officer, who will normally be a member of the board, must take care that their personal legal responsibilities do not conflict with their duties as a board member. In particular, the accounting officer shall vote against any proposal which appears to cause such a conflict; it is not sufficient to abstain.

3.10.6 Moreover, if the chair or board of such an ALB is contemplating a course of action that is inconsistent with the standards in box 3.1, then the accounting officer shall follow the procedure set out in the organisation's framework document. This process is similar to what happens in departments (see section 3.6), but will be tailored to reflect the position of the organisation's board, which is often appointed under statute.

POL00363159

3.11 In the round

3.11.1 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 with no precedents. Should that happen, the accounting officer should be guided by the standards in box 3.1 in assessing whether there is a case for seeking a direction for any of the factors in box 3.2. It is essential that accounting officers seek good outcomes for the Exchequer as a whole, respecting the key principles of transparency and parliamentary approval for management of public resources.

3.11.2 In addition, there may be occasions where it is necessary to respond urgently to events, reducing the time available for analysis and requiring the accounting officer to make an assessment. In such circumstances, all available options may carry more uncertainty and more risk than would be acceptable in more normal times.

3.11.3 Here, in assessing value for money and feasibility, the accounting officer must assess the relative merits and costs of alternatives (including doing nothing).

3.11.4 Sometimes, it is possible to do no more than identify the scale of the problem to be tackled and then examine why the proposed action should both be effective and have tolerable cost. Wherever proposals or projects are taken forward, accounting officer shall identify and assess risks, and design and operate the most effective risk treatment activities (including controls) possible in the time available.

3.11.5 The Treasury stands ready to help accounting officers think such issues through.

POL00363159

Chapter 4
Governance and Management

Public sector organisations shall have good quality internal governance and sound financial management. Appropriate delegation of responsibilities and effective mechanisms for internal reporting should ensure that performance can be kept on track. Good practice should be followed in procuring and managing resources and assets; hiring and managing staff; and deterring waste, fraud and other malpractice. Central government departments have some specific responsibilities for reporting, including to Parliament.

4.1 Introduction

4.1.1 Each public sector organisation shall establish governance arrangements appropriate to its business, scale and culture. The structure shall combine efficient decision making with accountability and transparency.

4.1.2 In doing so, central government departments shall be guided by the Corporate Governance Code[19] . Each public sector organisation needs clear leadership, normally provided by a board. Box 4.1 sets out best practice for departmental boards.

Box 4.1: best practice for boards in central government departments

- chaired by the department's most senior minister, with junior ministers as members
- comparable numbers of official and non-executive members, including a lead non-executive and a professionally qualified finance director (see annex 4.1)
- meeting at least quarterly
- sets the department's strategy to implement ministers' policy decisions
- leads the department's business and determines its culture
- ensures good management of the department's resources – financial, assets, people
- decides risk appetite and monitors emerging threats and opportunities
- steers performance to keep it on track using regularly updated information about progress
- keeps an overview of its ALBs' activities

[19] https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments for both the code and the good practice guidance.

POL00363159

4.1.3 It is good practice for ALBs to use similar principles. In many ALBs some structural features, such as board composition, derive from statute but considerable discretion may remain. In some organisations it is usual, or found valuable, for the board to include members with designated responsibility or expertise, e.g. for regional affairs or for specialist professional skills.

4.1.4 In order to carry out its responsibilities each board needs to decide, and document, how it will operate. Box 4.2 outlines the key decisions. It is not exhaustive. Once agreed, the working rules should be reviewed from time to time to keep them relevant. Boards should challenge themselves to improve their working methods, so that their processes can achieve and maintain good modern business practice.

Box 4.2: key decisions for boards

- mission and objectives
- delegations and arrangements for reporting performance
- procedures and processes for business decision making
- scrutiny, challenge and control of significant policies, initiatives and projects
- risk appetite and risk control procedures, e.g. maintaining and reviewing a risk register
- control and management of associated ALBs and other partnerships
- arrangements for refreshing the board
- arrangements for reviewing the board's own performance
- accountability – to the general public, to staff and other stakeholders (see section 4.13)
- how the insights of non-executives can be harnessed
- how often the board's working rules will be reviewed

4.2 Working methods

4.2.1 The accounting officer of each organisation is accountable to Parliament for the quality of the administration of the organisation that they lead. The administrative standards expected are set out in the Civil Service Code[20] and the Ombudsman's Principles of Public Administration[21]. They allow considerable flexibility to fit with each organisation's obligations and culture. It is against these standards that failure to deliver is assessed. Accounting officers shall also ensure they comply with the

[20] https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code

[21] https://www.ombudsman.org.uk/about-us/our-principles

POL00363159

functional standards[22], which set expectations for the management of functional work and the functional model across government.

4.2.2 Another fundamental concept is the Treasury's leadership position in managing public expenditure, and setting the rules under which departments and their ALBs should deploy the assets, people and other resources under their control. In turn each public sector organisation shall have robust and effective systems for their internal management. Box 4.3 outlines the key decisions each organisation needs to make.

4.2.3 To help the Treasury carry out this task properly:

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

4.2.4 In particular, departments shall 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 2.3.4 and box 2.3).

4.2.5 Working with the accounting officer, the finance director of each public sector organisation has special responsibility for seeing that the standards described in this chapter are respected. Annex 4.1 sets this out in more detail.

Box 4.3: essentials of effective internal decision making

Choice

- active management of the portfolio of risks and opportunities
- appraisal of alternative courses of action using the techniques in the Green Book, and including assessment of feasibility to achieve value for money
- where appropriate, use of models (see annex 4.2) or pilot studies to provide evidence on which to make decisions among policy or project choices
- active steering of initiatives, e.g. reviews to take stock at critical points of projects operation
- appropriate internal delegations, with a single senior responsible officer (SRO) for each significant project or initiative, and a single senior person leading each end to end

Process

- prompt, regular and meaningful management information on costs (including unit costs), efficiency, quality and performance against targets to track progress and value for money

[22] https://www.gov.uk/government/collections/functional-standards

POL00363159

- proportionate administration and enforcement mechanisms, without unnecessary complexity
- use of feedback from internal and external audit and elsewhere to improve performance
- regular risk monitoring, to track performance and experience and make adjustments in response

Afterwards

- mechanisms to evaluate policy, project and programme outputs and outcomes, including whether to continue, adjust or end any continuing activities
- arrangements to draw out and propagate lessons from experience

4.3 Opportunity and Risk

4.3.1 Embedded in each public sector organisation's internal systems there shall be arrangements for recognising, tracking and managing its opportunities and risks. Each organisation's governing body should make a considered choice about its desired risk appetite, taking account of its legal obligations, ministers' policy decisions, its business objectives, and public expectations of what it should deliver.

4.3.2 This can mean that different organisations take different approaches to the same opportunities or risks.

4.3.3 There should be a regular discipline of reappraising the opportunities and risks facing the organisation since both alter with time and circumstances, as indeed may the chosen responses. This process should avoid excessive caution, since it can be as damaging as unsuitable risk taking. The assessment should normally include:

- maintaining a risk register, covering identified risks and contingent risks from horizon scanning
- reputational risks, since poor performance could undermine the credibility, and ultimately the creditworthiness, of the Exchequer as a whole
- consideration of the dangers of maintaining the status quo
- plans for disaster recovery
- appraisal of end to end risks in critical processes and other significant activities.

4.3.4 In making decisions about how to manage and control opportunity and risk, audit evidence and other assurance processes can usefully inform choice. Audit, including internal audit, can provide specific, objective and well-informed assurance and insight to help an organisation evaluate its effectiveness in achieving its objectives. It is good practice for the audit committee to advise the governing board of a public sector organisation on its key decisions on governance and managing opportunities and risks. It is also a good discipline for this process to include evaluating progress in implementing PAC recommendations, where they have been accepted.

4.3.5 In turn the board shall support the accounting officer in drawing up the governance statement, which forms part of each organisation's annual accounts. See

POL00363159

annex 3.1. Further guidance about managing risks is in annex 4.3 and the Orange Book.

4.4 Insurance

4.4.1 In the private sector risk is often managed by taking out insurance. In central government it is generally not good value for money to do so. This is because the public sector has a wide and diverse asset portfolio; a reliable income through its ability to raise revenue through taxation; and access to borrowed funds more cheaply than any in the private sector. In addition commercial providers of insurance also have to meet their own costs and profit margins. Hence the public purse is uniquely able to finance restitution of damaged assets or deal with other risks, even very large ones. If the government insured risk, public services would cost more.

4.4.2 However, there are some limited circumstances in which it is appropriate for public sector organisations to insure. They include legal obligations[23], and occasions where commercial insurance would provide value for money[24]. Further information about insurance generally is in annex 4.4.

4.5 Control of Public Expenditure

4.5.1 The Treasury coordinates a system through which departments are allocated budget 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.

4.5.2 Each public sector organisation shall run efficient systems for managing payments (see box 4.4). It shall also keep its use of public resources within the agreed budgets, take the limits into account when entering into commitments, and generally ensure that its spending profile is sustainable.

4.5.3 Any major project, programme or initiative shall be led by a senior responsible owner (SRO). It is good practice to aim for continuity in such appointments[25].

Box 4.4: essentials of systems for committing and paying funds

- selection of projects after appraisal of the alternatives (see the Green Book), including the central clearance processes for larger commitments
- open competition to select suppliers from a diverse range, preferably specifying outcomes rather than specific products, to achieve value for money (see annexes 4.6 and 4.7)
- where feasible, procurement through multi-purchaser arrangements, shared services and/or standard contracts to drive down prices

[23] E.g. ALBs should insure vehicles where the Road Traffic Act requires it.

[24] E.g. where private sector contractors take out single-site insurance policies because they are cheaper than each individual party insuring themselves separately.

[25] See annex 4.5.

POL00363159

- effective internal controls to authorise acquisition of goods or services (including vetting new suppliers), within any legal constraints
- separation of authorisation and payment, with appropriate controls, including validation and recording, at each step to provide a clear audit trail
- checks that the goods or services acquired have been supplied in accordance with the relevant contract(s) or agreement(s) before paying for them.
- payment terms chosen or negotiated to provide good value
- accurate payment of invoices: once and on time, avoiding lateness penalties (see annex 4.8)
- a balance of preventive and detective controls to tackle and deter fraud, corruption and other malpractice (see annex 4.9)
- integrated systems to generate automatic audit trails which can be used to generate accounts and which both internal and external auditors can readily check.
- periodic reviews to benefit from experience, improve value for money or to implement developments in good practice

4.6 Receipts

4.6.1 Public sector organisations shall 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.

4.6.2 Public sector organisations shall take care to track and enforce debts promptly. The presumption should be in favour of recovery unless it is uneconomic to do so.

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.
- arrangements for deciding upon and reporting any write-offs (see annex 4.10). Audit trails which can readily be checked and reported upon both internally and externally

4.7 Non-standard financial transactions

POL00363159

4.7.1 From time to time public sector organisations may find it makes sense to carry out transactions outside the usual planned range, e.g.:

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

4.7.2 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 4.12 set out what is expected when such transactions take place in central government, including notifying Parliament.

4.7.3 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 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 Exchequer as a whole (see also section 4.11).

4.7.4 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 (where a similar statutory scheme exists)
- ex gratia payments to customers (where no established scheme exists)
- severance payments to employees leaving before retirement or before the end of their contract and involving payments above what the relevant pension scheme allows.

4.7.5 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 statutory or extra-statutory compensation schemes are discussed in annex 4.14.

4.8 Unusual circumstances

4.8.1 Sometimes public sector organisations face dilemmas in meeting their commitments. They may have a legal or business obligation which would be uneconomic or inappropriate to carry out assiduously to the letter. In such cases it can be justifiable to seek a pragmatic, just and transparent alternative approach, appropriately reported to Parliament in the organisation's annual accounts. One-off schemes of this kind are always novel and so require Treasury approval, not least because they may also require legislation or have to rest on the authority of a Supply and Appropriation Act (see section 2.5). 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. The cost of setting up and operating an accurate payment scheme might exceed the total amount due.

POL00363159

The organisation could instead make a one-off payment of equivalent value to a charity representing the recipient group.

- a dispute with a contractor might conclude that the contractor owed a public sector organisation an amount too big for it to meet in a single year while staying solvent. The customer might instead agree more favourable payment terms, with appropriate safeguards, if this arrangement provides better value for money.

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 should match the organisation's objectives, responsibilities and resources, balancing professional, practical or operational skills and policy makers, and 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 4.7.

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. Other public sector employees should strive for similar standards, appropriate to their context.

Box 4.7: public sector organisations as good employers

- selection designed to value and make good use of talent and potential of all kinds
- fairness, integrity, honesty, impartiality and objectivity
- professionalism in the relevant disciplines, always including finance
- arrangements to make sure that staff are loaded cost effectively
- management techniques balancing incentives to improve and disciplines for poor performance
- diversity valued and personal privacy respected
- mechanisms to support efficient working practices, both normally and under pressure
- arrangements for whistleblowers to identify problems privately without repercussions.

4.10 Assets

POL00363159

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 4.15 discusses how to set up and use such a strategy.

4.10.2 It is good practice for public sector organisations to take stock of their assets from time to time and consider afresh whether they are being used efficiently and deliver value for public funds. 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.

4.11 Standards of service

4.11.1 Poor quality public services are not acceptable. Public sector organisations should define what their customers, business counterparties and other stakeholders can expect of them.

4.11.2 Standards can be expressed in a number of ways. Examples include guidelines (e.g. response times), targets (e.g. take-up rates) or a collection of customer rights in a charter. Even where standards are not set explicitly, they may sometimes be inferred from the way the provider organisation carries out its responsibilities; so it is normally better to express them directly.

4.11.3 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 standards or their proxies (milestones, targets, outcomes) remain appropriate and meaningful.

4.11.4 Where public sector organisations fail to meet their standards, or where they fall short of reasonable behaviour, it may be appropriate to consider offering remedies. These can take a variety of forms, including apologies, restitution (e.g. supplying a missing licence) or, in more serious cases, financial payments. Decisions about financial remedies – which should not be offered routinely - should include taking account of the legal rights of the other party or parties and the impact on the organisation's future business.

4.11.5 Any such payments, whether statutory or ex gratia, should follow good practice (see section 4.13). Since schemes of financial redress often set precedents or have implications elsewhere, they should be cleared with the Treasury before commitments are made, just as with any other public expenditure out of the normal pattern (see sections 2.1 to 2.4).

4.12 Complaints

4.12.1 Those public sector organisations which deal with customers directly should strive to achieve clear, accurate and reliable standards for the products and services they provide. It is good practice to arrange for complaints about performance to be reviewed by an independent organisation such as an ombudsman.

4.12.2 Often such review processes are statutory. The activities of central government departments and the NHS are open to review by the Parliamentary and Health Service

POL00363159

Ombudsman (PHSO)[26], whose Principles of Good Complaints Handling[27] sets out generic advice on complaints handling and administration of redress (see also annex 4.14). After investigation of cases of specific complaint, the PHSO can rule on whether injustice or hardship can be attributed to maladministration or service failure, and may recommend remedies, either for individual cases or for groups of similar cases. If departments decline to follow the PHSO's advice, they should lay a memorandum in Parliament explaining why.

4.13 Transparency

4.13.1 All public sector organisations shall operate as openly as is compatible shall the requirements of their business. In line with the statutory public rights[28], they should make available timely information about their services, standards and performance. This material shall strike a careful balance between protecting confidentiality and open disclosure in the public interest.

4.13.2 All public sector organisations shall adopt a publication scheme routinely offering information about the organisation's activities. They shall also publish regular information about their plans, performance and use of public resources.

4.13.3 The published information should be in sufficient detail, and be sufficiently regular, to enable users and other stakeholders to hold the organisation and its ministers to account. Benchmarks can help local users to evaluate local performance more easily.

4.13.4 The primary document of record for central government departments is the report and accounts, which shall consolidate information about the relevant ALBs. It shall include a governance statement (see annex 3.1).

4.13.5 In addition, the Treasury is responsible for publishing certain aggregate information about use of public resources, for example Whole of Government Accounts (WGA) consolidating all central and local government organisations' accounts and comparisons of outturn with budgets. The Office for National Statistics (ONS) also uses input from data gathered by the Treasury to publish the national accounts.

4.13.6 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.

4.14 Dealing with initiatives

4.14.1 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 4.8 brings the different factors together. It applies directly to central government organisations but the principles will be of value elsewhere.

---

26 http://www.ombudsman.org.uk/

27 http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples

28 E.g. Freedom of information act 2000, Data protection act 1998, Environment information regulations 2004 and the Re-use of public sector information regulations 2005

POL00363159

Box 4.8: factors to consider when planning policies or projects design

Design

- Has the proposal been evaluated against alternative options, including doing nothing?
- Should there be pilot testing before full roll out?
- Are the controls agreed and documented clearly? Have the risks and opportunities been considered systematically? Is the change process resilient to shocks? What contingencies might arise?
- Is the intended intervention proportionate to the identified need?
- What standards should be achieved? How will performance be tracked and assessed? Could the proposal be simplified without loss of function?
- If partner(s) are involved, is the allocation of responsibilities appropriate?
- 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?
- Does the accounting officer assess the initiative as compatible with the public sector standards?

Control

- What prior agreement is required, if any?
- How will internal governance and delegation work? Will it be effective? Is it transparent? Should there be an SRO?
- Is there adequate legislation? If not, what is needed to make the action lawful?
- How will the proposal be financed? Is there budget and Estimate cover? Is it appropriate to charge to help finance the service? Are charges set within the law?
- Is the proposed action within the department's delegated authorities?
- What financial techniques will be used to manage rollout, implementation and operation?
- Are project and programme management techniques likely to be useful?
- How will the intended new arrangements be monitored and efficiency measured?
- How will feedback be used to improve outcomes?
- Does the design inhibit misuse and counter fraud? What safeguards are needed?

POL00363159

- Has the risk of fraud been assessed to help inform policy or project design?
- How will the associated risks be tracked and the responses adjusted?
- What intervention will be possible if things go off track?
- Would it be possible to recover from a disaster promptly?

Accountability

- How should Parliament be told of the proposal and kept informed of progress?
- What targets will be used? Are they sufficiently stretching?
- Is public access called for? How?
- Is the policy or service fair and impartial?
- Will its administration be open, transparent and accessible?
- Should there be customer standards? How are complaints used to improve performance?
- Should there be arrangements for redress after poor delivery?
- Is enforcement required? If so, is it proportionate?
- Is an appeal mechanism needed?
- Is regulation called for?
- Learning lessons
- What audit arrangements (internal and external) are intended?
- What information about 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?

POL00363159

Chapter 5
Funding

This chapter explores the means by which central government organisations may obtain funds in order to finance public expenditure. The Treasury operates disciplines to respect Parliament's concern to prevent unauthorised expenditure.

5.1 Introduction

5.1.1 Most public expenditure is financed from centrally agreed multi-year budgets administered by the Treasury, which oversees departments' use of their budget allocations. In the main, departments have considerable discretion about how they distribute these budget allocations, which are expressed net of relevant income. The main source of receipts to be netted off is fees and charges (see chapter 6).

5.1.2 The Treasury oversees and directs the rules that departments shall respect in managing their budgets. Departments are expected to live within their allocations for each financial year, with some limited exceptions, e.g. for certain demand led services. The budgeting framework is explained in the Consolidated Budgeting Guidance, which is refreshed each year.

5.2 Grants

5.2.1 Each central government department decides how much of its budget provision it should cascade to its ALBs in each year of the multi-year agreement. Departments may pay them grants (for specific purposes) and grants-in-aid (non-specific support) to finance their spending; though it is the net spending of the ALB that scores in the departmental budget. Annex 5.1 explains more about grants.

5.2.2 Budgets and Estimates plan net spending and include all spending of ALBs however it is financed. 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).

5.3 Estimates

5.3.1 The multiyear departmental budgets agreed collectively among ministers do not of themselves confer authority to spend or commit resources. Parliamentary agreement, usually through the Supply Estimate process, is also essential (see box 2.1).

5.3.2 Departmental Estimates are put to Parliament covering one financial year at a time, in the spring. Each covers the net expenditure of a department and its ALBs (i.e. all spending in budgets and any voted spend outside of budgets) for the year ahead. The provision sought shall be taut and realistic, without padding. The Supply Estimates Guidance Manual has more detail.

5.3.3 Before the summer recess, the provision sought in the Estimate is formally authorised in a Supply and Appropriation Act, which sets net expenditure limits for the year. The Act is then the legal authority for public expenditure within the ambit of the

POL00363159

Estimate. The ambit itemises a specific range of permitted activities and income streams for the year.

5.3.4 Within a financial year, there is some scope for transferring (through virement) provision from one section or subhead to another within any of the control limits in the same Estimate. There is scope for adjusting Estimate provision through a Supplementary Estimate late in the year if circumstances change. A Supplementary Estimate shall show all movements between sections, even if they would otherwise have been dealt with through virement.

5.3.5 Departmental Select Committees may examine departmental witnesses on the plans contained in Estimates. Usually such hearings take place after Estimates are laid in Parliament but before they are voted into law.

5.3.6 If there is underspending against Estimate provision in one year, it cannot automatically be carried forward to a later year. If a department wants to spend resources it did not consume in a previous year, it needs Treasury approval and must also obtain fresh parliamentary authority to spend in the year(s) concerned.

5.3.7 Like budgets, Estimates are set net of income. But Parliament needs to be made aware of receipts since Estimates authorise gross expenditure, normally using statutory powers. Annex 5.3 explains more about of types of receipt. Chapter 6 contains guidance about setting and adjusting fees and charges.

5.3.8 Occasionally an Estimate sets a negative limit for permitted resources. This happens if income is expected to exceed the relevant gross expenditure. Similarly a Supplementary Estimate can be negative if provision for spending is to fall within a given year.

5.3.9 A department's Estimate for a year includes all spending within its agreed budget for that year, as well as any voted non-budget spending. Not all of this amount requires voted parliamentary approval since some items, such as Consolidated Fund Standing Services, are paid direct from the Consolidated Fund. Hence only the voted parts of the Estimate requiring parliamentary approval appear in the Supply and Appropriation Act. Of course the disciplines on public funds (box 3.1) apply to all the activities described in the Estimate and accounts whether within the Act or not.

5.4 Excess Votes

5.4.1 Accounting officers have an important role in overseeing the integrity of the Estimates for which they are responsible. In particular, accounting officers are responsible for ensuring that Estimates are in good order (see section 2.2).

5.4.2 The Treasury presents Parliament each year with a Statement of Excesses to request retrospective authority for any unauthorised resources consumed above the relevant limits or outside the ambit of the Estimate. Parliament takes these excesses seriously. The PAC or departmental select committee may call witnesses to account in person or ask for a written explanation.

5.4.3 The Statement of Excesses includes two kinds of excess:

- spending above the amount provided in an Estimate
- irregular expenditure outside the ambit, e.g. on an unauthorised service.

POL00363159

5.4.4 Parliament usually regards the latter as particularly unsatisfactory because it means that the department concerned has flouted Parliament's intentions[29] and may have defective systems of control. The auditor may identify such excesses as spending not covered by statutory powers, even if the total amount spent does not exceed the voted limit.

5.4.5 Expenditure in excess of provision on an activity agreed by Parliament is also to be avoided since the authority of a Supply and Appropriation Act is just as essential as specific statutory authority (box 2.1). It is possible, with Treasury agreement, to raise the amount in an Estimate during the course of the year in a Supplementary. But otherwise accounting officers should reduce, reprioritise or postpone use of resources to keep within the provision Parliament has agreed for the year.

5.5 Commitments

5.5.1 Parliament is not bound[30] to honour ministers' commitments unless and until there are statutory powers to meet them and it authorises public funds to finance them (through an Estimate) in a given year. This discipline is especially important when ministers plan a new service.

5.5.2 Because commitments can evolve into spending, they shall always be scrutinised and appraised as stringently as proposals for consumption (box 4.8 may help). Some departments may agree with the Treasury blanket authority for defined and limited ranges of non-statutory commitments, e.g. indemnities for board members and commitments taken on the normal course of business. All other non statutory commitments are novel, contentious or repercussive, so Treasury approval is always essential before they are undertaken.

Box 5.1: contingent liabilities: notifying Parliament

- Parliament shall be notified of uncertain liabilities in a meaningful way without spurious accuracy. This shall be done by Ministerial Statement and departmental Minutes to the House of Commons, drawn directly to the attention of the chairs of the PAC and relevant departmental committee.
- If a contingent liability affects several departments but cannot confidently be allocated among them, the relevant ministers shall inform Parliament in a pragmatic way. A single statement may well suffice.
- If, exceptionally, a new liability needs to remain confidential, the minister shall inform the chairs of the relevant select committee and the PAC; then inform Parliament openly when the need for confidentiality lifts.
- Ministers shall inform Parliament if an ALB assumes a contingent liability which it could not absorb within its own resources, since the risk ultimately lies with the sponsor department's budget.

5.5.3 Public sector organisations shall give Parliament prompt and timely notice of any significant new commitments, whether using existing statutory powers or to be

[29] I.e. has breached the Concordat – see annex 2.3

[30] Under the Concordat.

POL00363159

honoured through future legislation. Non statutory contingent liabilities (above a specified threshold) shall always be notified in this way. The process is set out in annex 5.4.

5.5.4 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 5.1.

5.6 Tax

5.6.1 Public sector organisations shall not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer's duties (section 3.3). Thus artificial tax avoidance schemes shall normally be rejected. It shall be standard practice to consult HMRC[31] about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

5.6.3 Proposals to create new taxes in order to assign their proceeds to new spending proposals are rarely acceptable. Decisions on tax are for Treasury ministers, who are reluctant to compromise their future fiscal freedom to make decisions.

5.7 Public Dividend Capital

5.7.1 Certain public sector businesses, notably trading funds and certain Health Trusts, 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.

5.7.2 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.

5.7.3 A department needs specific statutory power to issue PDC, together with supply 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.

5.7.4 Further information about the use of PDC can be found in Consolidated Budgeting guidance[32].

5.8 Borrowing by public sector organisations

5.8.1 Some public sector organisations, e.g. certain trading funds, are partly financed through loans provided through the sponsor department's Estimate; or from the

[31] HMRC customer relationship manager or customer co-ordinator.

[32] https://www.gov.uk/government/collections/consolidated-budgeting-guidance

POL00363159

National Loans Fund (NLF). In these cases Treasury consent and specific legal powers are always required. Limits and other conditions are common. See annex 5.5 for more.

5.8.2 NLF and Voted loans can only be made if there is reasonable expectation that the loan will be serviced and repaid promptly. Similarly, when ALBs borrow, their sponsor departments explicitly stand behind them and so shall scrutinise borrowers' creditworthiness, not just relying on their track records, in order to satisfy themselves that such loans are sound. For NLF loans, if timely repayment could not realistically be expected, the loan would be unlawful.

5.8.3 Should a department become aware of concerns about the security of outstanding loans (either its own or an ALB's), it should warn the Treasury promptly and consider what action it can take to reduce or otherwise mitigate any potential loss. If a loan becomes irrecoverable, remedial treatment shall be agreed with the Treasury and then notified to Parliament.

5.8.4 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, e.g. if the borrower has windfall receipts, but never simply to refinance on terms more favourable to the borrower because a fee is charged to match the Exchequer costs when a loan ends early. This is because the NLF finances the amount outstanding using money market instruments sold at the time the loan was made, and must continue to service those instruments. So the Exchequer as a whole would make a loss if the NLF offered cheaper replacement loans.

5.8.5 While NLF loans are repaid to the NLF, voted loans are repaid to the Consolidated Fund. The treatment of repayments and interest payments in Estimates and accounts is discussed in the Consolidated Budgeting Guidance, the Estimate Manual and the FReM. The Treasury accounts for NLF transactions in the NLF's accounts. Any proposed write-offs must be notified to Parliament after obtaining Treasury agreement: see annex 5.5.

5.9 External borrowing

5.9.1 Public sector organisations may borrow from private sector sources only if the transaction delivers better value for money for the Exchequer as a whole. Because non-government lenders face higher costs, in practice it is usually difficult to satisfy this condition unless efficiency gains arise in the delivery of a project (e.g. PFI). Treasury agreement to any such borrowing, including by ALBs, is also essential. Nevertheless it can sometimes be expedient for public sector bodies to borrow short term, for example by overdraft.

5.9.2 When a sponsor department's ALB borrows, the department shall normally arrange to guarantee the loan to secure a fine rate. This is not always possible, e.g. when a guarantee would rank as a state aid (see annex 4.7). A department which guarantees a loan normally[33]needs a specific statutory power as well as Estimate provision. On exceptional occasions temporary non-statutory loans may be possible.

5.9.3 The case for a guarantee shall be scrutinised as thoroughly as if indeed a loan were made. Since guarantees always entail entering into contingent liabilities,

[33] The Concordat applies here in just the same way as to spending – see annex 2.3.

POL00363159

Parliament must be notified when a loan guarantee is given, using the reporting procedures in annex 5.4.

5.9.4 Occasionally there is a case for an ALB 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. The same principles apply to the borrowing of any bodies, such as subsidiaries, for which a department's ALBs are responsible.

5.10 Multiple sources of funding

5.10.1 Sometimes public sector organisations derive funding from more than one source. Examples of funding other than voted funds include national insurance contributions (which are dedicated to the National Insurance Fund), lottery funding and charitable funding. All of these alternatives usually come with specific conditions attached.

5.10.2 Organisations in this position shall segregate and account separately for the different streams of funding so that they can apply the relevant terms and conditions to each. In particular, where a source of funding is designated to a particular purpose, it is rarely appropriate to use another instead. In those circumstances switching is novel and contentious and thus requires Treasury approval.

5.10.3 When there is doubt about how to handle multiple streams of funding, it is good practice to consult the Treasury.

5.11 Cash management

5.11.1 The various organisations in central government together handle very large flows of public funds. 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.

5.11.2 So there is considerable advantage to be gained for the Exchequer as a whole by minimising this net position. In practice this means gathering balances together at the end of each working day. In aggregate all these accounts make up the Exchequer Pyramid, managed by the Treasury. Most funds are held with the Government Banking Service.

5.11.3 It is essential for central government organisations 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.

5.11.4 Each central government organisation shall establish a policy for its use of banking services. See annex 5.6 for guidance. Sponsor departments shall also make sure that their ALBs are aware of the importance of managing this aspect of their business efficiently and effectively.[34]

---

34 Further details on ALB's cash management arrangements can be found within the Framework Document Guidance and Framework Document Templates available on gov.uk - https://www.gov.uk/government/publications/managing-public-money-framework-documents

POL00363159

5.12 Other financing techniques, including hedging instruments and forward contracts

5.12.1 Depending on its circumstances, purposes and risk profile, a public sector organisation may, with appropriate Treasury consents, consider using financial instruments provided by the financial markets. Accounting officers must ensure there is a clear rationale evidencing the overall benefit before using these instruments.

5.12.2 Simpler examples of this type of activity are the use of credit and debit cards in order to secure faster settlements, or fixed price energy contracts for supply in public sector buildings. These simpler forms can be considered as being in the normal course of business.

5.12.3 The use of more complex types of financial instruments is only permitted with the explicit consent of the Treasury. The most common examples of this being the use of forward contracts for foreign currency transactions or commodities. Other examples include swap contracts and derivatives.

5.12.4 Accounting officers should be aware that the use of these more complex financing instruments to hedge might not be the cheapest option for the Exchequer as a whole, compared to departments and ALBs absorbing volatility risk within their budgets, which remains the default approach.

5.12.5 However, such transactions can support the accounting officer in ensuring the regularity of spending, by ensuring they do not need to absorb significant volatility (e.g. from foreign exchange value fluctuations) within their control totals.

5.12.6 For example: if a department or arm's length body were committed to pay an amount of foreign currency in the future that represented a significant proportion of the department or ALB's budget, which would be subject to high levels of foreign exchange volatility, it might enter a simple forward via the Bank of England – as agent for the Treasury under arrangements entered into through Government Banking to give certainty that the final cost (in sterling) would be known and within its control totals.

5.12.7 All use of such instruments should be carefully evaluated and will require Treasury consent, save those examples in the normal course of business such as those mentioned in 5.12.2. Treasury will always refuse proposals to speculate. Offers which appear too good to be true usually are.

5.12.8 Any organisation using these instruments shall 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 and their ALBs shall consult the Treasury before using derivatives for the first time. Annex 5.6 contains further detail.

5.12.9 Departments should only enter into such financing instruments via centralised expertise and frameworks. For example, through the Bank of England – as agent for the Treasury, who can provide departments with vanilla instruments such as forward contracts and swaps for foreign exchange transactions, and Crown Commercial Services for energy and commodities purchases.

5.12.10 Commercial providers also offer forwards, options and non-foreign currency derivatives (e.g. commodities, interest rates, inflation), these are always novel, contentious and repercussive and will always require explicit Treasury consent.

POL00363159

Treasury will normally be sceptical, as financial hedging generally incurs costs, private providers can have a higher cost of finance than the Government and intend to profit from their business, making them poor value for money.

5.12.11 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.

5.12.12 Departments should ensure that financing instruments are appropriately scored in line with Consolidated Budgeting Guidance, and that the Treasury is consulted regarding losses in line with Annex 4.10, and the department's delegated authority letter.

POL00363159

Chapter 6

Fees, charges and levies

Charges for services provided by public sector organisations normally pass on the full cost of providing them. There is scope for charging more or less than this provided that ministers choose to do so, Parliament consents and there is full disclosure. Public sector organisations may also supply commercial services on commercial terms designed to work in fair competition with private sector providers. Parliament expects proper controls over how, when and at what level charges may be levied

6.1 Introduction

6.1.1 Certain public goods and services are financed by charges rather than from general taxation. This can be a rational way to allocate resources because it signals to consumers that public services have real economic costs. Charging can thus help prevent waste through badly targeted consumption. It can also make comparisons with private sector services easier, promote competition, develop markets and generally promote financially sound behaviour in the public sector.

6.1.2 There are unavoidable reasons why policy on charging is important:

- charges substitute for taxation (or, in the short term, borrowing) as a means of government finance. Decisions on charging policy shall therefore be made with the same care, and to similar standards, as those on taxation
- for this reason, Parliament expects to consider legislation on whether charges shall be levied; how they should be structured; and on charge levels
- international standards[35] determine how income from charges is classified in the national accounts. Certain charges are treated as taxes.

6.1.3 As in other areas of managing public funds, Parliament expects the Treasury to make sure that its interests are respected, including pursuit of efficiency and avoidance of waste or extravagance. Because Estimates and budgets are shown net of income, special effort is required to give Parliament information about both gross and net costs, and about the sources and amounts of income.

6.2 Basic principle

6.2.1 The standard approach is to set charges to recover full costs. Cost shall be calculated on an accruals basis, including overheads, depreciation (e.g. for start up or improvement costs) and the cost of capital. Annex 6.1 sets out how to do this.

6.2.2 This approach is simply intended to make sure that the government neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise. It

[35] The Treasury and public accounts follow classification decisions taken by the Office for National Statistics, an independent organisation which is guided by the international standards set out in the European System of Accounts.

POL00363159

requires honesty about the policy objectives and rigorous transparency in the public interest.

6.2.3 As elsewhere, organisations supplying public services should always seek to control their costs so that public money is used efficiently and effectively. The impact of lower costs should normally be passed on to consumers in lower charges. Success in reducing costs is no excuse for avoiding the principles in this guidance.

6.2.4 This chapter applies to all fees and charges set by ministers and 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. Departments should be able to satisfy themselves that their ALBs can deliver the financial objectives for the services they charge for. This chapter also applies when one public organisation supplies another with goods or services; and to certain statutory local authority charges set by ministers.

6.3 Setting a charge: standard practice

6.3.1 When a charge for a public service is to be made, it is normally necessary to rely on powers in primary legislation. The legislation should be designed so that ministers decide, or have significant influence over, both the structure of the charge and its level. It is common to frame primary legislation in general terms, using secondary legislation to settle detail.

6.3.2 Treasury consent is required for all proposals to extend or vary charging schemes. This holds even if the primary legislation does not call for it, or the delegated authorities within which the organisation operates would otherwise allow it.

6.3.3 It is sometimes possible to rely on secondary legislation rather than primary to determine charges:

- an order under s56 of the Finance Act 1973
- restructuring of charges can sometimes be achieved by an order under s102 of the Finance (no 2) Act 1987 (see box 6.1).

Box 6.1: restructuring charges using S.102

- A s102 order can extend or vary powers in existing primary legislation.
- It can permit restructuring by specifying factors to be taken into account when setting fees.
- Explicit prior Treasury consent is always essential.

But...

- A s102 order cannot create a power for new charges where no primary legislation exists.
- Nor can it lift restrictions in (or in any other way undermine) primary legislation.
- Parliament is usually sceptical because s102 substitutes secondary for primary legislation.

POL00363159

6.3.4 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
- how any categories of service are to be differentiated, if at all, in setting charges.

6.3.5 The standard approach is that the same charge shall apply to all users of a defined category of service, so recovering full costs for that category of service. Different charges may be set for objectively different categories of service costing different amounts to provide. Box 6.2 shows how this can work.

Box 6.2: how different charges can apply to different categories of service

Different categories could be recognised by:

- distinguishing supply differences, e.g. in person, by post or online
- priorities, e.g. where a quicker service costs more
- quality, e.g. charging more for a premium service with more features
- recognising structural differences, where it costs more to supply some consumers

However, different groups of customers should not be charged different amounts for a service costing the same, e.g. charging firms more than individuals. Similarly, cross subsidies are not standard practice, e.g. charging large businesses more than small ones where the cost of supply is the same.

6.3.6 Charges within and among central government organisations shall normally also be at full cost, including the standard cost of capital. Any different approach would cause one party to make a profit or loss not planned in budgets agreed by ministers collectively; while the customer organisation(s) would conversely face charges higher or lower than full costs. A number of objectionable consequences might flow from this. For instance, a question of state aid could arise; or private sector consumers of the customer organisation might be charged distorted fees.

6.3.7 Shared services (box 6.3) are a special case of charging within the public sector.

Box 6.3: shared services

- It is often possible to make economies of scale by arranging for several public service organisations to join together to deliver services cheaper, e.g. by using their joint purchasing power. One organisation supplies the other(s). Since all the parties should lower their costs, the accounting officer of each organisation should have no difficulty in recognising improved value for money for the Exchequer as a whole and so justify going ahead.
- Public sector organisations supplying (or improving) shared services should consult the Treasury at an early stage of planning. Typically, supplier organisations face the cost of setting up provision on a larger scale than they need for their own use. As with setting up any new service, plans in budgets should amortise initial costs so that they can be recovered over an appropriate

POL00363159

period from the start of the service. More detail on shared services is in section 7.5.

- It is not acceptable for supplier organisations to plan to profit from, or subsidise, supply to customer organisations in the public sector. Nor is it acceptable for accounting officers to resist shared services just because the impact on their own organisation is not perceived to be favourable.

6.4 Setting a charge: non-standard approaches

6.4.1 Ministers' policy objectives for a service where a charge is levied may not fit the standard model in section 6.3. In such cases it may be possible to deliver the policy objective in another way. Some ways of doing this are described below.

6.4.2 Explicit Treasury consent, and often formal legal authority, is always required for such variations. It is desirable to consult the Treasury at an early stage to make sure that the intended strategy can be delivered.

6.5 Charging below cost

6.5.1 Where ministers decide to charge less than full cost, there should be an agreed plan to achieve full cost recovery within a reasonable period. Each case needs to be evaluated on its merits and obtain Treasury clearance. If the subsidy is intended to last, this decision should be documented and periodically reconsidered.

6.6 Charging above cost

6.6.1 ONS normally classifies charges higher than the cost of provision, or not clearly related to a service to the charge payer, as taxes. Such charges always call for explicit ministerial decision as well as specific statutory authority. The Treasury does not automatically allow departments to budget for net expenditure associated with above cost charges. Netting off, or netting off up to full costs, may be agreed in certain instances, considering each case on its merits.

6.6.2 Sometimes when a change of this kind is classified as a tax, departments also propose to assign its revenue. The Treasury always treat such proposals with caution (see 5.6.3).

6.7 Cross subsidies

6.7.1 Cross subsidies always involve a mixture of overcharging and undercharging, even if the net effect is to recover full costs for the service as a whole. So cross subsidised charges are normally classified as taxes. They always call for explicit ministerial decision and parliamentary approval through either primary legislation or a s102 order.

6.8 Information services

6.8.1 In the public interest, information may be provided free or at low charge. This approach recognises the value of helping the general public obtain the data they require to function in the modern world. There are some exceptions - see annex 6.2.

POL00363159

6.9 Levies

6.9.1 Compulsory levies, e.g. payments for licences awarded by statutory regulators, or duties to finance industry specific research foundations, are normally classified as taxation. Such levies may be justified in the wider public interest, not because they provide a direct beneficial service to those who pay them. Depending on the circumstances, the Treasury may allow regulators to retain the fees charged if this approach is efficient and in the public interest.

6.9.2 As with other fees and charges, levies shall be designed to recover full costs. If the legislation permits, the charge can cover the costs of the statutory body, e.g. a regulator could recover the cost of registration to provide a licence and of associated supervision. It may be appropriate to charge different levies to different kinds of licensees, depending on the cost of providing different kinds of licences (see box 6.2).

6.10 Commercial services

6.10.1 Some public sector services are discretionary, i.e. no statute underpins them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage.

6.10.2 Charges for these services shall be set at a commercial rate. The rate shall deliver a commercial return on the use of the public resources deployed in supplying the service. So the financial target shall be in line with market practice, using a risk weighted rate of return on capital relevant to the sector concerned. The rate of return used in pricing calculations for sales into commercial markets shall be:

- for sales into commercial markets, in line with competitors' assessment of their business risk, rising to higher rates for more risky activities
- where a public sector body supplies another, or operates in a market without competitors, the standard rate for the cost of capital (see annex 6.1)

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

6.10.4 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 6.3.

6.11 Disclosure

6.11.1 It is important that Parliament is fully informed about use of charges. Each year the annual report of the charging organisation shall give:

- the amounts charged
- full costs and unit costs
- total income received
- the nature and extent of any subsidies and/or overcharging

POL00363159

- the financial objectives and how far they have been met.

6.11.2 To keep Parliament properly informed, Estimates should display details of expected income from charges. The Estimates Manual explains how the controls work.

6.11.3 The FReM sets out the information public sector organisations should publish in their accounts. It should include analysis of income.

6.12 Taking stock

6.12.1 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, e.g. on a timetable compatible with the dynamics of the service. Box 6.4 suggests some issues to examine.

Box 6.4: reviewing a public service for which a charge is made

- Is it still right for a public sector body to use public resources to supply the service?
- Are there any related services for which there might be a case for charging?
- Does the business structure still make sense? Are the assets used for the service adequate?
- How can efficiency and effectiveness be improved so that charges can be lower or offer better value?
- Is the financial objective right?
- For a statutory (or other public sector) service, if full costs are not recovered, why not?
- For a commercial service, does the target rate of return still reflect market rates?
- Is it still appropriate to net off against costs any agreed charges above cost?
- Is there scope to secure economies of scale by developing a shared service?
- 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 to make a commercial return, or sold?
- Would another business model (e.g. licensing, contracting out, privatising) be better?

POL00363159

Chapter 7
Working with others

It often makes sense for public sector organisations to work with partners to deliver public services. This chapter outlines how sponsor departments shall keep track of their ALBs, and where necessary control their activities. It is important that the public interest and the need to keep Parliament informed are given priority in setting up and operating these relationships.

7.1 The case for working in partnership

7.1.1 Public sector organisations may be able to deliver public services more successfully if they work with another body. Central government departments may find it advantageous to delegate certain functions to ALBs that can be free to concentrate on them without conflict of interest. Or it may be helpful to harness the expertise of a commercial or civil society sector organisation with skills and leverage not available to the public sector.

7.1.2 Any such relationship inevitably entails tensions as well as opportunities. The autonomy of each organisation needs to be buttressed by sufficient accountability to give Parliament and the public confidence that public resources are used wisely.

7.1.3 It can be important that an ALB is demonstrably independent. This in itself does not determine the ALB's form or structure. Independence is achieved by specifying how the ALB is to operate. Functional or policy independence is compatible with financial oversight by the ALB's parent department and with accountability for the use of public resources.

7.1.4 It is generally helpful to deal with any potential conflicts head on by deciding at the outset how the relationship(s) between the parties should work. The key issues to tackle are set out in box 7.1.

Box 7.1: issues for partnerships with public sector members

- The decision to engage with a partner should rest on evaluation of a business case assessed against a number of alternatives, including doing nothing.
- Conflicts of interest should be identified so that handling strategies can be agreed, e.g. by establishing early warning processes or safeguards.
- The cultural fit of the partners should be close enough to give each confidence to trust the other.
- Accountability for use of public funds should not be weakened.
- The terms of engagement, including governance, should be documented in a framework agreement or equivalent (see box 7.2).

POL00363159

7.2 Setting up new arm's length bodies

7.2.1 When a sponsor department sets up a new ALB, the nature of the new body shall be decided early in the process. It is sensible for the functions of the new body to help determine this choice. Annex 7.1 offers advice and sources of guidance on setting up a new ALB and compares the characteristics of agencies, non-departmental public bodies (NDPBs) and non-ministerial departments (NMDs). Departments shall consult the Treasury and the Cabinet Office about making the choice.

7.2.2 In general, each new ALB should have a specific purpose, distinct from its parent department. There should be clear perceived advantage in establishing a new organisation, such as separating implementation from policy making; demonstrating the integrity of independent assessment; establishing a specialist identity for a professional skill; or introducing a measure of commercial discipline. It is sensible to be sceptical about setting up a new ALB, since it will often add to costs.

7.2.3 ALBs cannot be given authority to make decisions proper to ministers, nor to perform functions proper to sponsor departments. Only rarely is a non-ministerial department the right choice as NMDs have limited accountability to Parliament[36].

7.2.4 Nor is it acceptable to use a royal charter to establish a public sector body since such arrangements deny Parliament control and accountability.

7.2.5 A sponsor department cannot relinquish all responsibility for the business of its ALBs by delegation. It should have oversight arrangements appropriate to the importance, quality and range of the ALB's business. Normally new, large, experimental or innovative ALBs need more attention from the sponsor than established or small ALBs doing familiar or low risk business. And the sponsor department always needs sufficient reserve powers to reconstitute the management of each ALB should events require it (see section 3.8).

7.2.6 The sponsor department should plan carefully to make sure that its oversight arrangements and the internal governance of any new ALB are designed to work together harmoniously without unnecessary intrusion. The ALB also needs effective internal controls and budgetary discipline so that it can live within its budget allocation and deliver its objectives. And the sponsor department must have sufficient assurance to be able to consolidate its ALBs' accounts with its own.

7.2.7 There is a good deal of flexibility about form and structure. It may be expedient, for example, to set up an organisation which is eventually to be sold as a Companies Act company. Or certain NDPBs may operate most effectively when constituted as charities. Mutual structures can also be attractive. Innovation often makes sense. The standard models are all capable of a good deal of customisation.

7.2.8 If the PAC decides to investigate an ALB, the accounting officers of both the ALB and its sponsor department should expect to be called as witnesses. The PAC will seek to be satisfied that the sponsor's oversight is adequate.

---

[36] The sponsor department also has less control as each NMD has its own budget, Estimate and annual accounts. So if a ministerial department transfers work to an NMD, there is a greater risk of excess votes in each.

POL00363159

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 framework document (or equivalent) shall then be kept up to date as the partnership develops.

7.3.2 Framework document templates are available on gov.uk alongside the Framework documents guidance[37] and further information is provided in Annex 7.2

7.3.3 In framing founding documentation, the partners should adopt a proportionate approach. 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.

7.3.4 In this process the aim should be to put the accounting officers of the parties in a position to take a well informed view on the current status of the relationship, enabling timely adjustments to be made as necessary. It is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises.

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 (see section 7.8).

7.4.2 Each agency is established with a framework document on the lines set out in the framework documents guidance. With the exception of those agencies which are trading funds (see section 7.8), they are normally funded through public expenditure supplied by Estimates. Departments should consult the Treasury and Cabinet Office about the preparation of their framework documents.

7.5 Shared services and departments pooling resources

7.5.1 To promote better delivery and enhance efficiency, departments often find it useful to work with other government departments (or ALBs). This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups. Such arrangements can offer opportunities for departments to reduce costs overall while each partner plays to its strengths.

7.5.2 Such relationships can be constituted in a number of different ways. Some models are sketched in box 7.2. The list is not exhaustive.

7.5.3 Shared services often need funding to set up infrastructure, e.g. to procure IT. This could be agreed in a spending review, or customers could buy in to the partnership by transferring budget provision to the lead provider. Each of the accounting officers involved shall be satisfied that the project offers value for money for the Exchequer as a whole. The provider's charges should be at cost, following the standard fees and charges rules (see chapter 6).

---

[37] https://www.gov.uk/government/publications/managing-public-money-framework-documents

POL00363159

Box 7.2: examples 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 (e.g. 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, e.g. an agency or wholly owned 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

7.5.4 In any joint activity, there must be a single accounting officer so that the lines of responsibility are clear. If the PAC decides to investigate, the accounting officers of each of the participants should expect to be summoned as witnesses.

7.6 Joint working and delivering cross-cutting programmes

7.6.1 Sometimes an accounting officer decision involves several public sector organisations. There are a number of different potential models for joint working, as set out below.

7.6.2 It is good practice for participating bodies to document their respective responsibilities via a memorandum of understanding[38].

Box 7.4: models for joint working

Model 1: Collaboration

- departments may collaborate in the development of policy in which they respectively have an interest
- accounting officer responsibilities rest personally with the accounting officer whose department's resources are being used

Model 2: One department leads, whilst formally accessing the expertise of other government departments or ALBs

- the accounting officer responsibilities rest personally with the accounting officer whose department's resources are being used
- however, the accounting officer may require expertise, analysis or insights from another department or public body, in order to support their decision making

[38] https://www.gov.uk/government/publications/accounting-officer-assessments

POL00363159

- the accounting officer may require the supporting organisation to provide written assurances of the robustness of any analysis provided and underlying methodologies
- the ultimate judgement and accountability lies with the accounting officer incurring expenditure against their resources

Model 3: Departments individually fund elements of a joint project or plan

- departments individually contribute funding from their own Estimate and ambits to their own individual projects which make up the overarching plan
- accounting officer responsibilities rest personally with the accounting officer of the department whose resources are being used for each element of the cross-cutting project or programme
- joint governance processes may be established (e.g. joint governance boards) to oversee co-ordination and delivery of the overarching plan
- as in model two, accounting officers may rely upon expertise provided by other departments
- ministerial responsibility for the overarching plan is shared, with each minister having responsibility for their respective policy area

Model 4: One department leads at programme level, with accountability and responsibility for individual projects sitting with different departments and ALBs

- an overall Senior Responsible Owner (SRO)[39] at the programme level is responsible for the delivery of the programme as a whole
- individual project SROs are accountable to both the accounting officer of their department and the programme level SRO
- accounting officer responsibilities rest personally with the accounting officer of the department whose resources are being used for each element of the cross-cutting project or programme (as with Model 3)
- timely and high-quality information flows between the SROs and accounting officers are required to ensure the accounting officer can consider value for money of their projects in the context of the programme and Exchequer as a whole

Model 5: Support via budget cover transfers

- one department with an aim in common with another may transfer budget cover to the other department, in order to undertake activities that align with their respective objectives
- the accounting officer transferring the budget cover cannot abdicate all their accounting officer responsibilities. The transferring AO must be confident that the budget cover will be used in line with Parliament's expectations and the intent of the joint policy, and in compliance with the rules set out in MPM. This

[39] See Annex 4.5

POL00363159

can be achieved through the use of memoranda of understanding or other governance documents between AOs.

- More elaborate governance structures may be appropriate if these transfers occur as part of a joint programme (as per Model 4 above).
- accounting officer responsibilities ultimately rest personally with the accounting officer of the department receiving the budget cover who incurs the spending,
- the recipient department must have appropriate ambit and vires to undertake the work

Model 6: Machinery of government change

- policy responsibility and funding transfer from one department to another by order of the prime minister in exercise of the royal prerogative
- accounting officer responsibilities rest with the accounting officer of the department receiving the policy responsibility, who will use their resources
- in order to meet the requirements of regularity and propriety it may be necessary for the receiving department to:
  - amend their ambit to ensure they have parliamentary authority to incur spending on the new activity[40]
  - bring forward primary legislation to ensure compliance with the new services rule[41]

7.7 Non-departmental public bodies

7.7.1 Non-departmental public bodies (NDPBs) may take a number of legal forms, including companies and charities. Most executive NDPBs have a bespoke structure set out in legislation or its equivalent (e.g. a Royal Charter[42]). This may specify in some detail what task(s) the NDPB is to perform, what its powers are, and how it should be financed. Sometimes primary legislation contains powers for secondary legislation to set or vary the detail of the NDPB's structure. Annex 7.1 has links to more about NDPBs.

7.7.2 Each NDPB is a special purpose body charged with responsibility for part of the process of government. Each has a sponsor department with general oversight of its activity. The sponsor department's report and accounts consolidates its NDPBs' financial performance.

7.7.3 NDPBs show considerable variety of structures and working methods, with scope for innovation and customisation. Some NDPBs may also need to work with other organisations as well as with their sponsor. All this shall be documented in the framework document (see annex 7.2).

7.7.4 NDPBs' sources of finance vary according to their constitution and function.

---

[40] See 2.2.

[41] See 2.6.

[42] This route is no longer used - see Section 2.5.

POL00363159

7.7.5 Box 7.4 shows the main options available.

Box 7.5: sources of finance for NDPBs

- 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)
- 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 any goods or services the NDPB may sell
- income from other dedicated sources, e.g. lottery funding
- public dividend capital

7.7.6 In practice NDPBs always 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 retain the ultimate sanction of winding up unsatisfactory NDPBs.

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. Public corporations' powers are usually defined in statute; but otherwise all the disciplines of corporate legislation apply. UK Government Investments (UKGI), which specialises in strategic management of corporates, may be a good way of managing departments' responsibilities as shareholders.

7.8.2 Sponsor departments should define any contractual relationship with a corporate in a framework document adapted to suit the corporate context while delivering public sector disciplines. The financial performance expected should give the shareholder department a fair return on the public funds invested in the business. Box 7.5 offers suggestions. This approach may also be appropriate for a trading fund, especially if it is to become a Companies Act company in time.

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).

POL00363159

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 (and disappointments)
    - financial and performance monitoring
    - any necessary approvals processes
    - the circumstances of, and rights upon, intervention
- details of any other relationships with any other parts of government

7.9 Trading funds

7.9.1 All trading funds are established under the Trading Funds Act 1973. Their activities are not consolidated with their sponsor departments' business. They must finance their operations from trading activity.

7.9.2 Each trading fund is set up through an order subject to affirmative resolution. Before an order can be laid in Parliament, the Treasury needs to be satisfied that a proposed trading fund can satisfy the statutory requirement that its business plan is sustainable without additional funding in the medium term. A period of shadow operation as a pilot trading fund may help inform this assessment.

7.9.3 Each trading fund must be financed primarily from its trading income. 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 market in which the trading fund operates.

7.9.4 The possible sources of capital for trading funds are shown in box 7.6. 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, subject to any agreed limits, e.g. on borrowing.

7.9.5 7.8.5 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.

POL00363159

Box 7.7: sources of capital for trading funds

- public dividend capital (equivalent to equity, bearing dividends - see annex 7.4)
- reserves built up from trading surpluses
- long- or short-term borrowing (either voted from a sponsor department or borrowed 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

7.10 Non-ministerial departments

7.10.1 A very few central government organisations are non-ministerial departments (NMDs). It is important that there is some clear rationale for this status in each case.

7.10.2 NMDs do not answer directly to any government minister. They have their own accounting officers, their own Estimates and annual reports, and settle their budgets directly with the Treasury. However, some ministerial department must maintain a watching brief over each NMD so that a minister of that department can answer for the NMD's business in Parliament; and if necessary take action to adjust the legislation under which it operates. A framework document shall define such a relationship.

7.10.3 This limited degree of parliamentary accountability must be carefully justified. It can be suitable for a public sector organisation with professional duties where ministerial input would be inappropriate or detrimental to its integrity. But the need for independence is rarely enough to justify NMD status. It is possible to craft arrangements for NDPBs which confer robust independence. Where this is possible it provides better parliamentary accountability, and so is to be preferred.

7.11 Local government

7.11.1 A number of central government departments make significant grants to local authorities. Some of these are specific (ring fenced). Most are not, allowing local authorities to set out their own priorities.

7.11.2 Nevertheless Parliament expects assurances that such decentralised funds are used appropriately, i.e. that they are spent with economy, efficiency and effectiveness, and not wasted nor misused. The quality of the assurance available differs from that expected of central government organisations because local authorities' prime accountability is to their electorates.

7.11.3 For these relationships a framework document is not usually the most fruitful approach. Instead. Central government departments shall draw up an annual account of how their accounting officers assure themselves that grants to local government are distributed and spent appropriately; and how underperformance can be dealt with. This account forms part of the governance statement in the report and accounts of each department affected (see annex 3.1).

7.11.4 Similar considerations apply to the NHS and centrally funded schools.

POL00363159

7.12 Innovative structures

7.12.1 Sometimes central government departments have objectives which more easily fit into bespoke structures suited to the business in hand, or to longer range plans for the future of the business. Such structures might, for example, include various types of mutual or partnership.

7.12.2 Proposals of this kind are by definition novel and thus require explicit Treasury consent. In each case, proposals are judged on their merits against the standard public sector principles after examining the alternatives, taking account of any relevant experience. The Treasury will always need to understand why one of the existing structures will not serve: e.g. the NDPB format has considerable elasticity in practice. Box 4.8 and the framework document guidance may help with this analysis.

7.13 Outsourcing

7.13.1 Public sector organisations often find it satisfactory and cost effective to outsource some services or functions rather than provide them internally. Candidates have included cleaning, security, catering and IT support. A wider range of services is potentially suitable for this treatment. Innovative approaches should be explored constructively.

7.13.2 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. At that stage it is usually desirable to draw up an outline business case to help evaluate whether outsourcing makes financial and operational sense. Any decision to outsource should then be made to achieve value for money for the Exchequer as a whole.

7.13.3 It is good practice to arrange some form of competition for all outsourcing, as for other kinds of procurement. If services are likely to be required at short notice for example legal services for advice on 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 whose members can be called upon to deal with rapidly emerging needs.

7.13.4 Contracting out does not dissolve responsibility. Public sector organisations using a contractor should set in place systems to track and manage performance under the contract. It may be appropriate to plan for penalties for disruption and/or failure if the contractor cannot deliver. The PAC may need to be satisfied that the arrangements for contracting out entail sufficient accountability for the use of public funds.

7.14 Private finance

7.14.1 Where properly constructed and managed, public sector organisations can use private finance arrangements to construct assets and/or deliver services with good value for money. Structured arrangements where the private sector puts its own funds at risk can help deliver projects on time and within budget.

7.14.2 It is important to carry out a rigorous value for money analysis to determine whether these benefits are likely to exceed the additional cost of using private finance. Contracting organisations should also make sure that they are able to afford such arrangements over their working lifetimes, taking account, as far as possible, of the risk of difficult future financial environments. It is not good practice to embark on a private

POL00363159

finance arrangement if it is dependent on other separate financial transactions taking place during the project's lifetime.

7.14.3 Procurement using private finance is a flexible, versatile and often effective technique, so it should be considered carefully as a procurement option. Contracts should normally be built up using standard terms and guidance published by the Treasury (see Annex 7.4). Departure from standard guidance needs to be approved by the Treasury.

7.15 Commercial activity

7.15.1 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. This is essentially part of good asset management.

7.15.2 Any kind of public sector asset can and should be considered. Candidates include both physical and intangible assets, for example land, buildings, equipment, software and intellectual property (see annex 4.15). A great variety of business models is possible.

7.15.3 Such commercial services always go beyond the public sector supplier's core duties. Because these assets concerned have been acquired with public funds, it is important that services are priced fairly: see chapter 6. It is also important to respect the rules on state aids: see annex 4.7. Central government organisations should work through the checklist at box 7.8.

Box 7.8: planning commercial exploitation of existing assets

- 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, obtain Treasury approval
- take account of the normal requirements for propriety, regularity and value for money

7.15.4 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, commercial activity. If a public sector supplier's commercial activity demands further investment 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.

7.15.5 It is a matter of judgement when departments should inform Parliament of the existence, or growth, of significant commercial 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.

POL00363159

7.16 Working with civil society bodies

7.16.1 Central government organisations may find they can deliver their objectives effectively through relationships with civil society bodies: i.e. charities, social, voluntary or community institutions, mutual organisation, social enterprises or other not-for-profit organisations. Such partnerships can achieve more than either the public or the civil society sector can deliver alone. For example, using a civil society sector organisation can provide better insight into demand for, and suitable means of delivery of public services.

7.16.2 It is good practice to plan relationships with civil society partners through a framework document, as with other partnerships. Some guidelines on how these relationships can work well in harmony with policy and spending decisions are in the Civil Society Compact[43].

7.16.3 In this kind of relationship a public sector organisation may fund activities, make grants, lend assets, or arrange other transfers to a civil society sector body performing or facilitating delivery of services. It is desirable to build in safeguards to ensure that resources are used as intended (see annex 5.2). This gives Parliament confidence that voted resources are used for the purposes it has approved.

7.16.4 The safeguards to be applied should be agreed at the start of the relationship. Customisation in nearly always essential. It is often right to require clawback, i.e. to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold.

[43] https://www.gov.uk/government/publications/compact-the-agreement-between-government-and-the-voluntary-community-sector

POL00363159

Annex 1.1

Communications with Parliament

A key element of propriety is meeting Parliamentary expectations, especially transparency. In line with this, Managing Public Money details requirements to notify Parliament of certain events or the publication of material. Those notification requirements are set out as part of each area. This Annex supports departments and Arm's length bodies in respect of those notifications by setting out a standardised process for how such communications should occur. This includes circumstances where notification should occur in circumstances where Parliament is not sitting or where it is in the public interest such reporting should remain confidential.

Matters to be notified to Parliament

A1.1.1 MPM requires certain spending or commitments to spending to be notified to Parliament whether by written Ministerial Statement or by correspondence with the Committee of Public Accounts (PAC) and relevant departmental committee. It also requires transparency with regard to governance arrangements.

A1.1.2 This annex sets out some of the common requirements for notification that may occur. This list is non-exhaustive - accounting officers and finance teams should be aware that Parliamentary procedures and conventions, as well as specific requirements as set out in legislation, may give rise to additional requirements for communications with Parliament and Committees. If uncertain whether notification is necessary, it is good practice to seek the advice of both departmental Parliamentary Clerks and HMT spending teams.

A1.1.3 Failure to notify Parliament as directed is a breach of propriety and accounting officers must consider if such a course of action gives rise to a conflict with their accounting officer duties as set out in Chapter 3 of Managing Public Money.

A1.1.4 Accounting officers are directly responsible to Parliament for the use of public funds in their organisation and as such it is imperative that Parliament is made aware of unusual spending. Accounting officers should err on the side of transparency with Parliament wherever possible.

Mechanisms for notification

A1.1.5 Parliament may be notified in number of ways as outlined below:

- Annual Report and Accounts (ARA). Details of the requirements to be included In the Annual Reports and Accounts are set out in the Government Financial Reporting Manual. [44]

[44] https://www.gov.uk/government/collections/government-financial-reporting-manual-frem

POL00363159

- Written Ministerial Statements (WMS). Government ministers can make written statements to Parliament as well as oral ones. Written ministerial statements are normally used to put the day-to-day business of government on the official record and in the public domain. It is good practice where the statement relates to matters of spending to also notify the relevant departmental select committee and the Public Accounts Committee of the laying of the WMS.
- Correspondence with Parliamentary Select Committees. Such correspondence should be frank and provide sufficient level of detail to allow effective scrutiny. Correspondence may be sent on a confidential basis to the committees but the requirement for confidentiality should be articulated and justified within the correspondence.
- Depositing papers in the Libraries of both Houses of Parliament. The House Library will accept deposits following a commitment to place these papers in the Libraries is usually made in a written statement, in response to a parliamentary question or in the course of a debate. It is also possible to deposit material by authority of a letter from a Minister.[45]

A1.1.6 It will also be sometime be appropriate to make material available to the general public via publication on gov.uk. When this occurs, it may also be appropriate to notify Parliament this has occurred by one or other of the means above.

Content and timing of communications

A1.1.7 In general, the content of the communications should be as open as possible with Parliament balanced against the public interest in maintaining a safe space for policy development, commercial sensitivity and respecting national security concerns. Departments should be clear as to the dates of the communications and the dates and details concerning the matter to which those communications relate. In relation to spending, departments should be clear as to costs, but avoid spurious levels of accuracy, and instead use ranges of costs where matters are uncertain. Communications should always be approved by and attributed to the appropriate minister or senior official so that Parliament knows to whom they should direct any queries.

A1.1.8 The tables below set out time limits for when communications should occur. These should be treated as limits, not targets. It is always better to give Parliament time to consider any communications. If the time limits below cannot be met, the communication should explain why that is. Presentational convenience is not an acceptable reason to delay notification, and Parliament is unlikely to look kindly on delays due to administrative error or slow clearance processes.

Notification of significant income, spending or commitments to spend

A1.1.9 Managing Public Money details specific circumstances where it is necessary to inform Parliament of government spending. These include:

45 https://www.parliament.uk/globalassets/documents/commons-library/deposited-papers-guidelines-for-departments.pdf

POL00363159

- Losses (including losses due to fraud or overpayments) (A4.10.6)
- Gifts (A4.12.5)
- Special payments (A4.13.18)
- Asset sales (A4.15.11)
- Contingent liabilities (Annex 5.4)

A1.1.10 In addition, there are certain matters related to spending that require Parliament to be informed either directly or via the C&AG. These include:

- Contingencies Fund advances (Chapter 5 Estimate manual)
- details of irregular spend (A2.2.17)
- where the accounting officer is the of the view their duties are not met and a Ministerial direction is required. (3.6.5)

The below table summarises notification requirements as set out elsewhere in this document

Spending Commitments

	Published on gov.uk	Annual report and Accounts	WMS	Letter to PAC and Departmental Select Committee	Notified to C&AG and Treasury Officer of Accounts	Timing
Losses in excess of £300,000		✓				
Serious[46] losses		✓	✓			Parliament should be alerted once the scale of the loss is established or where the quantum of loss is uncertain where the AO considers it is proper for Parliament to be informed.
Gifts made in excess of £300,000		✓	✓			WMS should be laid in the house 14 sitting days before the gift is made.
Special Payments cumulatively greater than £300,000		✓				
Individual Special Payments greater than		✓				

46 Serious is not defined in Managing Public Money and the Accounting Officer should consider both in terms of quantum or if there are particular factors that require the loss to be brought to Parliaments attention in advance of the publication of the ARA..

POL00363159

£300,000 (note separately)						
Contingent Liability[47]		✓	✓	✓		WMS & DM should be laid in the house 14 sitting days before the indemnity incurred
Contingent Liability (Recess)		✓		✓		Correspondence should be sent to the relevant committees 14 working days before the indemnity is incurred. A WMS should be laid upon Parliament being reconvened.
Contingent Liability (Confidential)		✓		✓		Correspondence explaining the need for confidentially should be sent to the relevant committees 14 working days before the indemnity is incurred. A WMS should be laid upon circumstances requiring confidentiality expiring.
Contingent Liability (Short Notice)		✓	✓	✓		Parliament should be altered as soon as possible and preferably in advance of the liability being incurred WMS and correspondence should explain the reason for short notice.
Gifts received		✓				Gift received need only be noted in accounts where HMT or the department consider there is a special need for them to be brought to Parliament's attention
Asset Sales above Departmental delegations or that are NCR		✓	✓			Disclosures should be laid in Parliament as soon as practicable after the sale has taken place in the manner described in Asset sales disclosure guidance[48]
Irregular spending					✓	If the Treasury does not give retrospective approval or

47 As per Annex 5.4 Contingent Liabilities require notification where they are outside the normal course of business for the department, over £300,000 exposure but not arising under statutory powers or under statutory powers but are either NCR or of such a size relevant to the department's budget that Parliament should be notified.

48 Asset sale disclosures: guidance for government (publishing.service.gov.uk)

POL00363159

						authorise write-off of irregular expenditure, the department must inform the NAO.
Contingencies Fund advance[49]			✓			Whether or not recourse is made to the Contingencies Fund for cash, departments must notify Parliament, by way of a Ministerial Statement agreed with the Treasury, where a commitment will be, or has been, entered into in advance of Supply.
Ministerial Direction	✓	✓		✓	✓	Upon making the commitment to spend the department should promptly copy the direction request, the direction and other papers the accounting officer considers relevant to the Chair of the PAC, the Comptroller and Auditor General and the Treasury Officer of Accounts The direction should be published on the gov.uk website promptly, notifying the chairs of the PAC and the relevant departmental select committee as soon as this occurs
Ministerial Direction (confidential)				✓	✓	Where confidentiality is required, in addition to copying to the Comptroller and Auditor General and the Treasury Officer of Accounts as usual, the direction request and the direction must be shared with the chairs of the PAC and the relevant departmental select committee, along with an explanation of when they expect the need for confidentiality to fall away and publication to take place

49 Supply Estimates guidance manual - GOV.UK (www.gov.uk) paragraph 5.12

POL00363159

Notification of governance and accountability arrangements

A1.1.11 In order to provide proper scrutiny of spending, Parliament must also be in position to understand the manner which the decisions to spend have been come to and to whom they should direct any enquiries regarding that spending. It is also important that they understand the way responsibilities are assigned across government and between departments and arm's length bodies.

A1.1.12 Common governance documents and references to where to find detail on their preparation within this document are detailed below:

- Notification of accounting officer appointments (3.2)
- Accounting officer assessments (3.4)
- Framework documents (Annex 7.2)
- Accounting officer system statements (A3.1.13)

Governance Arrangements

	Publish on gov.uk	Letter to PAC and Departmental Select Committee	Notified to C&AG and Treasury Officer of Accounts	Deposited in the House Library	Timing
Accounting Officer appointment		✓	✓		AO appointment letters should be provided to the AO on the date they take executive control of the organisation for which they become AO.
Accounting Officer Assessment (GMPP)	✓	✓	✓		Publication of the summary should come at the point of approval of the Outline Business Case. However, accounting officers have discretion to determine the timing of publication, balancing Parliament's expectations and the public interest test subject to informing Parliament as below.
Accounting Officer Assessment (GMPP) confidential		✓	✓		Where an accounting officer does decide to delay publication, they should share the summary assessment on a confidential basis with the chairs of the PAC and the relevant departmental select committee, along with an explanation of when they expect the need for confidentiality to fall away and publication can take place.

POL00363159

Framework Document	✓			✓	Framework documents should be published on gov.uk on departmental collection pages as soon as they are agreed. They should be updated at least every three years.
AO System Statement[50]	✓			✓	AO systems statements should be published alongside the department's Annual report and Accounts and refreshed where there have been significant changes in departmental governance structures such as machinery of government changes or the creation or dissolution of arm's length bodies.

Statutory requirements to notify and report

A1.1.13 Many statutes have requirements to report on how the powers granted by Parliament have been used. For example, section 11 of the Industrial Development Act 1982 or section 3 of the Infrastructure (Financial Assistance) Act 2012. The above reporting requirements should not be considered to relieve departments of their obligations to fulfil their statutory requirements.

Confidential Reporting

A1.1.14 Sometime is it will be necessary to inform Parliament of spending or commitment to spend in confidential manner. This should be the exception rather than the rule and the public interest will generally weigh heavily in favour of transparency. If confidentiality is required, the department should make clear the reasons for such confidentially and also indicate the circumstances under which confidentially will no longer be necessary.

A1.1.15 Acceptable reasons for confidentially might include where there would prejudice to criminal investigations, revealing sensitive commercial information, national security concerns or the need to protect a safe space for ongoing policy development. A good rule of thumb will be to consider similar factors as may inform a decision to release material under freedom of information request.

A1.1.16 If material is to be kept confidential it will generally be appropriate inform the Public Accounts Committee and relevant departmental select committee through correspondence. In the most sensitive cases it may be necessary to provide an oral briefing to Committee members. All such measures should only continue for as long as the public interest is in favour of confidentially being maintained.

50 Accounting Officer System Statements: guidance (publishing.service.gov.uk) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/626226/pu2074_accounting_officer_guidance_2017.pdf

POL00363159

Annex 1.2

The Comptroller and Auditor General

Supported 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 statutory rights of access to records, the C&AG provides direct advice and assurance to Parliament.

A1.2.1 The C&AG is an officer of the House of Commons appointed by The King. They are responsible for the audit of most central government institutions. This work is carried out under his or her direction by NAO staff (see www.nao.org.uk) or by contracting out. NAO is in the public sector but independent of central government.

A1.2.2 The C&AG is appointed for a single non-renewable term of ten years; and can only be removed from office by The King on an address of both Houses of Parliament. The NAO's statutory board advises and supports the C&AG – for example, on the NAO's strategic direction and the associated resource requirements. Audit related decisions such as which examinations to perform and the specific audit and reporting approach, are matters solely for the independent C&AG to decide.

A1.2.3 The NAO is financed by an Estimate submitted jointly by the C&AG and the NAO chair to the Public Accounts Commission (TPAC), a committee of the House of Commons. NAO's expenditure may include discretionary activities permitted under statute if approved by NAO's board and subsequently by TPAC through its scrutiny of the NAO's Estimate.

Audit

A1.2.4 In order to carry out financial audit work, the C&AG has extensive statutory rights of access to information held by a wide range of public sector organisations. This material is also 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.

A1.2.5 The C&AG is responsible for the financial audit of virtually all central government organisations, providing an audit opinion on their annual financial and reporting to Parliament. The C&AG may be appointed the auditor of government companies as a requirement of statute or on an 'agreement' basis with an individual entity as necessary. Financial audits are carried out in accordance with International Standards on Auditing (UK and Ireland).

A1.2.6 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) examinations - having taken account of any proposals made by the Committee of

POL00363159

Public Accounts - is entirely at the C&AG's discretion, as is the manner in which they are carried out and reported. The C&AG has the same level of access for vfm examinations as for financial audit. Central government bodies must ensure that such access is provided for within the terms and conditions of contracts and agreements with third party contractors, sub-contractors and grant recipients.

A1.2.7 In the event of the C&AG requiring access to sensitive documents to inform his work – for example, policy papers such as Cabinet, or Cabinet Committee, papers - then public sector organisations should cooperate with NAO requests for access to such information, irrespective of its classification or other sensitivity. It is important to work closely with NAO to explain fully any publication sensitivities that may exist. While the final decision about the contents of his or her reports must rest with the C&AG, such close working ensures sensitivities can be properly taken into account as the report content is finalised.

A1.2.8 The Public Accounts Committee (PAC) may decide to invite witnesses to discuss the findings of both financial audits and vfm examinations. The PAC may also initiate other hearings on related matters

The Comptroller function

A1.2.9 An 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.

POL00363159

Annex 2.1

Treasury approval of legislation

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

A2.1.1 When preparing legislation, departments must consult the Treasury:

- the 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
- subsequently about any changes that are proposed to the agreed financial provisions, e.g. during the legislation's passage through Parliament

A2.1.2 Departments shall 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

A2.1.3 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 A2.1A. Treasury consent is required to protect the authority of the Chancellor of the Exchequer in matters of finance or establishment.

A2.1.4 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 before resources consumed or expenditure incurred can be charged on the Consolidated Fund

A2.1.5 But providing for statutory consent avoids any danger that the Chancellor might be committed to legislation he or she would not have agreed.

POL00363159

Money resolutions

A2.1.6 A money resolution is required[51] 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.

A2.1.7 The responsible department shall 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.

Box A2.1A: examples of legislation matters which require explicit Treasury approval

- direct charge (a Consolidated Fund standing service)
- indirectly, i.e. "out of monies to be provided by Parliament" (through Estimates):
- expenditure proposals affecting public expenditure as defined in the current public expenditure planning total, e.g. 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 coverage
- the form of government accounts and associated audit requirements
- public service manpower
- pay and conditions (e.g. 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

Ways and Means resolutions

A2.1.8 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

[51] By virtue of Standing Order 49 of the House of Commons

POL00363159

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.

A2.1.9 Departments shall clear ways and means resolutions with the Treasury. Further advice should be sought from parliamentary clerks.

Explanatory Notes

A2.1.10 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 A2.1B. Guidance on preparation is on the Cabinet Office website[52].

Box A2.1B: legislation authorizing expenditure: explanatory notes

Financial effects of the legislation:

- Estimates of expenditure expected to fall on
    - the Consolidated Fund (CF), distinguishing between Consolidated Fund standing services
    - 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

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 and local authorities

52 https://www.gov.uk/government/publications/guide-to-making-legislation

POL00363159

POL00363159

Annex 2.2

Delegated authorities

This annex expands on the requirement for departments to obtain Treasury consent to their public expenditure and the process of delegated authorities.

A2.2.1. Treasury approval for expenditure is one aspect of the 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 3.3.3) for ensuring that prior Treasury approval is obtained in all cases where it is needed.

A2.2.2. 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 A2.2A identifies the main ways in which the need can arise. It may not be exhaustive.

A2.2.3. Treasury approval:

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

A2.2.4. Departmental ministers should be made aware when Treasury consent is required in addition to their own.

Box A2.2A: where Treasury approval is required

- public statements or other commitments to use of public resources beyond the agreed budget plans
- guarantees, indemnities or letters of comfort creating contingent liabilities
- any proposals outside the department's delegated limits
- all expenditure which is novel, contentious or repercussive, irrespective of size, even if it appears to offer value for money taken in isolation
- where legislation requires it
- fees and charges

Where Treasury approval has been overlooked, the case shall immediately be brought to the Treasury's attention.

POL00363159

Delegation

A2.2.5.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.2.2.12 for exceptions). Delegated authorities may also allow departments to enter into commitments to spend (e.g. contingent liabilities) and to deal with special transactions (such as some write-offs) without prior approval.

A2.2.6.Such delegated authorities 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.

A2.2.7.Departments shall 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.

A2.2.8.The Treasury may also work through the Cabinet Office to set certain expenditure controls applicable across central government[53].

Setting delegated authorities

A2.2.9. While the standard terms for inclusion in delegated authorities are set out in box A2.2B, HMT has produced a single template delegation letter which must be used to set delegated limits for central government departments and ALBs[54]. 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.

A2.2.10.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)
- 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.

53 https://www.gov.uk/government/collections/cabinet-office-controls

54 https://www.gov.uk/government/publications/managing-public-money

POL00363159

Box A2.2B: 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, e.g. all items of a certain kind to require approval
- any relevant authorities, e.g. the enabling legislation or letter from a Treasury minister
- the relevant budget provision
- the relevant section of the department's Estimate
- any effective dates
- arrangements for review. HMT requires that delegated authority limits be reviewed annually.

A2.2.11. In turn departments shall agree delegated authorities with their arm's length bodies, making use of the template delegated authority letter[42]. Delegations to ALBs should generally be no greater than departments' own delegated authorities, but can be greater in exceptional circumstances with the consent of the Treasury. Departments must seek HMT approval for the delegated authorities they agree with their ALBs.

A2.2.12.There are some areas of expenditure and resource commitments which the Treasury cannot delegate: see box A.2.2C.

Box A2.2C: 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 (e.g. to write off NLF debt or PDC)
- any item which could set a potentially expensive precedent
- where Treasury consent is a specific requirement of legislation

A2.2.13.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.

POL00363159

Failure to obtain Treasury authority

A2.2.14.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 Estimates. Similarly, any resources committed or expenditure incurred in breach of a condition attached to Treasury approval is irregular.

A2.2.15.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
- the department is taking steps to ensure that there is no recurrence.

A2.2.16.Requests for retrospective approval shall follow the same format as requests submitted on time.

A2.2.17.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.

A2.2.18.It is unlawful 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.

A2.2.19.In cases of unlawful expenditure, the responsible accounting officer must note the department's accounts 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 accounts and whether to draw it to the attention of the PAC.

A2.2.20.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, e.g. 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.

A2.2.21.Departments shall 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.

POL00363159

POL00363159

Annex 2.3

The PAC Concordat of 1932

This annex sets out the evolution of Parliament's concerns regarding the propriety of public spending.

A2.3.1. The PAC has had long standing concerns about how the government gains authority from Parliament for each area of spending.

A2.3.2. 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.

A2.3.3. 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 ..."

A2.3.4. 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".

A2.3.5. 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".

A2.3.6. In reply, the Treasury Minute said:

POL00363159

> "... 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".
>
> "... while ... the 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".

A2.3.7. With this Concordat, the matter still lies.

A2.3.8. A2.3.8 Use of the Supply and Appropriation Acts as authority for expenditure is discussed in annex 2.4.

POL00363159

Annex 2.4

New services

This annex sets out the propriety considerations to be made when delivering new services.

A2.4.1. Chapter 2 (box 2.1) sets out the essential conditions for authorisation of public spending. New services are exceptions, i.e. services for which Parliament would normally expect to provide authorising legislation but has not yet done so. They can include altering the way in which an existing service is delivered as well as services not previously delivered.

When the Supply and Appropriation Act suffices

A2.4.2. Notwithstanding the general rules in box 2.1, in some circumstances it is not necessary to have specific enabling legislation in place. Parliament accepts that agreement to the Estimate[55] is sufficient authority for the kinds of expenditure listed in boxes 2.5 or 2.6. The content of these boxes is reproduced in box A2.4A. They can all be considered part of business as usual.

Box A2.4A: Expenditure Parliament accepts may rest on a Supply and Appropriations Act

- routine administration costs: employment costs, rent, cleaning etc
- lease agreements, e.g. for photocopiers
- expenditure using prerogative powers, notably defence of the realm and international treaty obligations
- temporary services or continuing services of low cost, provided that there is no specific legislation covering these matters before Parliament and existing statutory restrictions are respected, specifically
- initiatives lasting no more than two years, e.g. a pilot study or one-off intervention
- expenditure of no more than £1.75m a year (amount adjusted from time to time).

A2.4.3. It is important not to exceed these limits. The Treasury has agreed in the Concordat (see annex 2.3) to seek to make sure they are respected. So departments shall consult the Treasury before relying upon them.

[55] Which becomes a Supply and Appropriation Act once it has been through its parliamentary stages.

POL00363159

Anticipating a bill

A2.4.4. In addition, Parliament is prepared to accept that departments may undertake certain preparatory work while a bill is under consideration and before royal assent. Examples are listed in box A2.4B.

Box A2.4B: 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

A2.4.5. Departments may be able to finance activities such as those in box A2.4B out of their existing resources. When this happens, departments shall make sure that the ambit of the relevant Estimate covers the planned expenditure.

A2.4.6. It is also important to understand in which areas of new business Parliament does expect the normal rigour for authorisation (box 2.1) to apply. For the avoidance of doubt, some examples are shown in box A2.4C.

Box A2.4C: expenditure which may not normally be incurred before royal assent

- significant work associated with preparing for or implementing the new task enabled by a bill, e.g. renting offices hiring expert consultants or designing or purchasing significant IT equipment
- recruitment of chief executives and board members of a new public sector organisation
- recruitment of staff for a new public sector organisation

Providing for a new service

A2.4.7. Some new services go well beyond the examples in box A2.4B. They include such things as paying a new grant, providing a new registration service, transforming the delivery of existing service or setting up a new public sector organisation. Even if a bill providing for a new service is before Parliament, the activity the bill provides for cannot normally go ahead before royal assent. It is therefore good practice to plan the timetable for achieving the new service so that it is compatible with the bill timetable.

A2.4.8. Sometimes it is convenient to use a paving bill to provide the necessary powers to get a new service under way quickly. A paving bill can provide powers to allow expenditure which would be nugatory if the subsequent detailed legislation for the new service does not proceed, e.g. employing consultants to design a significant IT or

POL00363159

regulatory system. Paving bills are usually short, though they may be contentious (and time consuming) as they can prompt parliamentary discussion of the underlying substance of the measure.

A2.4.9. Departments which do not use paving bills may want to make an early start on legislation contained in a bill during its passage through Parliament. Usually the spending in question lacks both adequate statutory underpinning and authorisation in Estimates.

A2.4.10. In these circumstances there is a risk that allowing the spending to proceed might be wasteful if royal assent is not achieve as expected. So it is good practice to try to find other ways of making progress with the policy without anticipating royal assent.

A2.4.11. If, nevertheless. a department wants to spend early on matters to be empowered by a bill before Parliament, it may make a claim for an advance from the Contingencies Fund with a plan to repay it out of the next Estimate when agreed[56]. The spending must meet the conditions in box A2.4D.

Box A2.4D: criteria for drawings on the Contingencies Fund

- the bill in question must have reached second reading in the Commons; and
- the bill must be virtually certain to achieve royal assent with minimal change, preferably within a year; and
- genuine urgency in the public interest, i.e. where postponing expenditure until after royal assent would:
    - cause additional wasteful expenditure
    - lose (not just defer) efficiency savings
    - cause other damage or public detriment

A2.4.12. The Treasury judges applications for access to the Contingencies Fund cautiously and on their merits. It is important to note that neither political imperative nor ministerial preference is relevant to making this assessment.

A2.4.13. In rare circumstances a Contingencies Fund advance may be awarded to make senior appointments to a new public sector body being set up under a bill. When this is allowed, the people appointed must be clear that if for any reason the legislation fails, the provisional appointments would have to be cancelled.

Providing for a new service

A2.4.14. The instances described in this annex all mean that Parliament has less control over certain items of public expenditure than it would normally expect. Departments should therefore take great care to keep Parliament informed of what is happening and why.

A2.4.15. A timely written ministerial statement giving the amounts involved and their timing is the essential minimum before Contingencies Fund resources can be

[56] See section 5.8 of the Estimates Manual.

POL00363159

released. If possible, an oral explanation at second reading, or a separate oral statement, is desirable. In addition there shall be:

- notes in the explanatory memorandum and impact assessment to the relevant bill
- notes in the relevant Estimate - especially important if a department wants to anticipate secondary legislation which a bill will empower

A2.4.16. If the effect of the measure changes significantly, Parliament should be given timely information to keep it abreast of developments.

A2.4.17. It is good practice to keep the Treasury informed of the disclosure intended. The Treasury pulls all information about anticipation of parliamentary agreement together and publishes it annually at the close of each session.

Directions

A2.4.18. The exceptions in this annex to the requirements of box 2.1 provide a lot of scope for pragmatic progress of essential government business. The advice in this annex may be regarded as judicious extensions of the requirements of propriety, and acceptable only if Parliament is not misled.

A2.4.19. But sometimes even these easements are not enough. If the accounting officer is unable to design the minister's policy to fit within the standards in this annex, he or she will need to seek a ministerial direction (see section 3.6). The usual rules about disclosure of course apply.

POL00363159

Annex 3.1

The Governance Statement

It is fundamental to each accounting officer's responsibilities to manage and control the resources used in his or her organisation. The governance statement, a key feature of the organisation's annual report and accounts, manifests how these duties have been carried out in the course of the year. It has three components: corporate governance, risk management and, in the case of some departments, oversight of certain local responsibilities.

Purpose

A3.1.1. Each accounting officer (AO) delegates responsibilities within his or her organisation so as to control its business and meet the standards set out in box 3.1 (see chapter 3). The systems used to do this should give adequate insight into the business of the organisation and its use of resources to allow the AO to make informed decisions about progress against business plans and if necessary, steer performance back on track. In doing this the AO is usually supported by a board.

A3.1.2. These responsibilities are central to the AO's duties. To carry them out the AO needs to develop a keen sense of the risks and opportunities the organisation faces. In the light of the board's assessment of the organisation's appetite for risk, the AO needs to decide how to respond to the evolving perceived risks.

A3.1.3. The governance statement, for which the AO takes personal responsibility, brings together all these judgements about use of public resources as part of the annual report and accounts. It should give the reader a clear understanding of the dynamics and control structure of the business. Essentially, it records the stewardship of the organisation. Supplementing the accounts, it should provide a sense of the organisation's vulnerabilities and resilience to challenges.

Preparing the governance statement

A3.1.4. The governance statement is published in each organisation's annual report and accounts. It should be assembled from work through the year to gain assurance about performance and insight into the organisation's risk profile, its responses to the identified and emerging risks and its success in tackling them.

A3.1.5. There is no set template for the governance statement.

A3.1.6. The AO and the board have a number of inputs into this process:

- the board's annual review of its own processes and practices, informed by the views of its audit committee on the organisation's assurance arrangements
- insight into the organisation's performance from internal audit, including an audit opinion on the quality of the systems of governance, management and risk control

POL00363159

- feedback from the delegation chain(s) within the organisation about its business, its use of resources, its responses to risks, the extent to which in year budgets and other targets have been met, and any other internal accountability mechanisms; including:
  i. bottom-up information and assessments to generate a full appreciation of performance and risks as they are perceived from within the organisation
  ii. end-to-end assessments of processes, since it is possible to neglect interdependent and compounded risks if only the components are considered
  iii. a high-level overview of the organisation's business so that systemic risks can be considered in the round
  iv. any evidence from internal control failures or poor risk management
  v. potentially, information from whistle-blowers
  vi. material from any arm's length bodies (ALBs) connected with the organisation which may shed light on the performance of the organisation or its board.

A3.1.7. It is important that the governance statement covers the material factors affecting the organisation in the round, not neglecting the more serious (if remote) risks[57], emerging technology and other cutting-edge developments. It should also mention any protective security concerns in suitably careful terms[58], with details reported to the external auditor.

Content of the governance statement

A3.1.8. With the board's support, it is for the AO to decide how to:

- organise the governance statement
- take account of input from within the organisation and from the board and its committees
- where relevant, integrate information about the organisation's ALBs, some of which may be material to the consolidated organisation
- provide an explanation of how the department ensures that use of any resources granted to certain locally governed organisations (including the NHS) is satisfactory. See A3.1.12.

A3.1.9. Box A3.1A summarises subjects that should always be covered.

A3.1.10. All the items in this box are important. The risk assessment is critical. This is where the AO, supported by the board, should discuss how the organisation's risk management and internal control mechanism work, and why they were chosen to deliver reasonable assurance about prevention, deterrent or other appropriate action to manage the actual and potential problems or opportunities facing the organisation. Avoiding lengthy description of process, it should assess the evidence about the effectiveness in practice of the risk management processes in place. In doing so it should face frankly up to any revealed deficiencies as risks have materialised.

[57] Including the external risks identified in the National Risk Assessment.

[58] As set out in the Security Policy Framework.

POL00363159

Box A3.1A: essential features of the governance statement

- the governance framework of the organisation, including information about the board's committee structure, its attendance records, and the coverage of its work
- the board's performance, including its assessment of its own effectiveness
- highlights of board committee reports, notably by the audit and nomination committees
- an account of corporate governance, including the board's assessment of its compliance with the Corporate Governance Code, with explanations of any departures
- information about the quality of the data used by the board, and why the board finds it acceptable
- where relevant (for certain central government departments), an account of how resources made available to certain locally governed organisations are distributed and how the department gains assurance about their satisfactory use
- a risk assessment (see annex 4.3), including the organisation's risk profile, and how it is managed, including, subject to a public interest test:
    - any newly identified risk
    - a record of any ministerial directions given
    - a summary of any significant lapses of protective security (e.g. data losses)

A3.1.11. In putting together the governance statement, the AO needs to take a view on the extent to which items are significant enough to the welfare of the organisation as a whole to be worth recording. There are no hard and fast rules about this. Some factors to take into account are suggested in box A3.1B.

Box A3.1B: deciding what to include in the governance statement

- might the issue prejudice achievement of the business plan? – or other priorities?
- could the issue undermine the integrity or reputation of the organisation?
- what view does the board's audit committee take on the point?
- what advice or opinions have internal audit and/or external audit given?
- could delivery of the standards expected of the AO (box 3.1) be at risk?
- might the issue increase the risk of fraud or other misuse of resources?
- does the issue put a significant programme or project at risk?
- could the issue divert resources from another significant aspect of the business?
- could the issue have a material impact on the accounts?
- might national security or data integrity be put at risk?

POL00363159

Accounting officer system statements

A3.1.12. Government departments should include in their governance statements a summary account of how they achieve accountability for the grants they distribute to local government, schools, similar local government organisations and/or the NHS. It should cover:

- an account of how resources are distributed, e.g. in response to needs or desired change
- how the AO gains assurance about probity in the use of public funds
- how the AO achieves or encourages value for money in the local use of grants, e.g. through local arrangements which provide incentives to achieve good value
- the use the AO makes of disaggregated information about performance, including investigating apparent outliers and/or requiring those responsible locally to explain their results.

A3.1.13. This part of the governance statement should usually be backed by an accounting officer systems statement, which are published on gov.uk.[59] Guidance on accounting officer system statements can be found online. The system statement must be clear on the core data and information flows that the system will rely on. An understanding of these core data requirements should be developed collaboratively with the entities to be included within the system statement and with users to meet the need for effective accountability locally and nationally.

A3.1.14. Accounting officer system statements should evolve to reflect improving practice. Where a department proposes making major changes, it should contact Treasury and also consider consulting the relevant Parliamentary committees by providing them with a draft and the opportunity to comment.

External audit

A3.1.15. The organisation's external auditor will review the governance statement for its consistency with the audited financial statement. The external auditor may report on:

- any inconsistency between evidence collected in the course of the audit and the discussion of the governance statement
- any failure to meet the requirement to comply with or explain departures from the Corporate Governance Code or any other authoritative guidance.

[59] See https://www.gov.uk/government/collections/accounting-officer-system-statements.

POL00363159

Annex 4.1

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

A4.1.1. The finance director of a public sector organisation should:

- be professionally qualified[60]
- 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), and of the cross-government Finance Function

A4.1.2. 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 A4.1A. 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.

Box A4.1A: 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

[60] 1 The term professional finance director in this context means both being a qualified member of one of the five bodies comprising the Consultative Committee of Accounting Bodies (CCAB) in the UK and Ireland, i.e. 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 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.

POL00363159

- 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 and meaningful management information
- 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, annual accounts and consolidation data for whole of government accounts
- liaison with the external auditor
- liaison with PAC and the relevant Select Committee(s)
- liaison with cross-government Finance Function
- embedding of functional standards

A4.1.3. The finance function should maintain a firm grasp of the organisation's financial position and performance. Supporting the accounting officer, the finance director shall 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.

Financial leadership

A4.1.4. The finance director is responsible for leadership of financial responsibilities within the organisation and its ALBs. He or she shall ensure that the information on which decisions about the use of resources are based is reliable. Box A4.2B explains some specific responsibilities of the role.

POL00363159

Box A4.1B: 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

A4.1.5. The finance director shall 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 shall ensure that there are similar disciplines in the organisation's ALBs. These shall all draw on best practice in accounting and respect the Treasury's requirements, including, where relevant, accounts directions. These responsibilities are described in box A4.1C.

Box A4.1C: 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

A4.1.6. Individual finance director posts will of course have duties specific to their organisations and contexts in addition to those set out in this annex. But all finance director posts should seek to operate to these standards as an essential minimum.

POL00363159

POL00363159

Annex 4.2

Use of models

In modern government modelling is important. It can guide policy development; help determine implementation plans; and suggest how policies may evolve. Models should be controlled and understood in their proper context, with effective quality assurance, so that they can be used to good effect.

Control and governance

A4.2.1. Supported by the board, the accounting officer of a central government organisation should oversee the use and quality assurance (QA) of models within the organisation. There should be sufficient feedback for the accounting officer to be able to track progress and adjust the process.

A4.2.2. Each business critical model should be managed by a senior responsible officer (SRO) of sufficient seniority and experience, supported by experts and specialists, to understand the use of the model in context. Project and programme management techniques can be useful. It is good practice to avoid changing the SRO frequently.

A4.2.3. Each model is limited by the quality of its input data and founding assumptions. So the results of any model need to be treated with a degree of scepticism. It is vital to build sufficient governance into each model to help its users understand the value and weaknesses of its results. The apparent precision of mathematical models should not mislead uses into putting more weight on them than can be justified. Transparency should be the norm in the development and use of all models.

Quality assurance

A4.2.4. Whatever the complexity of the model, its governance should include an element of structured critical challenge to provide a sense check. It can take a number of forms: for example a steering group, a project board or outside assessment. New or untried models tend to require more QA than those using recognised techniques.

A4.2.5. In an organisation using a great deal of modelling, it is good practice for the accounting officer to appoint a QA champion. Effective QA demands dispassionate scrutiny by people disengaged with the project but with sufficient knowledge and experience to help steer the model into a successful approach. There may be a case for ensuring that different models in different parts of the organisation use consistent approaches.

A4.2.6. It is always good practice to evaluate the risks associated with any model so that the ultimate users of the model can appreciate what it can and cannot deliver. Sophisticated models may demand specialist expertise and leadership, but the vital element of constructive lay oversight should never be skimped. Otherwise there can be a danger that flaws are overlooked because the experts concentrate on the technical complexities.

POL00363159

A4.2.7. In managing a model, the SRO should consciously decide how it can provide good value for money. There is no point, for instance, in data collection to a high degree of accuracy if the assumptions used in the model cannot be exact. Similarly, there is a stronger case for investing in a model if it forms a central part of a decision-making process.

A4.2.8. References:

QA of government models: https://www.gov.uk/government/publications/review-of-quality-assurance-of-government-models

Guidance on long term financial modelling: https://www.gov.uk/government/publications/gad-services/government-actuarys-department-services#actuarial-modelling

Following the report by Sir Nicholas Macpherson into the quality assurance of analytical models that inform government policy, a cross-departmental working group on analytical quality assurance was established. The Aqua Book (at the following link) is one of their key products, and provides a good practice guide for those working with analysis and analytical models. The landing webpage also links to a number of other associated resources on quality assurance and modelling. https://www.gov.uk/government/publications/the-aqua-book-guidance-on-producing-quality-analysis-for-government

POL00363159

Annex 4.3

Risk

Each public sector organisation should have systems for identifying and managing risk – both opportunities and threats – suited to its business, circumstances and risk appetite. The board should lead the assessment and management of risk, and support the accounting officer in drawing up the governance statements (see annex 3.1).

The case for managing risk

A4.3.1. Every public sector organisation faces a variety of uncertainties, both positive and negative, which can affect its success in delivering its objectives, budget and value for money. So the board of each public sector organisation shall actively seek to recognise both threats and opportunities, and to decide how to respond to them, including how to set internal controls.

A4.3.2. Managing risk should be integrated into the normal management systems of each public sector organisation so that it can achieve its goals and maintain a reputation of credibility and reliability. It is for each accounting officer (AO), supported by the board, to decide how.

A4.3.3. The board should make a strategic choice about the style, shape and quality of risk management within each organisation. This is risk tolerance, i.e. the extent to which the organisation is willing to accept loss or detriment either in the performance of its regular services or in order to secure better outcomes. Different risk tolerances will apply to different circumstances, e.g. mission critical programmes or policies might find service failure scarcely tolerable, whereas investment bodies may care more about achieving financial success even at the price of some failures. Boards should be willing to take a proportionate approach so that less important risks do not crowd out the vital ones.

Risk management in practice

A4.3.4. The board's strategic guidance on risk appetite should permeate each organisation's programmes, policies, processes and projects. It should determine how delegations and reporting arrangements work so that departures from plan can be picked up and dealt with promptly.

A4.3.5. Feedback from working level should also inform each board reassessment of risk. Thus risk management should be a continuous cycle of assessment and feedback, responding to new information and developments. The essentials of the process are summarised in box A4.3A.

A4.3.6. Each organisation should decide how this cycle should work, in line with its circumstances, priorities and working practices. The final word must always be for the AO supported by the board, taking a broad and connected view across the whole organisation.

POL00363159

Box A4.3A: outline of the risk management cycle

- The board defines the organisation's risk tolerance.
- The organisation identifies and categorises its risks.
- The organisation assesses the risks identified: how likely their possible impact, identifying which are beyond tolerance and when.
- The board scans the horizon for any remote overlooked risks.
- The board decides which risks matter and what action should be taken, if any.
- Downward delegation of management, coupled with upward reporting of risks through the organisation enables the board to track performance
- Using this feedback, the board takes a rounded overview, and may adjust decisions e.g. on tolerance or on response.
- Back to step 1 and iterate as the board chooses.

Identifying risks

A4.3.7. It is important to capture all the organisation's risks so that they can be evaluated properly in context.

A4.3.8. There is value in getting each part of the organisation to think through its own risks. At working level operational risks may loom large. It may only be at board level that it is really possible to scan the horizon for emerging trends, problems or opportunities that might change the organisation's working environment. Some of the critical risks that are easily overlooked are shown in box 4.3B.

Box A4.3B: Examples of risk which are easily missed

- Information security risks: unsecured digital information can be misplaced or copied.
- High impact low probability risks: remote risks with serious effect if they happen.
- Opportunity risks: where some choices may close off other alternatives.
- End to end risks: which emerge when an operational chain fails simultaneously in several places in a linked set of processes.
- Inter-organisational risks; which can cause failure of the organisation's business because of links to partners, suppliers and other stakeholders.
- Cumulative risks: which happen if several risks precipitate at once, e.g. in response to the same trigger.

A4.3.9. As well as drawing on risk assessment from within the organisation, it may be valuable to use an external source to make sure that nothing important has been overlooked. Sometimes different public sector organisations can help each other out in this way, to their mutual advantage. And it can be useful to get staff to work together to consider the subject, e.g. in facilitated groups.

POL00363159

A4.3.10. Once the organisation's risks have been identified, it is possible to draw up a risk register. This is a list of recognised risks which can be kept up to date and which the board can review regularly. Each organisation needs to decide how to prioritise its total risk exposure so that the board can take an informed strategic approach to risk for the organisation as a whole.

Responding to risk

A4.3.11. Each organisation needs to decide whether, and if so how, to respond to its identified risks. Some standard responses are listed in box A4.3C.

Box A4.3C: Some standard responses to risk

Treat: a common response. Treatment can mean imposing controls so that the organisation can continue to operate; or setting up prevention techniques. See box 4.3D for possible treatments.

Transfer: another organisation might carry out an activity in which it is more expert. Insurance is not usually open to public sector organisations (see annex 4.4) but other forms of transfer are, e.g. using a payroll bureau. Some risks cannot be transferred, especially reputational risk. So delegating organisations should retain oversight of their agents, with scope for remedial action when necessary.

Terminate: it may be best to stop (or not to start) activities which involve intolerable risks or those where no response can bring the residual risk to a tolerable level, e.g. failing projects where it is cheaper to start again. This option is not always available in the public sector, which sometimes has to shoulder difficult risks – typically remote but potentially serious ones – which the private sector can choose to avoid.

Tolerate: for risks where the downside is containable with appropriate contingency plans; for some where the possible controls cannot be justified (e.g. because they would be disproportionate); and for unavoidable risks, e.g. terrorism.

Take the opportunity: boards may embrace some risks, accepting their downside perhaps with controls or preventative action, in the expectation of beneficial outcomes. Avoiding all risk can be as irresponsible as disregarding risk.

A4.3.12. In choosing responses, the acid test is whether the residual risk can be made acceptable after action. All controls should be realistic, proportionate to the intended reduction of risk, and offer good value for money. The more common types are listed in box A4.3D.

Box A4.3D: Common controls

Preventive action: measures to eliminate or limit undesirable outcomes, e.g. improving training or risk awareness; or stopping transfer of digital information using data sticks. Beware of imposing unnecessary costs or damaging innovation.

Corrective controls: measures to deal with damaging aspects of realised risks, e.g. clauses to recover the cost of failure of a contract. Includes contingency planning.

Directive controls: measures designed to specify the way in which a process is carried out to rule out some obvious potential damage, e.g. hygiene requirements.

POL00363159

Detective controls: measures to identify damage so that it can be remedied quickly. Especially useful where prevention is not appropriate, but can be a useful cross check elsewhere, e.g. stock controls.

A4.3.13. However it is treated, it is usually impossible to eliminate all risk. It would often be poor value for money to do so were it possible. So it is good practice to associate application of controls with contingency planning to cope with resolution of damage when risks precipitate. Many organisations find it useful to dry run these plans: first to check that they work, second to make sure they are proportionate and third to boil out any unnecessary features they may have.

The Board

A4.3.14. Risk management is a key governance task for the board. It should take a strategic view of risk in the organisation in the round, factoring together all the relevant input it can reasonably use. For example, it may consider to what extent risks interact, cumulate or cancel each other out. And consideration of risk should feature in all the board's significant decisions.

A4.3.15. It is good practice for the board to consider risk regularly as part of its normal flow of management information about the organisation's activities. It is good practice for each layer of management to give upward assurance about its performance, so reinforcing responsibility through the structure.

A4.3.16. It is up to each board to decide how frequently it wants to consider risk. Some set regular timetables to consider the whole risk register, while some choose to look at parts of the risk register in a regular sequence. Scrutiny of this kind enables the board to assess developments in context and make confident decisions about their relevance and significance.

A4.3.17. It is good practice for the board to make these assessments on the advice of its Audit Committee, though it should form its own view. Audit committees can also add value by chasing up implementation of the organisation's responses to PAC reports. Each Audit Committee should be chaired by a non- executive board member, drawing on input from the organisation's internal reporting and internal audit functions.

A4.3.18. Having weighed the identified risks, the board should also seek to distinguish unidentified risks, some of which may be remote. Box 4.3B offers some possibilities though it is not exhaustive. This process may lead the board to reconsider its strategy on risk tolerance.

A4.3.19. A useful focus of board risk work is supporting the AO in preparation of the governance statement for publication in its annual report (se annex 3.1). It should include an account of how the organisation has responded to risk and what it is doing both to contain and manage risk; and also to rise to opportunities.

A4.3.20. More generally, the board should make sure that lessons are learned from the organisation's experience. This applies particularly to perceived failures, e.g. an unforeseen risk or a crystallised risk which turned out more damaging than expected. But it is equally true of successes, especially those where risk was managed well, to see whether there is anything to be gained by repeating effective techniques elsewhere.

A4.3.21. Finally, the board should consider whether the organisation's risks are being treated appropriately. If damage has been prevented, it may be possible to adjust the

POL00363159

existing response to risk to achieve equally successful results by less expensive or less invasive techniques, e.g. replacing physical controls with security cameras.

Departmental groups

A4.3.22. Nearly all government departments sponsor one or more arm's length bodies (ALBs) for which they take ultimate responsibility while allowing them a degree of (or sometimes considerable) independence (see chapter 7). The accounts of these ALBs are consolidated with their sponsor department's accounts, emphasising that the sponsor stands behind them.

A4.3.23. It follows that each department board should consider the group's risk profile including the businesses of its ALBs. The potential liabilities of some ALBs (e.g. in the nuclear field) can be so great that they may overshadow the department's own, so this is essential hygiene.

A4.3.24. References:

The Orange Book: https://www.gov.uk/government/publications/orange-book

Other Treasury risk guidance:
http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr_governance_risk_riskguidance.htm

NAO report on Managing risks in government:
http://www.nao.org.uk/report/managing-risks-in-government/

GAD's practical guide to strategic risk management:
https://www.gov.uk/government/publications/strategic-risk-management

POL00363159

Annex 4.4
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.

A4.4.1. Central government organisations shall 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.

A4.4.2. 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 the organisation's assets or reduce exposure to liabilities crystallising. Such decisions shall always be made after a cost benefit analysis in order to secure value for money for the Exchequer as a whole. Some acceptable reasons for using insurance are set out in box A4.4A.

Box A4.4A: Where commercial insurance may provide value for money

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 a lease, and typically involves periodic expert inspection designed to reduce the risk of loss or damage.

Commercial 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 may 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: e.g., 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.

POL00363159

Where commercial insurance is required: e.g. vehicles where the Road Traffic Acts require it.

Appraising the options

A4.4.3. Decisions on whether to buy insurance shall be based on objective cost-benefit analysis, using guidance in the Green Book[61]. Box A4.4C outlines some factors which are often worth considering in such assessments.

Box A4.4C: Costs and benefits which could be included in assessments

Costs:

- the insurance premium which may be paid – comprising the expected cost, expenses, cost of capital, profit and others
- the administrative cost of managing claims with the insurance company
- the cost of brokerage to secure the insurance, potentially included in the premium

Benefits:

- transfer of risk, valued at the expected compensation for the insured losses, i.e. reflecting all possible scenarios and their probability of arising – note this will depend significantly on how the insurance is structured and its features
- services bundled with the insurance as outlined in other considerations below

Other considerations:

- Additional services that could either be provided as part of insurance cover or sourced separately:
    - Claims handling and administration – Managing claims as they arise through to settlement, including assessment of damages and legal defence. This could also include post event advice, with pre-arranged contracts and plans for accelerated recovery
    - Recoveries – Pursuing liable parties for damages
    - Risk mitigation – Actions, advice and investment to pro-actively reduce the risk of loss and manage losses effectively when they arise
- Project or stakeholder requirements – For example insurance may be required as part of taking out a lease, in these cases it is also worth considering whether the insurance requirement changes the value for money analysis of this option, suggesting an alternative may be preferred
- Data and systems ownership – Where government has risks that are spread across a number of central government bodies, there is value in collating and analysing the risk exposure and experience data. This may be possible with or without insurance, but when retaining the risk this can synergise with necessary administrative activity

[61] https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent

POL00363159

- Alternative options – Insurance is not the only option when looking to manage risk. In line with the Orange Book, once identified and assessed, risk management should look at mitigation in combination with accepting, avoiding or transferring the risk. All options should be considered to secure the best value for money

Setting fees and charges

A4.4.4. If a central government organisation insures risks arising in supplying a service for which a fee or charge is levied, the actual premium payments shall 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 shall be taken into account. See Chapter 6 for further details.

Reporting

A4.4.5. Departments shall seek Treasury consent for any decision to use the services of commercial insurance companies outside of the circumstances described in this annex.

A4.4.6. Departments should also consult Treasury regarding any reviews of insurance, or alternatives to insurance, that might contain lessons of wider application.

Dealing with uninsured losses (except traffic accidents)

A4.4.7. 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

A4.4.8. 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. Similarly, ALBs should not normally expect their sponsor departments to meet claims for reimbursement of loss.

Insured losses

A4.4.9. Public sector organisations should make insurance claims in accordance with the terms of the policy.

A4.4.10. ALBs 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.

POL00363159

Claims between public sector organisations

A4.4.11. 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. For small claims it would not be value for money for the Exchequer to make interdepartmental adjustments in the case of minor damage. 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. It will always be regarded as novel, contentious, or repercussive for one central government organisation to seek legal redress from another central government organisation through the courts, meaning that Treasury consent is always required.

A4.4.12. Box A4.4D shows how to proceed when one central government organisation makes a larger claim against one or more others.

Box A4.4D: 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) feal 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

A4.4.13. Most ALBs insure third-party vehicle claims to comply with the Road Traffic Acts. Public sector organisations that are not insured or otherwise protected for traffic accidents should refer any third-party claims, either for or against, to the Treasury Solicitor who acts on behalf of the government.

A4.4.14. Many claims between public sector organisations involving damage to, or loss caused by, vehicles, can be handled using the arrangements in paragraph A4.4.13.

POL00363159

A4.4.15. Vehicles travelling in other countries must comply with local requirements. These may require vehicles 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, e.g. indemnities.

Loans

A4.4.16. 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 borrower is an acceptable substitute if the lender is satisfied that the borrower could and would meet any damage or other loss.

A4.4.17. Public sector organisations are usually expected to meet the cost of insuring any government assets (e.g. equipment or stores) held by a contractor in the normal course of business, if the contractor is not comfortable relying of a government indemnity. 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.

A4.4.18. 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 approved and reported if they fall within the contingent liabilities process (see annex 5.4).

A4.4.19. 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

A4.4.20. 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. Similarly, parliamentary bodies such as the National Audit Office, the Parliamentary Commissioner (Ombudsman) and the Independent Parliamentary Standards Authority need not insure against employers' liability risks as they are exempted under the Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2011 (SI 2011/686).

A4.4.21. 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.

A4.4.22. The scope of the certificate should be strictly confined to the risks with which the Employers' Liability (Compulsory Insurance) Act 1969 is concerned, and

POL00363159

may not be extended to any other risks. It should be in the form set out in Box A4.4E. 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 A4.4E: 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.

POL00363159

Annex 4.5

Senior Responsible Owner Accountability

This annex sets out how Senior Responsible Owner accountabilities interact with accounting officers and Parliament.

A4.5.1. Senior Responsible Owners (SRO) for Major Projects (as defined in the Government's Major Project Portfolio) are in a special position in that they are expected to account for and explain the decisions and actions they have taken to deliver the projects for which they have personal responsibility. This line of accountability should be made clear to SROs in their appointment letter which is published on gov.uk.

A4.5.2. The Government publishes on an annual basis a list of the SROs for the Government's Major Project Portfolio (as defined by the Infrastructure and Projects Authority).

A4.5.3. Where a committee wishes to take evidence from an SRO of one of these major projects it will be on the understanding that the SRO will be expected to account for the implementation and delivery of the project and for their own actions. Appointment letters will make clear the point at which an SRO becomes directly accountable for the implementation of the project in question. The SRO will also be able to disclose to the Committee where a Minister or official has intervened to change the project during the implementation phase in a way which has implications for cost and/or timeline of implementation. In this respect the SRO should also be able to disclose their advice about any such changes.

A4.5.4. Accounting officers are ultimately accountable for the performance of all the business under their control, including major projects for which an individual SRO has direct accountability and responsibility. And in this respect, if a Select Committee calls for evidence from an SRO, the accounting officer of the department may also be called to support the SRO at a hearing.

A4.5.5. This line of direct accountability for SROs does not alter the special position and relationship of accounting officers with the PAC.

A4.5.6. The Government Functional Standard GovS 002: Project Delivery sets the expectations for the direction and management of portfolios, programmes and projects for all government departments and arm's length bodies. An SRO should refer to this standard to ensure the breadth of practices required for successful delivery are used. https://www.gov.uk/government/publications/project-delivery-functional-standard

A4.5.7. Further information on the accountability, relationship to other key leadership roles in project delivery and the selection and appointment of an SRO is available in Infrastructure and Project Authority guidance on the role of the senior

POL00363159

responsible owner. https://www.gov.uk/government/publications/the-role-of-the-senior-responsible-owner

A4.5.8. Further information is available in Cabinet Office guidance for officials from departments and agencies on giving evidence to Parliamentary Select Committees (the Osmotherly Rules).

POL00363159

Annex 4.6

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 Cabinet Office advice. This annex provides an overview of the policy framework for public procurement.

A4.6.1. Good procurement practice demands that public sector organisations buy the goods, works and services they need using fair and open procurement processes, guarding against corruption and meeting the standards in MPM. World Trade Organisation (WTO) agreements and many of the UK's trade deals underpin these principles. The specific responsibilities are set out in box A4.6A.

Box A4.6A: checklist of key purchasing responsibilities

General:

- value for money, normally through competition
- compliance with legal obligations including those imposed by international agreements
- follow Crown Commercial Service 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 GPS guidance

Planning and engagement:

- clarify objectives of procurement from the start
- consider how the procurement strategy could attract a diverse range of suppliers including SMEs and civil society organisations
- consider collaborative or shared procurement with other organisations to maximise purchasing power
- design procurement strategy and engage with the market early and well before competition starts
- consult GPS on any difficult legal issues

POL00363159

Skills:

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

Review:

- apply the Gateway™ review process
- draw issues which may have wider implications to the Cabinet Office's attention

A4.6.2. This guidance is intended to be fully consistent with the UK's international obligations. It does not create any rights or legal obligations.

Value for money

A4.6.3. Value for money is a key concept (see paragraph 3.3.3 and box A4.6B). 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 up front prices. Whether in conventional procurement, market testing, private finance or some other form of public private partnership, finding value for money involves an appropriate allocation of risk.

Box A4.6B: 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, for example, 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 strategy should seek to achieve the best value outcome for the Exchequer as a whole, not just for the organisation itself. This should be designed in before the invitation to tender is published.

Collaborative procurement: in the vast majority of cases, standardising and aggregating procurement requirements will deliver better value for money. Public sector organisations, including smaller ones, should therefore collaborate as far as possible on procurement in line with GPS practice.

A4.6.4. 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 guidance, in order to secure economies of scale, unless they can achieve better value for the Exchequer as a whole some other way. Smaller suppliers should have fair access to see if they able to deliver better value for money.

POL00363159

Legal framework

A4.6.5. Public sector organisations are responsible for ensuring that they comply with the law on procurement (see box A4.6C) taking account of Cabinet Office guidance[62].

The user's requirement

A4.6.6. Procurement should help deliver relevant departmental and government-wide strategies and policies. The procuring organisation should establish that the supply sought is really needed, is likely to be cost effective and affordable. And the published specification should explain clearly what outcomes are required, since this is crucial to obtaining the supply required. Once it is decided that third party procurement appears better value for money than provision in-house, a range of models should be considered, for example employee-led mutuals and joint ventures as well as more traditional outsourcing.

Box A4.6C: the legal framework for public procurement

- international obligations, notably WTO agreements
- domestic legislation, including subordinate legislation implementing directives
- contract and commercial law in general
- domestic case law

The procurement process and suppliers

A4.6.7. Competition promotes economy, efficiency and effectiveness in public expenditure. Works, goods and services should be acquired through competition unless there are convincing reasons to the contrary, and where appropriate should comply with domestic advertising rules and policy as well as relevant obligations imposed on the UK by its international agreements. The form of competition chosen should be appropriate to the value and complexity of the goods or services to be acquired.

A4.6.8. Public sector organisations should aim to treat suppliers responsibly to maintain good reputations as purchasers (see box A4.6D), taking account of the government's Procurement Pledge to help stimulate economic growth[63].

Box A4.6D: 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

---

[62] Cabinet Office guidance: https://www.gov.uk/government/organisations/crown-commercial-service

[63] Procurement Pledge (http://www.cabinetoffice.gov.uk/resource-library/our-procurement-pledge)

POL00363159

- the outcome of bids announced promptly
- 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

A4.6.9. In carrying out efficient sourcing projects, central government should follow best practice.

A4.6.10. One such approach is LEAN approach[64] whose principles are designed to make doing business with government more efficient and cost-effective (for both buyers and suppliers) to support economic growth.

A4.6.11. During the evaluation stage of sourcing, it is important to for public sector procuring organisations to:

- establish the propriety of candidate suppliers – taking account of the requirement to exclude those convicted of, for example, fraud, theft, fraudulent trading or cheating HMRC
- assess suppliers' economic and financial standing to gain confidence of their capacity to carry out fully what the buyer requires within the pre-determined timescale and deliver value for money
- secure value for money (see box A.4.6B), using relevant and consistent criteria for evaluating the key factors (cost, size, sustainability, design etc).

Contracts

A4.6.12. 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;
- Include prompt payment clauses.

A4.6.13. 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 used (typically service level agreements). These may have all the hallmarks of contracts other than scope for legal enforcement.

64 https://www.gov.uk/government/publications/lean-sourcing-guidance-for-public-sector-buyers

POL00363159

Central purchasing bodies and agencies

A4.6.14. Central government organisations are required to use the services and collaborative procurement deals managed by the Crown Commercial Service on behalf of government[65].

A4.6.15. If public sector purchasers employ private sector agents to undertake procurement on their behalf they should:

- require compliance with the law (see box A4.6C)
- ensure clear allocation of responsibilities
- 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

A4.6.16. Central government bodies shall:

- base procurement decisions independent of any tax advantages that may arise from a particular bid
- avoid contractors using offshore jurisdictions, consistent with international obligations and the government's stated objectives on tax transparency and openness
- be vigilant in not facilitating tax arrangements with suppliers or their agents that are detrimental or disadvantageous to the Exchequer. Public sector organisations need to take special care in relation to the tax arrangements of public appointees (see Cabinet Office guidance[66])
- 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.

A4.6.17. In the case of bids under the Private Finance (PF2), it is particularly important to ensure that comparisons of competing bids take account of any tax planning by bidders. The Treasury's Green Book provides for a tax adjusted Public Sector Comparator to allow for the (usually) material tax difference between a PF2 option and the wholly public sector alternative. It would be inappropriate to apply this to bids where tax planning has cancelled out this effect.

A4.6.18. 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 shall consult the Treasury and HMRC at an early stage to identify the likely tax implications and assess the proposal for propriety generally.

---

[65] Cabinet Office guidance: https://www.gov.uk/government/organisations/crown-commercial-service

[66] Cabinet Office guidance: Procurement Policy Note – Tax arrangements of Public Appointees

POL00363159

Further guidance

A4.6.19. Central sources of guidance on procurement and related issues include:

The Government Commercial Function (https://www.gov.uk/government/organisations/government-commercial-function)

The Treasury's Green Book on project appraisal and evaluation in central government (https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent)

Department for Business and Trade guidance on compliance with the subsidy obligations arising from the UK's international agreements (https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities)

Procurement Policy Notes (https://www.gov.uk/government/collections/procurement-policy-notes)

The Crown Commercial Service (https://www.crowncommercial.gov.uk/)

HM Revenue and Customs on tax avoidance issues (http://www.hmrc.gov.uk/avoidance/)

POL00363159

Annex 4.7
Subsidies

A4.7.1. The transition period which followed the UK's departure from the European Union ended on 31 December 2020, and EU law ceased to have any force in the UK (save in those areas provided for by the Withdrawal Agreement)[67]. UK public bodies must continue ensure compliance with all relevant domestic and international subsidies rules, including World Trade Organisation commitments and commitments the UK has entered into under bilateral Trade Agreements.

A4.7.2. In certain areas the government has published updated guidance, which can be found on gov.uk. accounting officers should be aware that obligations arising from domestic and international law are binding for the whole public sector and assist their partner organisations in complying where new obligations have arisen.

Box A4.7A: further guidance

HMG guidance on complying with international obligations on subsidy control – https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities

[67] This annex has been retitled 'Subsidies' from 'State aids' to reflect this.

POL00363159

Annex 4.8

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.

A4.8.1. Public sector organisations should use good commercial practice in managing the flows of expenditure and commitments they deal with. Box 4.3 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 and from place to place.

A4.8.2. In particular, public sector organisations should;

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

A4.8.3. Public sector organisations are also bound by legislation[68] aiming to ensure that in commercial transactions, the payment period does not exceed 30 calendar days after the debtor receives an invoice. Further advice is available from the Cabinet Office and BEIS.

A4.8.4. However, the government recognises that the public sector should set a strong example by paying promptly. Central government departments should aim to pay 80% of undisputed invoices within 5 days. They should also include a clause in their contracts requiring prime contractors to pay their suppliers within 30 days. The principles in Box 4.4 must still be applied to all payments. Further guidance is available[69].

Payments outside the normal pattern

A4.8.5. Payments in advance of need shall be exceptional and shall only be considered if a good value for money case for the Exchequer can be made. Even then, as advance payments lead to higher Exchequer financing costs, such payments are novel and contentious and require specific Treasury

---

[68] The Late Payment of Commercial Debts (Interest) Act 1998 (as amended by The Late Payment of Commercial Debt Regulations 2002 (SI 1674) and the Late Payment of Commercial Debt Regulations 2013).

[69] The Prompt Payment Code https://www.smallbusinesscommissioner.gov.uk/ppc/about-us/

POL00363159

approval. Advance payment shall never be used to circumvent expenditure controls or budgetary limits.

A4.8.6. In particular, 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 (i.e. payments made before equivalent value is received in return) should only be considered if, for example, a price discount commensurate with the time value of the funds in question can provide a good value for money case. Exceptions to these guidelines, which would not normally require specific Treasury approval, 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
- 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 private sector finance would reduce value for money
- 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.

A4.8.7. 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.

A4.8.8. Public sector organisations shall 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.

A4.8.9. 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 central government organisation considering deferred payments must thus seek Treasury approval before proceeding.

POL00363159

Annex 4.9

Fraud

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

A4.9.1. 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 Fraud Act 2006 recognises that a criminal offence of fraud arises from causing a loss to an individual or legal entity through the intentional misdeclaration of information; knowingly withholding information; or through an abuse of position. The risk of a given fraud is usually measured by the probability of its occurring and its impact in monetary and reputational terms should it occur. Fraud can also have other impacts including undermining the delivery of government policy objectives and outcomes and physical or societal harm.

A4.9.2. 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 fraud risk
- detecting fraud
- measuring the effectiveness of the fraud risk strategy
- reporting fraud.

A4.9.3. The most effective way to manage the risk of fraud is to prevent it from happening by developing an effective anti-fraud culture.

A4.9.4. For guidance on all these areas, see Tackling Internal Fraud[70] and Tackling External Fraud[71].

Assessing vulnerability to fraud

A4.9.5. Each organisation shall identify and assess at different levels how it might be vulnerable to fraud with reference to the government standards for Fraud Risk Assessment. Fraud should be always considered as a risk for the departments' risk register.

Evaluating the scale of fraud risk

A4.9.6. For any new major area of spend, departments shall assess the risk of and impact from fraud at the outset when the spending is being proposed. This shall identify the potential for fraud and the different impacts that fraud could have for

[70] http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr_managing_risk_of_fraud.htm

[71] http://www.nao.org.uk/report/good-practice-in-tackling-external-fraud-2/

POL00363159

this spend area. Once spending is approved this shall result in the development and continued maintenance of a detailed fraud risk assessment.

Responding to fraud risk

A4.9.7. 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, a Fraud Risk Strategy and a Fraud Response Plan (key documents that every organisation should have)
- Developing and promoting an anti-fraud culture, maybe through a clear statement of commitment to ethical behaviour to promote awareness of fraud. Recruitment screening, training and maintaining good staff morale can also be important
- Allocating responsibilities for the overall and specific management of fraud risk so that these processes are integrated into management
- Establishing cost-effective internal systems of control to prevent and detect fraud
- 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 suspicions of fraud
- Responding quickly and effectively to fraud when it arises
- Establishing systems for investigations into allegations of fraud
- Using the government's Counter Fraud Function and/or Internal Audit to advise on fraud risk and drawing on their experience to strengthen control
- 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 Having a programme of fraud risk assessment, and fraud measurement
- Having systems to report to the centre all instances and values of prevented and detected fraud from across the organisation
- Having metrics with a financial impact based upon prevented and/or detected fraud against a baseline
- Have a programme to test for, and measure, previously undetected and unreported fraud.

A4.9.8. It is good practice to measure the effectiveness of actions taken to reduce the risk of fraud. Assurances about these measures can be obtained from Internal Audit fraud loss measurement exercises, stewardship reporting, monitoring, or from other review bodies.

Reporting fraud

A4.9.9. Public sector organisations shall retain records of internal and external frauds discovered and actions taken, including an assessment of the value of any losses. They may need to contribute to occasional reports and analysis of frauds.

POL00363159

These shall be reported to the centre of the government's Counter Fraud Function via the Consolidated Data Return.

A4.9.10. Public sector organisations shall also provide the Counter Fraud Function's Centre of Expertise with details, of any novel or unusual frauds (or attempted frauds) so that this information can be shared more widely. Public sector organisations shall also consider reporting frauds and suspected fraud to the NAO.

A4.9.11. Where fraud leads to serious loss it may be appropriate to report to Parliament as set out in Annex 4.10. If criminal investigations are ongoing it may be necessary to report in a confidential manner so as not to prejudice any investigation or trial.

POL00363159

Annex 4.10

Losses and write offs

This annex sets out what is expected when departments and their arm's length bodies (ALBs) incur losses or write off the values of assets, including details of when to notify Parliament.

A4.10.1. As Parliament does not agree or approve advance provision for potential future losses when voting money or passing specific legislation, such transactions when they arise are subject to greater scrutiny and control than other payments. Public sector organisations should only consider accepting losses and write-offs after careful appraisal of the facts (including whether all reasonable action has been taken to effect recovery – see Annex 4.11), and should be satisfied that there is no feasible alternative. In dealing with individual cases, departments must always consider the soundness of their internal control systems, the efficiency with which they have been operated, and take any necessary steps to put failings right.

A4.10.2. The guidance in this chapter relates to cash and fiscal losses. It is not intended for losses that do not impact on the fiscal position. For example, erroneous debit balances that result in an accounting adjustment but not a cash loss should not be disclosed in the losses statement.

Levels of delegation

A4.10.3. Departments have delegated authority to deal with all losses, unless there are specific delegations put in place, subject to paragraph A4.10.4. Box A4.10A provides examples of the different categories of loss.

Box A4.10A: examples of losses

Losses:

- cash losses: physical losses of cash and its equivalents (e.g. credit cards, electronic transfers)
- realised exchange rate and hedging losses: losses due to fluctuations in exchange rates or hedging instruments
- losses of pay, allowances and superannuation benefits paid to civil servants, members of the armed forces and ALB employees: including overpayments due to miscalculation, misinterpretation, or missing information; unauthorised issues; and other causes
- losses arising from overpayments: of social security benefits, grants, subsidies etc

POL00363159

- losses arising from failure to make adequate charges: e.g. for the use of public property

Losses of accountable stores:

- losses through fraud, theft, arson or any other deliberate act
- losses arising from other causes

Fruitless payments and constructive losses

Claims waived or abandoned

Consulting the Treasury

A4.10.4. When departments identify losses and write-offs, they shall consult the Treasury, using the guidance in Box A4.10B, irrespective of 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.

A4.10.5. Similarly, ALBs shall consult their sponsor departments about similar cases. In turn departments may need to consult the Treasury.

Box A4.10B: consulting the Treasury on losses

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
- the reason for consulting the Treasury
- 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
- whether the investigation has shown any defects in the existing systems of control and if so, what action will be taken

POL00363159

Notification to Parliament

A4.10.6. Losses shall be brought to Parliament's attention at the earliest opportunity, normally by noting the department's annual accounts, 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 shall not hesitate to notify Parliament of any losses which it would be proper to bring to their attention.

Losses and claims records

A4.10.7. Public sector organisations shall maintain an up to date record of losses. The record shall 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
- the annual accounts in which each loss is to be noted.

A4.10.8. A losses statement is required in annual accounts where total losses exceed £300,000. Individual losses of more than £300,000 should be noted separately. Losses shall be reported on an accruals basis.

A4.10.9. Where efforts are still being made to secure recovery of cash losses formally written off, charged to the accounts and noted, public sector organisations shall consider including them in a record of claims to ensure that recovery is not overlooked.

Accounting for cash losses

A4.10.10. Cash losses may initially be accounted for as debtors in annual accounts pending recovery or write-off.

A4.10.11. When a department incurs a cash loss it shall charge it to the appropriate budget subhead in the Estimate, and for accounts recognise the cost in accordance with the FReM.

A4.10.12. Where a cash loss is wholly or partly recovered by reducing the amounts of pay or pension[72] which would otherwise be due, or under statutory or other specific powers[73], only the resulting outstanding balance is treated as a loss to be written off. The sum(s) are charged to the relevant budget boundary as if they had been paid to the individual concerned who then used the money to pay the claim.

A4.10.13. 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

[72] 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.

[73] For example, King's Regulations.

POL00363159

to apply the sums withheld by non-issue of pay etc, the gross amount of the loss is written off.

A4.10.14. Generally, no note is necessary if the net loss is nil by the time the annual accounts are finalised. There may, however, be exceptions (e.g. 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.

Store losses

A4.10.15. Stores losses are, in effect, money spent without the authority of Parliament. In establishing the amount of the loss, and hence whether the annual account shall be noted, the net value of the loss after crediting any sums recovered will be the determining factor.

A4.10.16. Losses of stores arising from culpable causes shall be noted in departmental records, in accordance with normal practice. Such losses shall also be noted in the annual 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.

A4.10.17. 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.4.10.245 and noted accordingly.

A4.10.18. Any loss recoverable from a third party, where a decision is taken to waive recovery because of a knock for knock agreement, shall be noted as a stores loss.

A4.10.19. 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 agreed[74].

Fruitless payments

A4.10.20. 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 A4.10C.

A4.10.21. 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 shall be treated as losses, and brought to the attention of Parliament in the same way as stores losses.

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

POL00363159

Box A4.10C: 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 no longer needed, or for goods wrongly ordered or accepted
- the cost of rectifying design faults caused by a lack of diligence or defective professional practices
- extra costs arising from failure to allow for foreseeable changes in circumstances

Constructive losses

A4.10.22. A constructive loss is a similar form of payment to stores losses and fruitless payments, 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.

A4.10.23. Constructive losses need not be noted in the Losses Statement in the annual accounts unless they are significant.

Claims waived or abandoned

A4.10.24. 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.

A4.10.25. 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. Departments should consult the Treasury about treatment when a case arises
- a claim for a refund of an overpayment which fails or is waived. This should be regarded as a cash loss.

A4.10.26. Waivers shall be noted in annual accounts in accordance with the FReM. In addition:

- a claim not presented should normally be noted at its original figure

POL00363159

- where more than one department is involved, each should note its records to the extent of its interest, without attempting spurious accuracy.

A4.10.27. There is no need to note annual accounts if claims between departments are waived or abandoned. These are domestic matters.

Box A4.10D: 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 4.11.11) 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

POL00363159

Annex 4.11

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 4.7). In difficult cases it is important to act on legal advice.

A4.11.1. Even good payment systems sometimes go wrong. Most organisations responsible for making payments will sometimes discover that they have made overpayments in error. 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 A4.11A. Where recovery of overpayments is not pursued the guidance in annex A4.10 shall be followed.

Box A4.11A: possible reasons for overpayment

Contractors and suppliers:

- Overpayments in business transactions shall 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 shall 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 the below groups 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. These groups are:
    - civil servants
    - members of the armed forces
    - employees of NDPBs
    - retired teachers and NHS employees
    - and the dependents of any of these

POL00363159

A4.11.2. 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 (either in house or using external companies). Advice that a particular course of action appears to offer good value may not be conclusive since it may not take account of the wider public interest
- 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.

A4.11.3. It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems and their operation. It is important to put failings right.

Payments made without 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, e.g. 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, e.g. those involving recipients' carelessness, may require judgement. And some cases may involve such obvious error, e.g. where an amount stated is very different from that paid, that no recipient could reasonably claim to have acted in 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, e.g. 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.

POL00363159

Fraud

A4.11.8. 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

A4.11.9. 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

A4.11.10. Defences which may be claimed against recovery include:

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

A4.11.11. **Lapse of time:** 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.

A4.11.12. 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.

A4.11.13. 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.

A4.11.14. **Change of position:** 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

POL00363159

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.

A4.11.15. **Estoppel:** 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.

A4.11.16. 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.

A4.11.17. It is essential for public sector organisations to seek legal advice where change of position or estoppel is offered as defence against recovery.

A4.11.18. **Good consideration:** 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.

A4.11.19. **Hardship:** Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment 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. Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence.

Collective overpayments

A4.11.20. 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. However, that does not mean that recovery of all such overpayments should be automatically written off. For example, it may be legitimate to continue to effect recovery from those who have offered to repay, or some may not be subject to the same level of hardship.

A4.11.21. 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.

POL00363159

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.

A4.11.22. If a public sector organisation is minded to forgo recovery of the whole or any part 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.

POL00363159

Annex 4.12

Gifts

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

A4.12.1. 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 A4.12A. 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
- grants in kind that are part of a planned programme of HMG support for an organisation or third country (for example, the provision of equipment in official development assistance projects). Again, there is an expectation that the government will receive value through the furtherance of its policy objectives in precisely the same way as with financial support to a partner organisation or the direct delivery of projects by government. Such grants in kind will normally be made under the same legislation that supports other parts of the programme concerned and the purchase of the equipment concerned will typically have been financed through provision in the department's Estimate.

Box A4.12A: 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

POL00363159

- 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

A4.12.2. Treasury approval is needed for all gifts valued at more than £300,000, and any other gifts not covered by a department's or ALB's delegated authorities. ALBs shall consult their sponsor departments about gifts.

A4.12.3. The written ministerial statement (WMS) and departmental minute must then be laid before the House of Commons, on the same day, 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 shall be explained.

A4.12.4. The WMS and 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 A4.12B: standard paragraphs for written ministerial statement and departmental minute

Opening paragraph:

It is the normal practice when a government department proposes to make a gift of a value exceeding £300,000, 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 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.

A4.12.5. The WMS and minute shall 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, information about the cost and nature of the replacement, when it is expected to be acquired, and the Estimate to which the expenditure will be charged should be included. In the case of non-voted expenditure, the account to which the replacement cost will be charged should be quoted.

Parliamentary objections

A4.12.6. 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

POL00363159

concerned. This may be particularly appropriate if it is proposed to make the gift urgently or promptly on expiry of the waiting period.

A4.12.7. Where an objection is raised, the gift shall 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 shall be notified of the outcome of any representations made by MPs.

Noting annual accounts

A4.12.8. Annual accounts shall include a note on gifts made by departments if their total value exceeds £300,000. Gifts with a value of more than £300,000 shall be noted individually, with a reference to the appropriate WMS and departmental minute. Exceptionally, where gifts are made between government departments, the receiving department shall note in its accounts, not the donor.

Gifts received

A4.12.9. Departments shall 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 accounts unless the Treasury or department concerned considers there is a special need for them to be brought to Parliament's attention.

A4.12.10. Donations, sponsorship or contributions, e.g. from developers shall also be treated as gifts.

A4.12.11. When offered services on a gratuitous basis, accounting officers should consider the potential for such services to give rise to future expenditure, as well as anti- competitiveness risks and propriety issues more broadly.

A4.12.12. For example, if services may be withdrawn in the future either at the discretion of the supplier or in the event of the supplier entering insolvency it may lead to a pressure to continue provide such services on fee paying basis in the future. It may also be that the provision of services may lead to an incumbency benefit for the supplier that put them at competitive advantage in any future procurement.

A4.12.13. The fact there are no upfronts costs to a proposal does not relieve the accounting officer of the need to consider future costs or the need for Treasury consent for novel contentious or repercussive transactions.

POL00363159

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.

A4.13.1. 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.

A4.13.2. 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.

A4.13.3. Arm's length bodies should operate to similar standards as departments unless there are good reasons to the contrary, e.g. 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 their arm's length bodies observe the standards.

Dealing with special payments

A4.13.4. Departments must always consult the Treasury about special payments unless there are specific agreed delegation arrangements in place (See Annex 2.2). So a department should seek Treasury approval, for any special payment for which it has no delegated authority, or which exceeds its authority.

A4.13.5. For the avoidance of doubt, Treasury approval shall be sought before the offer of the special payment is made. If appropriate departments may seek a negotiation mandate in advance based on their assessment of a likely outcome.

A4.13.6. ALBs shall consult their sponsor departments in comparable circumstances. In turn, the department may need to consult the Treasury.

A4.13.7. The special payments on which the Treasury may need to be consulted are summarised in box A4.13A. The list is not exclusive. If a department is in doubt, it is usually better to consult the Treasury.

A4.13.8. 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;
- may be deemed novel, contentious, or repercussive
- arise because of obscure or ambiguous instructions issued centrally.

POL00363159

Box A4.13A: 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, e.g. 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 outside of 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, e.g. on grounds of hardship.

A4.13.9. 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 must be justified especially carefully since confidentiality could appear to mask underhand dealing. Also financial reporting requirements and Freedom of Information legislation should be complied with. 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.

A4.13.10. Departments shall 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.

POL00363159

Severance payments

A4.13.11. 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 repercussive. So departments shall always consult the Treasury in advance when considering a special severance payment.

A4.13.12. The Treasury adopts a sceptical approach to proposals for special severance settlements, in particular:

- precedents from other parts of the public sector may not be a reliable guide in any given case
- 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;
- 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 proceeding;
- winning such cases demonstrates that the government does not reward failure and should enhance the employer's reputation for prudent use of public funds.

A4.13.13. Severance payments will only be approved where they provide value for money for the Exchequer as a whole, rather than simply for the body concerned.

A4.13.14. Departments shall not treat special severance as a soft option, e.g. 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.

A4.13.15. It is important to ensure that Treasury approval is sought before any offers, whether oral or in writing, are made. A proforma for seeking Treasury approval is available[75].

A4.13.16. Departments and their ALBs are also required to seek ministerial approval (including the approval of the Minister for the Cabinet Office) of confidentiality clauses in certain circumstances. Cabinet Office guidance on the use and approval of such agreements is also available[76].

Box A4.13B: factors to consider in special severance cases

Any case for special severance put to the Treasury shall 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 and likely scale of any award

[75] https://www.gov.uk/government/publications/managing-public-money

[76] https://www.gov.uk/government/publications/civil-service-settlement-agreements-special-severance-payments-and-confidentiality-clauses

POL00363159

- the management procedures followed
- the value for money offered by the possible settlement
- any non-financial considerations, e.g. where it is desirable to end someone's employment without dismissal, perhaps because of restructuring
- whether the case could have wider impact, e.g. for a group of potential tribunal cases

A4.13.17. 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 and the proposal is in line with Cabinet Office approvals and controls[77]
- 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

A4.13.18. 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 and should contain the same level of detail as if the case had been brought to the Treasury in advance.

Retention payments

A4.13.19. Retention payments, designed to encourage staff to delay their departures, particularly where transformations of ALBs are being negotiated, are also classified as novel and contentious. Such payments always require explicit Treasury approval, whether proposed in individual cases or in groups. Treasury approval must be obtained before any commitment, whether oral or in writing, is made.

A4.13.20. Organisations considering proposals for retention payments should subject them to strict value for money analysis. Sponsor departments shall submit a business case to the Treasury, supported by market evidence, together with an evaluation of the risks and costs of alternative options. The Treasury will always be sceptical of whether they are necessary.

Reporting

A4.13.21. As Parliament does not provide for special payments when voting Estimates or passing specific legislation, special payments shall be brought to Parliament's

[77] https://www.gov.uk/government/publications/cabinet-office-controls

POL00363159

attention, usually through a note in the organisation's account. Any special severance payments for senior staff will in any case be itemised in annual accounts.

A4.13.22. Notification is separate from accounting treatment, which will depend on the nature of the special payment. Special payments shall be noted in the accounts even if they may be reduced by subsequent recoveries.

A4.13.23. Special payments shall be noted in annual accounts where the total value exceeds £300,000. Individual payments of more than £300,000 shall be noted separately.

Reporting to Cabinet Office

A4.13.24. Departments and their ALBs are required to report to the Minister for the Cabinet Office on a quarterly basis any special severance payment made in connection with the termination of employment. These returns will enable Cabinet Office to provide assurance on whether the use of special severance payments across the Civil Service is both proportionate and appropriate, including the use of any confidentiality clauses alongside such payments. A pro forma is available[78].

A4.13.25. Civil Service-wide data on special severance payments will be published annually by the Cabinet Office.

[78] https://www.gov.uk/government/publications/civil-service-settlement-agreements-special-severance-payments-and-confidentiality-clauses

POL00363159

Annex 4.14

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, e.g. to make payments to compensate. Remedies may take several different forms and should be proportionate and appropriate.

Dealing with complaints

A4.14.1. 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[79] to help public bodies when dealing with complaints. 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.

A4.14.2. Public sector organisations should seek to learn from their complaints. 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

A4.14.3. As section 4.11 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 policies and procedures need change, to prevent the failure reoccurring.

The remedies available

A4.14.4. Remedies can take a variety of forms, including (alone or in combination):

[79] http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full

POL00363159

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

A4.14.5. 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 2.5 and 2.6).

Designing remedies

A4.14.6. 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.

A4.14.7. 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.

A4.14.8. 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. Consideration should always be given by the public sector organisation that the circumstances of a complaint do not involve bad faith on the part of the complainant, and the possibility of fraudulent intent.

A4.14.9. 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 A4.14A. The list may not be exhaustive.

Box A4.14A: factors to consider in deciding whether financial compensation is appropriate

- Whether a loss has been caused by failure to pay an entitlement, e.g. 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, e.g. because of delay
- Whether the process of making the complaint has imposed costs on the person complaining, e.g. lost earnings or costs of pursuing the complaint
- The circumstances of the person complaining, e.g. whether the action or inaction of the public sector organisation has caused knock on effects or hardship

POL00363159

- Whether the damage is likely to persist for some time
- Whether any financial remedy would be taxable when paid to the person complaining
- Any advice from the PHSO

A4.14.10. 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.

A4.14.11. 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 PHSO's Principles of good administration[80]. They must be well designed since costs can escalate if a problem turns out to be more extensive than initially expected.

A4.14.12. 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 (e.g. monthly or annual) payments. Public sector organisations considering such settlements should seek both legal and actuarial advice in drawing them up.

A4.14.13. Essentially, designing a compensation scheme is no different from designing other services. Good management, efficiency, effectiveness and value for money are key goals (see Chapter 4). Some specific issues which may require special care for compensation schemes are outlined in box A4.14B.

Box A4.14B: 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, e.g. 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

[80] http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration

POL00363159

- Inform Parliament appropriately, e.g. through a written statement and/or in the estimates / annual 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

A4.14.14. When considering making individual remedy payments, departments need to consult the Treasury (and sponsored bodies need to consult their sponsor departments) about cases which:

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

A4.14.15. 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

A4.14.16. 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' accounts. Departments and agencies should include summary information on compensation payments arising from maladministration in their annual reports.

POL00363159

Annex 4.15

Asset management

Each public sector organisation is expected to develop and operate an asset management strategy underpinned by a reliable and up to date asset register. The board should review the strategy annually as part of the corporate or business plan.

A4.15.1. Accounting officers of public sector organisations are responsible for managing their assets. This aspect of financial management covers the acquisition, use, maintenance, and disposal of assets for the benefit of the organisations and indeed for the Exchequer as whole.

A4.15.2. Each organisation needs to have a clear grasp of:

- the content of its current assets base
- the assets it needs to deliver efficient, cost-effective public services
- what this means for asset acquisition, use, maintenance, renewal, upgrade and disposal
- whether any gains could be achieved by working with other public sector organisations
- how use of assets fits within the corporate plan.

A4.15.3. Normally, these responsibilities will be dispersed in an organisation through a system of delegations with appropriate reporting arrangements. Similarly, departments should ensure that each of their sponsored organisations has equivalent arrangements.

Asset registers

A4.15.4. 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 financial accounts. It is also essential to undertake regular stock taking of the organisation's current assets base and thus for planning change.

A4.15.5. The assets on an organisation's register should include both tangible and intangible assets, covering both owned assets and assets under its legal control such as leased or private finance assets. Box A.4.15A lists the main groups of assets but is not exhaustive. Each organisation should decide on a meaningful valuation threshold in line with best practice.

A4.15.6. 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 similarly 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

POL00363159

- investments in the form of debentures and shares in commercial companies. These should be checked at least annually

Box A4.15A: main categories of public sector assets

Tangible Assets	Intangible Assets
Wholly owned land and buildings	Copyrights, including Crown copyright
Leased fixed assets (including those acquired through private finance)	Trademarks
Raw materials	Franchises
Stocks and stores	Patents and other intellectual property rights, including in house software
Plant, machinery, equipment, tools	Goodwill
Furniture and fittings	Data and information
Assets under construction	Knowledge and know-how
Donated physical assets	Software licenses
Heritage assets	Public dividend capital
Antiques and works of art	Loans and deposits
Economic infrastructure (including highways, railways, airports, utilities, communication networks, power generation and transmission	Investments including shares and debentures in companies

Asset management strategies

A4.15.7. The asset management strategy of a public sector organisation should be integrated into its corporate and annual business plans. It should thus be possible to help plan change in asset use or deployment when necessary. Box A.4.15B suggests some key steps. The organisation's board should take stock of progress in delivering its asset management strategy from time to time, and at least annually.

Box A4.15B: steps for developing asset management plans

POL00363159

- 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, e.g. to extend, modify or replace the existing asset base.
- 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 for spending or retaining receipts.
- Plan any loans of assets, with charges and conditions for their return, liability, damage.
- Consider whether any retained assets have potential to generate revenue through commercial services.

A4.15.8. Knowledge assets (also known as intangible assets, some examples of which are listed above in Box A4.15A) should be considered as part of a public sector organisation's asset management strategy. Proper management of such assets is essential for the efficient and effective use of resources within public sector organisations, and it is therefore important that organisations are able to identify, protect, and maximise the value of these assets. To assist with this, government has published guidance to support organisations and clarify best practice for public sector knowledge asset management , and recommends that organisations:

- develop a strategy for managing their knowledge assets, as part of their wider asset management strategy
- appoint a Senior Responsible Owner for knowledge assets who has clear responsibility for the organisation's knowledge asset management strategy.

Efficiency improvements

A4.15.9. Efficiency in the use of workspace may make it possible for a public sector organisation to occupy less space. It is good practice to dispose of surplus property, or to share accommodation on the civil estate with other public sector organisations where this is practicable. It may be necessary to consider a budget transfer between organisations, with Treasury consent, to help meet the initial relocation costs.

A4.15.10. Prior to marketing any land or building asset, public sector organisations should also make use of the following:

- the Cabinet Office's National Property Controls which detail the rules on lease extensions, lease renewals, acquisitions, disposals as well as required space standards associated with major refurbishments of buildings
- the Register of Surplus Land, part of ePIMS (electronic Property Management Information Mapping Service), a mandatory central database recording information on the civil estate. The

POL00363159

data base does not cover leasehold property with less than 99 years outstanding
- the Civil Estate Occupancy Agreement governing relationships among Crown bodies sharing accommodation 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
- latest guidance and advice available from the Government Property Unit.

Asset sales

A4.15.11. When undertaking an asset sale, departments shall follow the Asset Sales Disclosure Guidance. The guidance requires government departments to disclose the impacts of an asset sale on Public Sector Net Borrowing (PSNB), Public Sector Net Debt (PSND), Public Sector Net Financial Liabilities (PSNFL) and Public Sector Net Liabilities (PSNL), as well as disclosing the proceeds and whether the sale was above, within or below the retention value range. Departments shall also include a rationale for the sale, as well as justification for its format and timing, and include these alongside the impacts in a Written Ministerial Statement laid in Parliament after the sale.

Transfer of property

A4.15.12. Public sector organisations may transfer property among themselves without placing the asset on the open market, provided they do so at market prices and in appropriate circumstances. They should follow the guidelines in box A4.15C.

Box A4.15C: protocol for transfers of assets

- Consult ePIMS to see if properties on the civil estate can be used
- Value assets at market prices using Royal Institute Chartered Surveyors' Red Book (www.rics.org)
- The original and prospective owners should work collaboratively 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 rarely necessary because of the indivisibility of the Crown
- Consult the Government Property Unit of the Cabinet Office, who may be able to help with coordination
- 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 A4.15.13 below

POL00363159

A4.15.13. Sometimes transfers of assets result from machinery of government changes. The relevant legislation (e.g. a transfer of functions order) should prescribe the terms of any such transfers.

A4.15.14. In certain limited circumstances overage provisions can be considered. The circumstances where overage is acceptable are:

- where the property is sold to a private developer for housing development
- there is a realistic prospect that selling will improve the outcome for housing policy, e.g. by creating an aggregated composite site
- the accounting officers of the relevant public sector organisations are convinced that, in this transaction, overage offers value for money for the Exchequer as a whole
- the Treasury agrees (these transaction are always novel and contentious)

A4.15.15. In addition, the overage provisions may be agreed by a central government purchaser of property where it is a condition of the sale of that property by a local government or devolved administration body. In all cases the purchase must represent value for money for the Exchequer as a whole and Treasury consent shall be sought.

Disposal of property and land assets

A4.15.16. Public sector organisations should take professional advice when disposing of land and property assets. Some key guidelines are in box A4.15D.

Box A4.15D: protocol for disposal of land, property and other assets

- Value assets at market prices using Royal Institute of Chartered Surveyors' Red Book (www.rics.org).
- 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. Where such a sale achieves the policy objectives of another department or public body it may be appropriate for the loss of value to be made good by that department instead and potentially scored as a grant to the recipient.

A4.15.17. Sometimes private finance projects involve disposals. Each such case should be evaluated as part of the private finance project, with due attention to the need to secure good value for money. Further guidance is an annex 7.4.

A4.15.18. Public sector organisations which make grants to third parties for the acquisition of assets should normally include a clawback condition under which

POL00363159

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.

A4.15.19. 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.

Economic infrastructure assets

A4.15.20. Managing economic infrastructure affects the quality of delivery of services. It is also central to achievement of the national infrastructure goals detailed in the National Infrastructure Plan. These factors need to be incorporated into the business plans and objectives of public sector organisations which hold, use and manage such assets.

A4.15.21. Good asset management of economic infrastructure thus calls for the responsible organisations to coordinate their own and their stakeholders' objectives. Sometimes securing value for money for the taxpayer means compromise between cost, risks, opportunities and performance. Finding the right solution can affect organisations' long-term plans, their prioritisation of resources and work to achieve realism in stakeholder expectations, as set out in the National Infrastructure Plan.

Central asset registers

A4.15.22. From time to time government 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.

A4.15.23. Under Crown copyright policy, certain public sector organisations are required to supply details for the official bibliographic database. See annex 6.2 for further details.

Digest of guidance

Government's Estate Strategy: delivering a modern estate – https://www.gov.uk/government/publications/government-estate-strategy-2018

Common Minimum Standards for Construction – https://www.gov.uk/government/publications/common-minimum-standards-for-construction

Property disposal – https://www.gov.uk/government/publications/guide-for-the-disposal-of-surplus-government-land

Crichel Down rules – offering land and property acquired by the public sector back for former owners – https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance#historyC

Disposal of Heritage Assets – https://historicengland.org.uk/images-books/publications/disposal-heritage-assets/guidance-disposals-final-jun-10/

POL00363159

Annex 5.1

Grants

This annex sets out how government departments should arrange and control grants, including to arm's length bodies such as NDPBs.

A5.1.1. Central government departments normally offer two kinds of financial support to third parties, using statutory powers:

- grants: made for specific purposes, under statute, and satisfying specific conditions e.g. 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.

A5.1.2. Grants should not be confused with contracts. A public sector organisation funds by grant as a matter of policy, not in return for services provided under contract.

Payment

A5.1.3. Grants shall be paid on evidence of need or qualification, depending on the terms of the grant scheme. For example:

- the recipient may need to demonstrate financial viability and delivery capability
- 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, e.g. 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.

A5.1.4. Grants in aid shall 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.

Control

A5.1.5. 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 2.5).

POL00363159

A5.1.6. The accounting officer of the funding organisation is responsible for ensuring that grant recipients are eligible and use the grant in the way envisaged in the founding legislation, with terms and conditions set out in a grant funding agreement. For grants in aid, it is usual 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
- allowing recipients reasonable freedom to take their own decisions.

A5.1.7. 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.

A5.1.8. Accounting officers shall ensure that all grants issued comply with the Government Functional Standard for grants[81].

A5.1.9. Departments should understand enough about the other sources of a grant recipient's income to be satisfied that the same need is not funded twice, this should include an internal and cross-government check of grant funding awards. It is usually essential to segregate inflows from different recipients since they are usually intended for different purposes.

A5.1.10. 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 7.2 for more.

A5.1.11. Departments should ensure that they have adequate assurance arrangements in place, which take account of an assessment of fraud risk, and that the Comptroller and Auditor General has adequate access rights to grant recipients.

A5.1.12. A department asked by another part of government to pay a grant to an external organisation, such as a charity, from its own resources should ensure that its own accounting officer gives due consideration to the proposal before funding is committed.

Protecting the Exchequer

A5.1.13. 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 (see annex 5.2).

Endowments

[81] https://www.gov.uk/government/publications/grants-standards

POL00363159

A5.1.14. 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, i.e. a modest one-off grant to enable the recipient to set up a fund from which to draw down over several years. The recipient should then be able to make a clean break with the need for support.

A5.1.15. Departments contemplating such funding arrangements shall consult the relevant Treasury spending team (and in turn arm's length bodies shall consult their sponsor departments) as this form of funding is always novel and contentious. 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 projects or programmes from proper expenditure scrutiny
- the sustainability of the funded body and whether such funding will remove future reliance on public funding
- whether there are clear objectives, outputs and outcomes of the funding
- the risk of further call on public funds.

A5.1.16. Any such endowment shall:

- reflect genuine need for capital funding that could not be raised through other methods
- be made only to recipients with the competence to manage the endowment over time
- avoid skewing public funding away from other projects that have genuine cash needs.

A5.1.17. The terms of an endowment shall:

- be clear that the funded body should not subsequently approach the donor for annual funding
- maintain clear boundaries between the funder and recipient.

A5.1.18. Endowments shall never be used as a way of bringing expenditure forward to avoid an underspend. Nor is it acceptable to make a string of endowment payments to a single recipient instead of taking specific provision in legislation to pay grants.

A5.1.19. Endowments are intended for situations where a clear financial break will be advantageous to both recipient and donor. Normally the recipient will be a civil society body or equivalent status.

POL00363159

POL00363159

Annex 5.2

Protecting the Exchequer interest (clawback)

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.

A5.2.1. Endowments are intended for situations where a clear financial break will be advantageous to both recipient and donor. Normally the recipient will be a civil society body or equivalent status.

Clawback

A5.2.2. 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 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
- yield the proceeds of sale (or a specified proportion) to the funder.

A5.2.3. However, a charge over the asset is not always essential. Some ground rules are suggested in box A5.2A.

Box A5.2A: when to consider clawback

Clawback desirable:

- tangible or 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

POL00363159

- 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

A5.2.4. 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

A5.2.5. 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 A5.2B. Using this tailored approach can mean different organisations take very different approaches to the same risks.

Box A5.2B: 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, e.g. 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, e.g. 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 (e.g. as a company or charity)
- any other relevant legal factors

POL00363159

A5.2.6. 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
- external conditions are very different to plans

the recipient goes into liquidation (e.g. should the funder take priority over unsecured creditors)

Duration of change

A5.2.7. 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 A5.2C. 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.

A5.2.8. 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 A5.2C: 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, e.g. 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

A5.2.9. 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.

A5.2.10. 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

POL00363159

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 purpose.

Enforcing a claim on a funded asset

A5.2.11. 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.

A5.2.12. 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, e.g. covering the statutory background) 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.

A5.2.13. 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.

A5.2.14. 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.

A5.2.15. 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 (e.g. 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.

POL00363159

POL00363159

Annex 5.3

Treatment of 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.

A5.3.1. 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.

A5.3.2. Unless otherwise authorised, 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.

A5.3.3. Hereditary revenue is:

- virtually all non-statutory receipts
- cash receipts received by virtue of specific statutory authority
- receipts where statute does not say otherwise.

A5.3.4. 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.

A5.3.5. The main categories of income and associated receipts are shown in Box A.5.3A.

Box A5.3A: 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 allowing the recipient to use as collateral the difference between the market value of the asset and the original grant
- sums due under bespoke legislation: paid as specified, e.g. 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:

POL00363159

- either paid into the Consolidated Fund as CFERs
- or applied to support spending in the Estimate if the Treasury agrees

A5.3.6. Specific legislation, with Treasury approval, is normally required to authorise use of income directly to meet resource consumption i.e. to offset current or capital expenditure. In effect this process means that the department seeks less finance through Estimates because part of the cost of the service is met from income. Parliament has an interest because otherwise resource consumption would require specific approval through the Estimates process.

A5.3.7. Following the Clear Line of Sight reforms, there is no longer a specific control over the amount of income that can be retained by departments and used to offset spending. However controls over income remain.

A5.3.8. In order for a department to retain income to offset against spending within the Estimate it must be within the budget boundary (i.e. classed by the Treasury as negative DEL or departmental AME) and be properly described in the Estimate. There must also be a direct relationship between the income and the spending and departments may not use additional income on one part of the Estimate to offset shortfalls of income (or overspends) in another part of the Estimates without Treasury approval. Such approval will only be given where the additional income has an appropriate relationship to the expenditure it is being used to cover.

Authority to retain and use income

A5.3.9. The Treasury has powers to direct that income included in a departmental Estimate and approved by Parliament may be retained and used by the department. This Treasury direction is included within the introductory text to the Main Supply Estimates publication[82]. The direction provides that the income in the relevant Estimate may be applied against resources (current or capital) within that Estimate. Without such authority the cash must be surrendered to the Consolidated Fund as extra receipts (CFERs).

A5.3.10. Sometimes departments have excess income, i.e. income is anticipated to be higher than the expenditure stream it matches, or more income than was anticipated in the Estimate. When income is anticipated to be higher than the expenditure stream it matches departments may present an Estimate with a negative budgetary limit at the start of the financial year, although this is relatively rare. When more income is received than was anticipated in the Estimate, departments are allowed to treat the income as negative DEL as long as it is no more than 10% above the level envisaged for that year as part of the

[82] See Estimates Manual https://www.gov.uk/government/publications/supply-estimates-guidance-manual

POL00363159

Spending Review settlement[83]. Any income in excess of this will normally be treated as non-budget and will need to be surrendered as a CFER.

[83] https://www.gov.uk/government/collections/consolidated-budgeting-guidance

POL00363159

POL00363159

Annex 5.4
Contingent 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.

A5.4.1. As with expenditure, ministers may enter into liabilities – in effect, 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.

A5.4.2. 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.

A5.4.3. 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 events occur. In taking on such liabilities departments must be sure to consult the Treasury.

A5.4.4. 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) shall require the ALB to gain the sponsor department's agreement to any commitment, including borrowing, into which it proposes to enter. Departments shall 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

A5.4.5. 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 shall 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

POL00363159

budgets and Estimates shall be scored as the department's best assessment of the need to pay out in support of the liabilities.

A5.4.6. In the nature of giving liabilities, many will arise with little notice. departments shall report these to Parliament at the earliest opportunity. There is a standard procedure for doing this: see paragraphs A5.4.26 to A5.4.40 of this annex.

A5.4.7. If a liability taken on in this way seems likely to persist, the department concerned shall 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).

A5.4.8. 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.5.4A, with some common examples. What may be the normal course of business for one department may not be the normal course of business for another.

Box A5.4A: liabilities arising 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 Supply and Appropriation Act, based on the activities it has previously authorised

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, e.g. major building works
- commitments to pay grants in future years under a statutory grant scheme
- contingent liabilities resulting from non-insurance (see annex 4.4)

A5.4.9. If procurement in the normal course of business gives rise to proposals for liabilities outside the normal range (e.g. a cap on the contractor's liabilities), the public sector organisation should consider renegotiating. The acid test is

POL00363159

whether two private sector bodies would use the same terms. In cases of doubt, the Treasury shall be consulted.

A5.4.10. Private Finance Initiative (PFI) contracts are a special case of procurement and so can cause departments to take on liabilities. 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.

A5.4.11. There are additional conditions for taking on non-standard conditions, 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

A5.4.12. Before accepting any liability, the organisation should appraise the proposal using the Green Book[84], 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, e.g. by imposing conditions about duration.

A5.4.13. Many liabilities transfer risk from the private sector to the public sector. The starting basis in these cases should be that a risk-based fee is charged to the private sector (analogous to a guarantee fee or insurance premium). Charging fees in this way ensures the private sector has an incentive to mitigate risk and reduces taxpayers' exposure to liabilities crystallising.

A5.4.14. It will not always be possible or desirable to charge the private sector a fee. For example, if the department does not have the legal power to do so, or because the policy intervention is counter-cyclical. In these cases, the Treasury will need to be satisfied why not charging a fee is appropriate.

A5.4.15. The Contingent Liability Approval Framework[85] provides detailed advice on charging for risk, mitigations to consider during the design of new guarantees and indemnities, and the contact details of expertise available in government to advise on such proposals.

A5.4.16. Providing indemnities to contractors or limiting their liability in the event of their own negligence, or that of a sub-contractor, should only be undertaken following an assessment of the best value for money option for the Exchequer as a whole. Assessment of VFM should include consideration of the fact that requiring excessive liability caps, beyond what would be reasonable given the size and scope of the contract, is likely to result in potential contractors including pricing for excessive risk or choosing not to bid, thus reducing competition. The

---

[84] https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent

[85] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1016279/September_2021_Contingent_Liability_Approval_Framework_update_digicomms_template.pdf

POL00363159

extreme case of unlimited liability should be used very sparingly and only after discussion with the Commercial Function.

A5.4.17. When considering the use of unlimited liability clauses departments should consider whether the contractor could bear such losses without being rendered insolvent, resulting in the risk being passed back to the department. The Outsourcing Playbook gives further advice on identifying when to use liability caps and how to set the level of those caps and support should be sought from the Commercial Function. Where the quantum or scope of the cap is a departure from normal commercial practice, or will give rise to a contingent liability, Treasury consent shall be sought in the usual way for novel contentious and repercussive spend. For the avoidance of doubt limitations of liability that are prohibited or unenforceable in UK law, for example death or personal injury caused by negligence, fraud, or fraudulent misrepresentation or breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, are not permitted.

A5.4.18. 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 or incurring liabilities shall include the liabilities of any sponsored bodies.

A5.4.19. Treasury approval must be sought for all contingent liabilities that are novel, contentious or repercussive. In addition, a completed Contingent Liability approval framework checklist must be submitted to Treasury before entering into a contingent liability with a maximum exposure of £3m or more. This process is also required for remote contingent liabilities.

Types of liabilities

A5.4.20. Public sector organisations may take on liabilities by:

- issuing specific guarantees, usually of loans;
- writing a letter or statement of comfort; or
- providing indemnities.

A5.4.21. It is important to remember that any of these instruments issued by a minister may be legally enforceable.

A5.4.22. Guarantees shall normally arise using statutory powers. They typically involve guarantees against non-payment of debts to third parties.

A5.4.23. 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

POL00363159

equivalent effect. Creditors could easily take these to mean more than intended and threats of legal action could result. Treasury approval is essential.

A5.4.24. 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.5.4B, in line with the Civil Service Management Code[86]. 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.

A5.4.25. 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 A5.4B: 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, including costs, which is incurred in the execution or the purported execution of his or her board functions, save where the board member has acted recklessly."

Notifying liabilities to Parliament

A5.4.26. The rules for notifying Parliament of liabilities are very similar to those for public expenditure. Generally speaking there is no requirement to inform Parliament about any liability which:

- arises in the normal course of business
- arises under statutory powers (subject to the bullets bellow)
- would normally require notification (i.e. neither arising in the normal course of business nor under statutory powers) but is under £300,000 in value.

A5.4.27. There are some exceptions to this general rule. Parliament shall be notified of any liability, even if it meets one or more of the criteria given in paragraph A5.4.26, which:

- arises as a result of a specific guarantee, indemnity or letter of comfort where the guarantee is not of a type routinely used in commercial business dealings
- is of such a size, relative to the department's total budget, that Parliament should be given notice
- arises under specific statutory powers which require Parliament to be notified

[86] https://www.gov.uk/government/publications/civil-servants-terms-and-conditions

POL00363159

- is novel, contentious or potentially repercussive.

A5.4.28. It is important to note that undertakings in the normal course of business shall 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.

A5.4.29. Non-statutory liabilities which need to be reported to Parliament shall be notified by Written Ministerial Statement and accompanying departmental Minute (see box A5.4C). Treasury approval is required before going ahead. It is sometimes necessary, with Treasury agreement, to adapt the form of wording, e.g. if the liability arises immediately.

A5.4.30. Written Ministerial Statements and departmental Minutes shall be laid in the House of Commons, on the same day, and shall briefly outline the nature of the contingent liability and confirm that a departmental Minute providing full details has been laid in the House of Commons.

A5.4.31. Departmental Minutes shall:

- use the standard wording for the opening and closing passages, which has been agreed with the PAC (box A.5.4C)
- 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 A5.4.26)
- explain that authority for any expenditure required under the liability will be sought through the normal Supply procedure
- be copied to the chairs of both the PAC and departmental committee.

A5.4.32. The contingent liability should not go live until 14 parliamentary sitting days, after the Minute has been laid. Every effort shall be made to ensure that the full waiting period falls while Parliament is in session. Where a contingent liability is reported less than 14 days before the end of the session, the contingent liability should only go live after lying before Parliament during 14 sitting days, i.e. some days after the start of the next session.

A5.4.33. 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, e.g. proactively arranging a meeting with them. The Treasury should be kept in touch with representations made by MPs and of the outcome.

POL00363159

Box A5.4C: standard text for departmental Minutes on liabilities

The Opening passage:

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 for which there is no specific statutory authority, for the Minister concerned to present a departmental Minute to Parliament a 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 shall 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.

A5.4.34. If, exceptionally, the guarantee or indemnity would give rise to an actual liability, the department shall consult the Treasury about the wording of the Minute. The department should discuss the implications for the actual liability on its budget, Estimate and accounts.

A5.4.35. There is not usually a requirement to notify Parliament in instances where a contingent liability arises due to events outside a department or ALB's control rather than through an active policy decision. An example of something that would be outside a department or ALB's control would be legal proceedings being brought against them. Events of this nature should still be disclosed in the entity's Annual Report and Accounts in line with the requirements of the Government Financial Reporting Manual (FReM).

Non-standard notification

A5.4.36. Sometimes it is not possible to give details of a contingent liability with full transparency. In such cases the department shall write to the chairs of both the PAC and departmental committee to provide the same details as those outlined in paragraph A5.4.31, with the same notice period. The letters shall explain the need for confidentiality. Any objection by either chair shall be approached in the same way as MPs' objections (paragraph A5.4.33). If departments continue to have concerns about writing to Parliament, in particularly sensitive or confidential cases, they shall seek advice from the Treasury.

A5.4.37. Sometimes departments want to report an urgent contingent liability providing less than the required 14 days notice. In such cases, the department shall follow the procedure in paragraph A5.4.29 and explain the need for urgency, agreeing revised wording to the final standard paragraph with the Treasury.

POL00363159

A5.4.38. If the proposal is more urgent than this rule would allow, the department shall write to the chairs of the PAC and the departmental committee, giving the information in paragraph A5.4.31 and explaining the need for urgency. Where possible, the Chairs should be given 14 working days from receipt of the letter to raise an objection in writing, in which case the department would withhold final approval to proceed with incurring the liability pending an examination of the objection. As a matter of record, when Parliament reconvenes, a Written Ministerial Statement and departmental Minute should be laid explaining what has happened, including any liabilities undertaken.

A5.4.39. The same procedure as in paragraph A5.4.38 shall be used to report liabilities during a parliamentary recess. In such cases the notice period should be 14 working days notice, i.e. excluding weekends and bank holidays.

A5.4.40. 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 shall consult the Treasury. When Parliament reconvenes a Written Ministerial Statement should be laid explaining what has happened, including any liabilities undertaken.

Reporting liabilities publicly

A5.4.41. Any changes to existing liabilities shall 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 A5.4.36) can be reported transparently, the standard Minute (paragraph A.5.4.31) shall be laid.

A5.4.42. Departments shall report all outstanding single liabilities, or schemes of liabilities, in their 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.

A5.4.43. 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.

A5.4.44. 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 2.4 and the Estimates Manual[87] 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

A5.4.45. 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

[87] https://www.gov.uk/government/publications/supply-estimates-guidance-manual

POL00363159

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).

POL00363159

Annex 5.5
Lending

Government departments may borrow from the Estimate or 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.

A5.5.1. The government provides loan finance to public sector organisations through departmental Estimates and the National Loans Fund (NLF). The broad principles of this annex also apply to Public Dividend Capital (PDC) and government loan guarantees.

Statutory authority

A5.5.2. The NLF needs specific statutory authority to lend to each of its borrowers, normally found in the enabling legislation of the borrower. Similarly, departments must normally have specific statutory authority to make voted loans. Box A5.5A identifies the provisions which shall 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 shall also consult the Exchequer Funds and Accounts team (EFA) in the Treasury.

Loans from the NLF

A5.5.3. 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.

A5.5.4. The NLF cannot lend at a loss[88]. 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.

A5.5.5. Because the government's credit rating is better than commercial borrowers' the NLF can both borrow and lend at fine rates. NLF lending is not available to commercial entities in the private sector.

A5.5.6. 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. Departments automatically stand behind all NLF loans

[88] S5, NLF Act 1968.

POL00363159

to arm's length bodies (ALBs) and should agree this with them, formally in writing.is intended, they should also consult EFA.

Box A5.5A: powers in legislation enabling lending

NLF loans	Voted loans
The Secretary of State or Minister may lend to relevant bodies	The circumstances in which loans may be made
The Treasury may issue funds from the NLF to the Secretary of State	Repayment of principal and interest should be made to the Consolidated Fund
The purpose for which loans may be made	Conditionality associated with the loans
A limit on total lending outstanding	
(Sometimes) a power to raise this limit by order within a further absolute ceiling;	A borrowing limit, sometimes including a power to raise this limit by order within a further absolute ceiling specified in the primary legislation
A requirement for interest and principal repayments collected by departments to be surrendered to the NLF	The terms and conditions to be attached to loans and how interest rates are to be determined
A requirement to present an annual account to Parliament, prepared by the sponsor department, of loans made and repaid.	

Interest on NLF loans

A5.5.7. Interest on temporary NLF loans of up to 6 months is fixed and repayable with the principal on maturity.

A5.5.8. 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, interest over the life of the loan with repayment of principal in full at maturity.

POL00363159

A5.5.9. 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 is not received on time. EFA can advise on the details of the terms and conditions.

A5.5.10. 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 Board[89] (PWLB).

Early repayment of NLF loans

A5.5.11. 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, leaving the Exchequer as a whole worse off. However, there may be a case for early repayment (other than for temporary loans) where there are genuinely surplus funds (e.g. from the sale of assets or trading activities). Similarly, it may also be possible to refinance existing loans where material, demonstrable and sustained changes (e.g. in asset life or technology) make a different maturity period more appropriate.

A5.5.12. Any proposals for early repayment must be agreed with the Treasury beforehand. If agreed, the borrower pays:

- interest up to the day before the loan is prematurely repaid
- 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 is designed to leave the Exchequer no worse off. It 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 (i.e. the discount or premium) then scores as an adjustment to interest in the accounts.

Write off or repayment of NLF loans by grant

A5.5.13. Departments shall consult the Treasury about any 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.

A5.5.14. 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.

A5.5.15. Change of status and capital reconstruction ahead of privatisation is different. When the borrower's status changes from public to private sector, it is no longer appropriate for it to enjoy the fine rates the NLF achieves. So all NLF loans must be repaid. Departments shall agree the approach with the Treasury.

---

[89] The PWLB lends NLF funds to local authorities and others: https://www.dmo.gov.uk/responsibilities/local-authority-lending/about-pwlb-lending/

POL00363159

Accounting for NLF loans

A5.5.16. Legislation authorising an ALB 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 accounts in accordance with the FReM.

Voted loans

A5.5.17. 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 (paragraphs A5.5.3-A5.5.10).

A5.5.18. Voted loans are technically assets of the Consolidated Fund. So payments of interest and principal should normally be surrendered to the Consolidated Fund. However if there is related expenditure within the same budget boundary as the receipt, such payments may be retained if the Treasury agrees.

Repaying early and writing off voted loans

A5.5.19. The Treasury shall be consulted about any proposals for the early repayment of voted loans. The rules applying to early repayment of NLF loans (A5.5.11) normally apply.

A5.5.20. Treasury approval is required to write off loans of more than £20m. The department concerned shall notify Parliament in a Treasury Minute using the standard opening and closing paragraphs in box A5.5B. If it is not possible for the Minute to be laid allowing fourteen days of parliamentary time, the Minute should explain why.

A5.5.21. 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.

A5.5.22. 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 A5.5B: 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 explaining the circumstances and giving particulars of the write-off. Except in cases of special urgency, Treasury consent is withheld until fourteen parliamentary sitting days after the issue of the Minute.

POL00363159

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.

Lending to competitive organisations

A5.5.23. The requirements described above always apply to NLF and voted loans. Some additional disciplines apply to loans to public sector organisations which operate in commercial markets. These disciplines are justified by the need to:

- avoid distorting competition in the markets in which these organisations operate
- deliver vfm for the Exchequer as a whole by maximising the efficiency of the pooled borrowing approach and minimising subsequent cost of funds.

A5.5.24. The competitive organisations and transactions in the public sector to which these disciplines apply are:

- those organisations that compete with the private sector for more than 75% of their business
- many organisations that compete for between 20% and 75% of their business, considered case by case
- usually organisations using loan finance for a particular discrete activity that would compete with the private sector.

A5.5.25. The disciplines required are all intended to ensure that the public sector organisations concerned do not exploit any competitive advantage they might otherwise enjoy through access to cheaper finance. They are set out in box A5.5C.

Box A5.5C: disciplines for commercial lending

- All borrowing must be agreed with the Treasury spending team
- The borrower, or its sponsor department, should obtain a credit rating, using independent financial advice and excluding any implicit or explicit government guarantees
- Any guarantee of an organisation's borrowing should rest on explicit statutory powers. There may be terms and conditions, e.g. a cap on the amount
- The borrower organisation should satisfy the Treasury that the proposed transactions are justified within its corporate plan; or for large singleton transaction that it delivers value for money
- Short term finance i.e. less than seven days, should be obtained from commercial providers, e.g. through overdrafts
- Longer term borrowing, whether from the NLF or through voted loans, should be at interest rates comparable to what similar competitor firms in the private

POL00363159

sector would pay, and must as a minimum cover the government's cost of borrowing . The Treasury will determine the interest rate to be applied

External borrowing and government guarantees

A5.5.26. 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.

A5.5.27. 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

A5.5.28. 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 5.4).

A5.5.29. In principle government guarantees may also be given for longer term borrowing, including in foreign currencies. 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. Private 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.

A5.5.30. As foreign borrowing may also have implications for the credit standing on the international money markets of the UK public sector, proposals for such borrowing must be cleared with the Treasury in advance. This applies to all ALBs.

A5.5.31. It is good practice to keep Parliament informed when guarantees are first used, or varied significantly.

POL00363159

Annex 5.6

Banking and managing cash

Public sector organisations should run their cash management processes to provide good value for the Exchequer as a whole. This means using the Government Banking Service, limiting use of commercial banking (with Treasury consent in each instance), and providing the Treasury with accurate forecasts of cashflows. Any use of non-standard techniques should be kept within defined bounds and controlled carefully.

A5.6.1. Together public sector organisations process large volumes of cash each day in order to carry out their functions. It is important that the cashflows involved achieve good value for the Exchequer as a whole by minimising the government's borrowing at the end of each working day. So as much as possible of the government's cashflow should be contained within the Exchequer pyramid.

A5.6.2. Public sector organisations must maximise the use of publicly procured banking services (accounts with commercial banks managed centrally by Government Banking), unless there is a clear business case to do otherwise. This ensures effective aggregate control and provides the opportunity for central consolidation of cash resources to minimise government's financing arrangements. Other arrangements lead to increased government borrowing increasing costs and credit risk to the Exchequer.

A5.6.3. When assessing the government's cash position, the Debt Management Office (DMO) relies in part on the Treasury's cash flow forecasts, which in turn rely on department's own forecasts. For this reason, it is important for departments and their ALBs to provide accurate cash flow forecasts to the Treasury.

A5.6.4. Accounting officers are responsible for managing the risks inherent in this process actively, including any credit exposures of funds held in commercial banks outside the Exchequer pyramid. Each public sector organisation should establish a banking policy in order to carry out this task.

Cash management

A5.6.5. Good cash management means having the right amount of cash available when needed, without inefficient unused surpluses. Each public sector organisation should plan its own cash management efficiently, following the guidelines in box A5.6A. It is usually convenient for sponsor departments to include their ALBs' flows with their own for this purpose. With this information EFA can enable departments to draw cash as they need it within their voted provisions in Estimates.

POL00363159

A5.6.6. EFA need to understand the dynamics of public sector organisations' demands for cash and similarly the income they may generate. With this information they can identify peaks and troughs in the public sector's overall need for cash so that the DMO can plan its debt management activity. For this purpose EFA need to know the annual, monthly and daily sequences of cash flow, including any major one-off items.

A5.6.7. As a matter of good financial management, public sector organisations should never go overdrawn. Exchequer costs rise if unplanned large payments are not forecast in advance. The Treasury will normally charge penalty interest at current base rate plus 2% on overdrawn positions on Government Banking accounts. Particular care should be given to ensure the nominated supply estimate account and the account group as a whole remain in credit.

A5.6.8. The Treasury may waive or vary such a penalty interest charge, normally if the circumstances which led to the overdraft are outside the department's control, or if the overdraft does not incur additional costs to the Exchequer.

Box A5.6A: planning and cash management

- Forecast cash flows and provide EFA with detail within agreed timescales
- Tell EFA of the major cash flows even if a definite transaction date has not been agreed.
- Keep EFA advised if payment or receipt dates are moved even if this is outside normal deadlines.
- Negotiate payment dates, put them in contracts with counterparties and stick to them.
- Transact substantive payments (above £5m) by 12pm (noon) each weekday.
- Negotiate the main inflows to take place on specific dates, and specify receipt in the morning as late receipts (after 3pm) may not be swept into the Exchequer pyramid that day.
- Departments should keep commercial accounts at minimum levels and ensure they are not funded in advance of need. Departments should notify EFA each quarter of any balances held in a commercial account.

Banking

A5.6.9. Each public sector organisation should establish a banking policy for control of its working balances and its transmission of funds. Its centrepiece should be use of Government Banking accounts, which sit within the Exchequer pyramid. Departments should only hold funds outside of the Exchequer where a good business case can be made for doing so, e.g. if Government Banking cannot provide a necessary service or legislation requires it.

A5.6.10. Specific Treasury agreement to each commercial account is required before it is established. Once this approval has been received, departments (and their ALBs) should gain the Crown Commercial Representative for Banking's (CR) approval before setting up, or altering, any commercial accounts The CR has

POL00363159

responsibility for the strategic management of banking services and their suppliers across the whole of the Exchequer.

A5.6.11. A banking policy should cover at least the features outlined in box A5.6B. Once settled, the policy should be reviewed regularly to make sure that it remains appropriate and up to date.

Box A5.6B: essential features of an organisation's banking policy

- The Government Banking bank accounts to be operated, with reference to their purposes (e.g. to contain income from different sources)
- Any commercial accounts, how they should operate, and why they are justified
- How and where working overnight balances required for day to day operation are to be held
- 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
- The organisation's cut off times for processing payments (in line with the Exchequer's core banking hours; authorising payments on their banking platforms by 12pm for high value payments and no later than 3pm for others)
- When and how payment by cheque, credit card or direct debit is acceptable (see guidelines in Box A5.6D)
- Any use of non- standard financial instruments, e.g. agreeing foreign exchange hedging contracts with commercial banks (see paragraph A5.6.22)
- Record keeping, including frequent bank statement reconciliations

A5.6.12. Where a public sector organisation plans to use commercial bank account(s), it should follow the guidelines in box A5.6C. Only commercial banks which are members of the relevant UK clearing bodies should be considered for this purpose[90].

Box A5.6C: guidelines for using commercial banks accounts

- Only hold funds outside of the Exchequer where there is a clear basis to do so (legal, value for money for the Exchequer as a whole) and with the agreement of the Treasury
- Consult the CR to agree the approach to negotiations with potential suppliers and to ensure leverage of government's relationship with key banking suppliers
- Ensure that cleared funds will reach accounts as early as possible in the relevant clearing cycle

[90] http://www.accesstopaymentsystems.co.uk/introduction-payment-systems/what-payment-scheme

POL00363159

- 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 as this increases Exchequer debt and raises 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 (e.g. 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
- Minimise balances in commercial accounts without going overdrawn, holding only enough for immediate needs

Money transmission

A5.6.13. 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.5.6D. Sometimes it is necessary to strike a balance among these desirable features to achieve the best outcome.

A5.6.14. For payments to counterparties outside the Exchequer, it is good practice for public sector organisations to use BACS[91] Grade 3 (Government Grade) where possible. This is a safe and cost-effective payment method, allowing for settlement directly at the Bank of England which reduces exposure to commercial banks. Use of a government grade Bacs SUN means public sector organisations are not limited to the standards BACS payment limit. For inward payments, it may be appropriate to apply credit controls or other safeguards.

A5.6.15. Public sector organisations should ensure their finance operations provide timely payment of all intra-day outflows. Payments made late during the working day increase intraday volatility, causing disruption to payee's and the wider Exchequer's cash management activities which may lead to increased cost.

Box A5.6D: money transmission services ranked in order of preference

- Internal transfers. Use to move funds between accounts held within the same bank as they are free. You can move funds between your organisation's accounts as well as to accounts held by other public sector organisations who use Government Banking's contract with the same bank.

[91] BACS (formerly the Bankers' Automated Clearing Service) is the commonly used three-day electronic payments and receipts system.

POL00363159

- Government BACS grade 3. This can be used for payments external to the Exchequer boundary, for example to suppliers and for salaries, and when moving funds to public sector organisations who use different commercial banking service providers.
- Faster payments and CHAPS. These should only be used for transactions with entities external to the Exchequer. Where used for:
    - making payments, this should be in a controlled manner with appropriate safeguards to prevent damage to the Exchequer; or,
    - receipts, arrangements should be made for the payer to make payments as early as possible in the day.
- Credit and other payment cards. When accepting credit and other payment cards to receive payments the fees and additional risks involved need to be understood. Paying and receiving funds in this way needs to represent value for money for the Exchequer.
- Payable orders and cheques, should be used by exception and only when other methods are not available.
- Cash, uncrossed cheques, order books or any methods carrying similar security risks should not usually be used.

Borrowing

A5.6.16. 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 without explicit Treasury consent would be considered irregular.

A5.6.17. 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).

Managing risk using other financing instruments, including hedging

A5.6.18. Sometimes public sector organisations face financial risks that they might struggle to manage or absorb if they crystallised. In these circumstances they may consider using commercial financial instruments such as forward contracts, to limit their exposure to such risks..

A5.6.19. The use of such instruments to limit risk may be appropriate in certain circumstances, but speculation is never acceptable.

A5.6.20. In principle risks of this kind are no different to the other risks with which public sector organisations grapple. They should be managed in a similar way, balancing the scale and likelihood of the risk against the cost, and opportunity cost of taking mitigating action.

POL00363159

A5.6.21. When considering use of financial instruments, it is important to remember that:

- their use may entail taking on new risks, which themselves must be managed. It is therefore necessary for any organisation using them to ensure that it has sufficient expertise in depth for this task
- financial instruments of this type might not always be the cheapest option. So departments should be confident that the risk being avoided is worth the additional cost they might incur
- provisions for their use should be contained in the organisation's banking policy (box A5.6B)

A5.6.22. Any decision to use financial instruments is automatically novel and contentious and Treasury consent shall be sought accordingly.

A5.6.23. As set out in 5.12.9, departments should only enter into such financing instruments via centralised expertise and frameworks. For example, through the Bank of England for foreign exchange transactions and Crown Commercial Service for energy and commodities purchases.

A5.6.24. If an organisation considers using financial instruments to hedge, its accounting officer will need to be satisfied that the cost and management effort of operating the hedging policy offers value for money *for the Exchequer as a whole*. The organisation should clear its strategy with the Treasury and draw up a bespoke section of its banking policy for the purpose. An outline is shown at box A5.6E.

Box A5.6E: outline management policy for using financial instruments

- Define the risks to be controlled, their volume, frequency and the rationale for control
- Governance of and accountability for the various elements of the organisation's hedging policy, both at working level and on the board
- List of acceptable counterparties (after assessing their credit risks and competence), with exposure limits (which may differ for different financial instruments)
- Arrangements for defining acceptable risk, differentiated as necessary among the different methods of dealing with them
- Arrangements for monitoring and reporting exposures and forecasts

Foreign exchange

A5.6.25. A powerful case for hedging arises when a public sector organisation must make regular and predictable transactions in foreign currencies whose scale is material to the organisation's business. The Guidance on Foreign Exchange Exposure Management and approval framework provides detailed advice on how to manage foreign exchange risk, and the contact details for the relevant expertise available within government.

POL00363159

A5.6.26. The standard principles for foreign exchange management are set out in box A5.6F. When drawing up the strategy It is important to remember that the detailed advice set out in section 5.12 and this annex applies, alongside the guidance.

Box A5.6F: Mandatory FX management requirements

1. Departments should always consider spot transactions and do not need Treasury consent if they are carried out within Government Banking.
2. Consent for FX transactions other than spots must be obtained from Treasury in accordance with paragraph 2.5 of the FX guidance.
3. Where Treasury consent is required, an opinion must also be obtained from the FAB in accordance with the FX guidance. Consultancy expenses for FX advice should not be incurred until advice has been sought from the Board.
4. Departmental bodies exposed to material FX risk must have a Foreign-Exchange policy document setting out their FX risk management strategy. It must be reviewed annually by the department and at least once by the FAB. The FX Policy Document must have Treasury approval before coming into force.
5. For all forward contracts of any value and all spot payments in G10 currencies with a value greater than £2 million equivalent, the Bank of England must be used. If using forward contracts, they should be arranged as soon as possible to optimise their benefits.
6. For FX transactions under £2 million equivalent, and non-G10 currencies over £2 million, Government Banking contracts and suppliers must be used for banking services.
7. Incoming foreign currency over £2 million equivalent should be received through the Bank of England.
8. Bank balances (sterling or non-sterling) should always be held in Government Banking, unless prior Treasury approval has been given. Non-Government Banking commercial holdings and transactions require approval from Treasury and their values must be reported regularly.
9. Foreign currency balances should be minimised
10. Before agreeing foreign currency liabilities, purchases and other contracts in sterling, check if there is an FX risk premium that will be passed on at a greater rate than achievable by the Bank of England.
11. Government bodies are not permitted to speculate. They should not attempt to anticipate FX movements and try to "beat the market". It is not the intention of Parliament that voted Exchequer funds are used to make profits or savings by trading currencies.
12. Government bodies are required to consider budgetary controls and value for money *for the Exchequer as a whole*. Accordingly, avoid buying or selling FX options, other than in exceptional circumstances, as options are usually

POL00363159

expensive, carrying a risk based premium and often involve a degree of speculation.

13. While the Bank of England can help with G10 currencies, where possible, avoid using currencies other than sterling, US dollars or Euros as markets in other currencies are less liquid.

POL00363159

Annex 6.1

How to calculate charges

This annex discusses how to calculate the cost of public services for which a fee is charged.

Introducing a new or updated charge bearing service

A6.1.1. Public sector organisations planning to set up or update a service for which a fee may be charged shall ensure early engagement with Treasury. Advice should be sought at the earliest opportunity if there are any variations on the standard model. Proposed variations may be agreed in certain instances, considering each on its merits. Each will need to be justified in the public interest and on value for money grounds.

A6.1.2. Practical issues which organisations will need to consider when setting up or refreshing a charge bearing service include: the definition of the service and its rationale; the proposed financial objective (for instance, full cost recovery; 70% of full cost plus a 30% public subsidy); how the service is to be delivered and which organisation is to deliver it; whether the provider should retain any income from charges; the proposed charging structure (for instance, a single service or several sub-services). Organisations will also need to refer to the checklist in box 4.9 of factors to consider when planning policies and projects.

Measuring the full cost of a service

A6.1.3. With agreed exceptions, 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 fees for public services it is essential to calculate the cost of providing them accurately.

A6.1.4. The main features to be taken into account in measuring the annual cost of a service are set out in box A6.1A. 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.

A6.1.5. 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 best estimates, geared to estimated consumption patterns.

A6.1.6. Start-up costs which are capitalised in the accounts and the cost of fixed capital items are scored in the accounts in full. These costs should be attributed to the cost of the service as the depreciated value each year.

A6.1.7. Start-up costs which cannot be capitalised in the accounts are scored as they are incurred. Such costs may be recovered through fees and charges by spreading them over the first few years of service provision. It is also good

POL00363159

practice to set fees to recover costs which cannot be capitalised in the accounts and which have been incurred to improve efficiency and effectiveness so that charges are lower or offer better value. This needs explicit Treasury agreement and may require statutory backing.

A6.1.8. 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 (e.g. where faster shipping is offered); or conversely any discount should be justifiable by saving to the supplier (e.g. 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.

Box A6.1A: 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, e.g. (shares of) payroll, audit, top management costs, legal services, etc
- Raw materials and stocks
- Research and development
- Depreciation of start upstart-up and one-off capital items
- Taxes: vat, council tax, stamp duty, etc
- Capital charges
- Notional or actual insurance premiums
- Fees to sub-contractors
- Distribution costs, including transport
- Advertising
- Bad debts
- Compliance and monitoring costs
- Provisions

POL00363159

But not:

- Externalities imposed on society (e.g. costs from pollution and crime)
- Costs of policy work (other than policy on the executive delivery of the service)
- Enforcement costs[92]
- Replacement costs of items notionally insured
- Start-up costs (those which are capitalised in the accounts) and one-off capital items

Financial objectives

A6.1.9. 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 the standard cost of capital, currently 3.5% in real terms. Some exceptions are noted in section 6.4.

A6.1.10. One other exception is commercial services, i.e. those services which compete or may compete with private sector suppliers of similar services. These should aim to recover full costs including 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.

A6.1.11. Great care should be taken in pricing commercial 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.

Accidental surpluses and deficits

A6.1.12. 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.

A6.1.13. It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing through a s102 order (see paragraph 6.3.3).

A6.1.14. Where significant surpluses have arisen, these should usually be refunded to the payees at the earliest opportunity.

[92] See HMT guidance on receipts https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/226421/PU1548_final.pdf

POL00363159

POL00363159

Annex 6.2

Charging for information

This annex discusses how public sector organisations should charge for the use and re-use of information, including data, text, images or sound recordings. Much information about public services is available for free. However, when charging for information, it is generally at full cost although there are exceptions.

A6.2.1. The policy is that much information about public services should be made available either free or at low cost, in the public interest. Most public organisations freely post information about their activities and services on the internet. There should be no additional charge for material made available to meet the needs of particular groups of people e.g. Braille or other language versions. More extensive paper or digital versions of information may carry a charge to cover the costs of production.

A6.2.2. Information products have an unusual combination of properties: typically, high cost of production combined with low cost or reproduction. They 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.

A6.2.3. It is good practice to make available sufficient recent legislation, public policy announcements, consultation documents and supporting material to understand the business of each public sector organisation.

A6.2.4. Anything originating in Crown bodies, including many public sector organisations, has the protection of Crown copyright. Most Crown copyright information is made available at no charge under Open Government Licence terms.

A6.2.5. Public sector organisations should maintain information asset registers as part of their asset management strategy[93] feasible.

Rights to access

A6.2.6. The terms on which information is 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 re-used by others free of charge. However, public sector organisations should take account of copyright issues, using legal advice as necessary.

A6.2.7. Most public sector organisations choose, as a matter of policy, to make available on the internet information disclosed in response to requests under the Freedom of Information Act 2000 and Environment Information Regulations

[93] For further information see http://www.nationalarchives.gov.uk/information-management/manage-information/policy-process/digital-continuity/step-by-step-guidance/step-2/

POL00363159

2004. Public sector bodies should also note the provisions of the amendments (introduced by the Protection of Freedoms Act 2012) to sections 11-11B and 19 of the Freedom of Information Act 2000[94] in respect of relevant datasets, where there are statutory duties relating to the format and supply of requested datasets and to their listing in publication schemes, and to charges under a specified licence.

Information carrying charges

A6.2.8. Whilst the majority of information is free to access, a number of public sector organisations supply information for which charges are made to cover the associated costs. These include:

- services commissioned in response to particular requests
- services where there are statutory powers to charge
- information sold or licensed by trading funds (although they must comply with the rules set out by the re-use regulations – see below)
- publications processing publicly gathered data for the convenience of the public, through editing, reclassification or other analysis
- retrieval software, e.g. published as a key to using compiled data

A6.2.9. Public sector organisations can also charge for supplying some information which recipients intend to process, e.g. for publication in another format. Licences 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. The norm is:

- Raw data: license and charge at marginal cost
- Value added data and information supplied by trading funds: charge at full cost including an appropriate rate of return where this is permitted under the re-use regulations (see paragraph A6.2.10)

The Re-use of Public Sector Information Regulations 2015

A6.2.10. The Re-use of Public Sector Information Regulations 2015[95] set out the circumstances where public sector bodies may charge above marginal cost for licensing the re-use of information. Where it is intended to charge for the re-use of information within the scope of the regulations, it is important to comply with those regulations, paying attention to the clauses that cover requirements to generate revenue

A6.2.11. Trading funds, for example, may charge for information where the customer intends to duplicate or process (re-use) such material for profit. In such cases, Crown bodies need to apply for a delegation of authority from the Keeper of Public Records[96] to license the information.

---

[94] Freedom of Information Act 2000 revised - https://www.legislation.gov.uk/ukpga/2000/36/contents

[95] SI 2015/1415 - http://www.legislation.gov.uk/uksi/2015/1415/contents/made

[96] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright/delegations-of-authority/

POL00363159

A6.2.12. The regulations set out that “charges for re-use must, so far as is reasonably practicable, be calculated in accordance with the accounting principles applicable to the public sector body”. See Annex 6.3 for further detail on marginal cost pricing.

POL00363159

Annex 6.3

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.

A6.3.1. UK competition law is founded on the Competition Act 1998 which prohibits business agreements that prevent, restrict or distort competition in trade in the UK. They also disallow market abuse on the part of any business in a dominant[97] in a market.

A6.3.2. 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
- refusing to supply competitors without objective justification such as poor customer credit worthiness.

Pricing in competitive markets

A6.3.3. Services should be costed in line with the normal rules for full cost recovery. Charges should be set to achieve the appropriate financial objective, normally at least recovering full costs.

A6.3.4. 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.

A6.3.5. 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, e.g.:

- 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, i.e. charging below cost to encourage demand, or above cost to discourage it.

[97] A business is deemed to be in a dominant position if it can generally behave independently of competitive pressures in its field.

POL00363159

A6.3.6. There A6.3.6 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, e.g. to match competition)
- the charging strategy is compatible with full cost recovery over the medium term. This may mean ceasing to offer a 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

A6.3.7. 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.

A6.3.8. 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

A6.3.9. 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.

.

POL00363159

Annex 7.1

Forming and reforming ALBs

This annex covers the processes of setting up new arm's length bodies and reshaping existing ones, either by merger, dissolution or other transformation. While the processes are flexible, there are some common themes centring on accountability and streamlining government processes.

Rationale for ALBs

A7.1.1. The government works through ALBs when there is a good reason to do so, usually when it is helpful for a specialist body to carry out a function where independence is important. Each ALB has its own bespoke reason for existing and many are established under specific legislation determining their form, functions and powers.

A7.1.2. The three main kinds of ALBs are agencies, non-departmental public bodies (NDPBs) and non-ministerial departments (NMDs). Each has its strengths and is appropriate for a range of functions. The three are compared in box A7.1A.

Setting up a new ALB

A7.1.3. It is good practice to decide early which kind of body is most appropriate when setting up a new ALB (sources of guidance on setting up ALBs are in box A7.1B). Parliament is concerned that hiving off functions into an ALB shall not diminish accountability. For that reason NMDs are rarely the right solution.

A7.1.4. It is important to remember that effective functional independence does not necessarily require a specific structure. Ministers can choose to stand back from the decisions made or opinions published by any ALB while maintaining financial control and oversight, e.g. ministers never interfere with HMRC's decisions on individual taxpayers' affairs.

A7.1.5. The next step is to develop a framework document (or equivalent) setting out the relationship between the new ALB and its parent department. Advice on this is in annex 7.2. These should be reviewed every 3 years to keep abreast of experience and the changing context[98].

A7.1.6. Decisions on the form of any particular ALB must ultimately be for ministers. They will depend in part on 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. Generally, the closer the ALB's functions are to the centre of government, the more likely it is to be an agency; while NMD status is appropriate for organisations of some size carrying out professional functions. The form and structure of the NDPB is very flexible, suiting specific and technical functions.

[98] https://www.gov.uk/government/publications/managing-public-money-framework-documents

POL00363159

A7.1.7. When an ALB is planned, it is essential to consult both the Treasury and the Cabinet Office about its powers, status and funding[99]. Departments should also seek advice from UK Government Investments (UKGI), the government's centre of excellence in corporate finance and corporate governance, when establishing central government companies, public corporations or ALB's which have a significant commercial element, significant private sector interface and/or whose governance is of material complexity. In the case of such organisations, departments should also consider whether UKGI is best placed to deliver the shareholder function itself on behalf of the department or, if not, seek the advice and use the expertise of UKGI during the life of such arm's length bodies.

Box A7.1A: comparison of the three main kinds of ALB in central government

Feature	Executive Agency	Non-departmental public body (NDPB)	Non-ministerial department (NMD)
Status	Part of a department	Independent organisation. May be a company and/or charity	Department in its own right
Crown body	Yes	Not usually	Yes
Established by	Administrative action (usually quick and easy)	Usually bespoke legislation (may take time)	Administrative action, often supplemented by primary legislation (if needed, may take time)
Governance	CEO supported by a board	Independent board led by non-executive Chair	Permanent secretary supported by a board
Ministerial accountability	A minister in the parent department makes key decisions on the agency's affairs	A minister in the sponsor department decides key matters. E.g. whether to adjust functions, wind up or replace	Rarely needed, but when necessary by a minister in the parent department decides
Parent department	Has direct control	Subject to formally agreed memorandum. May be light touch	Remote
Funding	Estimates and/or fee income	Grant(s) from department(s), and/or income from fees or levies	Estimates and/or fee income
Employees	Civil servants	Not usually civil servants	Civil servants
Accounts etc.	Publishes plans and accounts as part of parent department's	Publishes own plans and accounts. Usually consolidated into	Publishes own plans and accounts

[99] See for example: Executive Agencies: A guide for Departments and Public Bodies: A Guide for Departments - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80076/exec_agencies_guidance_oct06_0.pdf

POL00363159

		parent department's	
Parliamentary	CEO is agency accounting officer, oversight by departmental PAO	CEO is normally the accounting officer, oversight by departmental PAO	Permanent secretary is accounting officer. Parent department PAO can step in if necessary

A7.1.8. It is worth remembering that the three kinds of ALB in box A7.1A are only the most common. Others are possible. Cabinet Office guidance on the categories of Public Bodies[100] explains in more detail. They include public corporations and various kinds of cooperative arrangements with the private or voluntary sector, some fairly loose. And there is scope to establish one-off arrangements for special bodies where circumstances demand something different. Special structures must of course be evaluated carefully, on the strength of a comparative business case, to make sure that they will deliver value for money to the public purse.

A7.1.9. Whatever the legal status of an ALB, its sponsor department should 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[101].

A7.1.10. If legislation is required to set up an ALB, it is important to observe the new services rules (Section 2.6). Strictly this means that royal assent is required before resources can be committed to getting the organisation on its feet. In some urgent cases it may be possible to make a claim on the Reserve to make an earlier start, but even so only after second reading in the Commons to an uncontroversial bill and with safeguards to allow commitments to be unwound if the bill does not pass.

A7.1.11. Whatever the approach taken to setting up the new organisation, it is often desirable to operate a period of shadow running before it starts in earnest. And do be aware that the process of preparation can take time – e.g. often a couple of years or more for an NDPB.

Box A7.1B: sources of guidance

Guide to the Establishment and Operation of Trading Funds: http://webarchive.nationalarchives.gov.uk/20130129110402/http:/www.hm-treasury.gov.uk/psr_reporting_centralgovernment.htm

Corporate Governance in Central Government Departments: Code of Good Practice includes references to NDPBs and Agencies:

[100] Categories of Public Bodies: A Guide for Departments and is available on the Cabinet Office website https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80075/Categories_of_public_bodies_Dec12.pdf

[101] For further guidance in relation to this please consult the Cabinet Office Public Bodies Governance Team and UKGI guidance. https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

POL00363159

https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments

Financial Reporting Manual – includes guidance for NDPBs and Agencies, including form of Annual Reports: https://www.gov.uk/government/collections/government-financial-reporting-manual-frem

Consolidated Budgeting Guidance – includes guidance in relation to NDPBs and public corporations: https://www.gov.uk/government/collections/consolidated-budgeting-guidance

POL00363159

Reforming ALBs

A7.1.12. Valuable as they can be, proliferation of ALBs is not good practice. It adds to administrative costs generally and can fragment accountability. So it can be necessary or desirable to wind up or merge ALBs in the light of experience.

A7.1.13. The process of decision making is similar to that for setting up a new ALB if there is to be a successor organisation. It is good practice to decide on a suitable shape for the new organisation and then plan legislation, if necessary, to achieve it.

A7.1.14. The predecessor organisation(s) must be wound up in an orderly fashion, with final accounts to close its affairs (including a comprehensive list of assets and liabilities). If a closing organisation has no staff by the time the final accounts are draw up, it is usual for the accounting officer of the successor organisation, if there is one, to take responsibility for signing them off. If this is not possible, for example if there is no successor, the PAO of the parent department should sign them off.

A7.1.15. When staff are to be migrated into a new organisation, it is important to respect their statutory employment rights. Planning for this should form a key part of the transition preparations. Mistakes can be costly.

POL00363159

Annex 7.2

Framework documents

Departments need arrangements to monitor and understand their arms-length bodies' strategy, performance and delivery. These should be set out in a framework document. This annex sets out the process and clearances required, with links to specimen documents tailored to the nature of various public sector organisations. Whilst details will be tailored to individual circumstances, the expectation is that framework documents should follow the appropriate template as closely as practicable, and departures from the specimen templates should be clearly signposted, explained and justified, and those departures cleared with HMT spending teams and the Treasury Officer of Accounts.

A7.2.1. This annex provides guidance on the framework documents for:

- non-departmental public bodies (NDPBs)
- executive agencies
- statutory office holders
- central government companies (including those classified as NDPBs)
- central government charities (including those classified as NDPBs)
- non-Ministerial Departments
- public corporations.

A7.2.2. Terminology may differ and it may be these documents are referred to as a memorandum of understanding, management agreements or partnership agreements in some cases depending on historical or departmental practice. The content of documents should, however, follow the specimen framework document templates. The process set out below applies irrespective of the name of the document.

A7.2.3. The framework document sets out the ALBs purpose, describes the governance and accountability framework that applies between the roles of the body and its sponsor department (and with any other departments or devolved administrations with an interest in the ALB's business), reflecting the specific structures, roles and responsibilities in each case, and sets out how the day-to-day relationship works in practice, including in relation to governance and financial matters. They are public documents which:

- shall be published online and added to the Treasury's collection page for framework documents[102]
- deposited in the Libraries of both Houses of Parliament in line with Parliamentary Guidance[103].

A7.2.4. Standalone guidance on framework documents, and template framework documents for each of the six broad types of ALB as set out above are published

[102] https://www.gov.uk/government/collections/framework-documents-collection

[103] https://www.parliament.uk/globalassets/documents/commons-library/deposited-papers-guidelines-for-departments.pdf

POL00363159

alongside Managing Public Money on gov.uk[104] and will be updated from time to time. These templates are broadly similar representing consistent standards of accountability and governance, with relatively few differences where needed to reflect the circumstances of a type of body (e.g. where an NDPB is also established under the Companies Act).

A7.2.5. When considering the appropriate specimen template to use the classification of the body should be considered. This should first be the formal statistical classification by the Office of National Statistics followed by classification by the Cabinet Office. Where the body has not been classified or there is uncertainty as to classification, please consult the Treasury as to the appropriate template to use. It is important that the framework documents are fit for the purpose of the individual body. It may, therefore, be appropriate for teams to consider using a different template to that prescribed by classification if the individual circumstances of the body mean that another of the templates would be more appropriate, in whole or part, from an operational or policy perspective (e.g. it may be appropriate for an NDPB with a Board responsible for complex commercial operations to use the Government Companies template.)

A7.2.6. Where departments are of the view that departures from the specimen templates are necessary or there is a policy reason why an alternative template from the bodies statistical classification should be used, these departures should be clearly signposted, and policy arguments explained and justified. Such departures will also require Treasury consent.

A7.2.7. New framework documents must be cleared first with the Sponsor department Corporate Governance Team or Financial Governance Team or equivalent, before clearance with relevant Treasury spending team and the Treasury Officer of Accounts. It may also be appropriate to share the framework documents for new public bodies or where there are complex governance arrangements with the Cabinet Office Public Bodies Governance Team for their views.

A7.2.8. Departments should also seek advice from UK Government Investments (UKGI), the government's centre of excellence in corporate finance and corporate governance, when establishing central government companies, public corporations or ALB's which have a significant commercial element, significant private sector interface and/or whose governance is of material complexity. In the case of such organisations, departments should also consider whether UKGI is best placed to deliver the shareholder function itself on behalf of the department or, if not, seek the advice and use the expertise of UKGI during the life of such arm's length bodies.

A7.2.9. Where a framework document is amended or departs from the cross-government templates, the changes must be cleared by the Sponsor department's Corporate Governance Team or Financial Governance Team or equivalent, before seeking Treasury consent. Framework documents shall be sent to the spending team and to TOAEnquiries GRO. Treasury will aim to clear framework documents within 28 days.

A7.2.10. Framework documents should be reviewed and updated at least every 3 years unless there are exceptional reasons that render this inappropriate that have been agreed with Treasury and the Principal Accounting Officer of the sponsor department. Upon review, where there are departures from the currently published

[104] https://www.gov.uk/government/publications/managing-public-money-framework-documents

POL00363159

templates or where the existing framework documents are no longer in compliance with those templates frameworks documents should be re-cleared via TOA and the spending team. It may be appropriate to update a framework document sooner if there are significant changes to the ALB, e.g. reclassification, or the body taking on additional functions or being subject to a machinery of government change.

A7.2.11. Framework documents constitute a core constitutional document of the arm's-length body and it is imperative that accounting officers, Board members and senior officials are familiar with them, ensure they are kept up to date and use them as guide to govern the collaborative relationship between the arm's-length body, the sponsor department and the rest of government.

POL00363159

Annex 7.3

Government Companies, Public Corporations, and Trading Funds

Companies are used across government as a way of delivering on government objectives which are better met by a more discrete legal entity with a clear accountability and governance structure. Government companies' objectives are diverse and as such their characteristics are equally diverse. The risk of such diversity is that it can lead to inconsistency in spending controls, governance arrangements and accountability. This annex is intended to consolidate existing guidance in relation to their responsibilities for public money and to provide some advice on common issues that arise.

What is a government company?

A7.3.1. A Government Company (often informally referred to as a "GovCo") is one in which the government is the majority or only shareholder. It can include situations both where the government has purposely set up the company up as a GovCo or where the government has acquired majority shareholder status of an existing company.

A7.3.2. Government may also have interests in companies where it does not hold majority shareholder status. This may be where the government is the sole or majority customer, where it holds preference shares, where the company is closely governed by a regulatory regime or where the company is provided support by the government such that government is deemed to hold significant control. Given this diversity, it is helpful to consider companies through more clearly defined criteria than the high-level label of "GovCo".

What is a government company?

A7.3.3. The initial question for determining what kind of controls and governance apply is whether the company is formally classified as public or private sector. Most GovCos will be public sector but government also has interests in private sector companies.

A7.3.4. Companies are classified to the public or private sector based on ONS criteria. The 'public sector' is defined by the Office of National Statistics ('ONS') with reference to the European System of Accounts 2010 in accordance with EU requirements for Governments to produce accurate public sector finances and national accounts. The National Accounts (or Sectoral) classification of entities as public or private depends on the level of government control over the general corporate policy of the entity being classified. This can be direct or indirect and may be evidenced by indicators that include:

POL00363159

- the ability to appoint those in control, or those who determine the policy of the entity
- a right to be consulted over such appointments, or to have a veto over appointments
- the provision of funding accompanied by rights of control over how that funding is spent
- a general right to control the day-to-day running of the body[105].

A7.3.5. ONS decisions on classification are definitive and are informed by common European standards. These classifications are published[106]. ONS may take some time to consider the classification of a particular government entity, in the meantime advice should be sought from the Treasury classifications team. Pending review by the ONS, the Treasury view of classification should be regarded as definitive and should inform the body's governance, reporting and accountability structures.

Classification of Government companies – central, local or public corporation?

A7.3.6. Once the ONS has classified a body as public sector it is classified to a sub-sector based on its characteristics. These sub-sectors in respect of companies are:

- Central Government Company (CGC)
- Local Government Company (LGC)
- Public Corporation (PC).

Central and Local Government Companies

A7.3.7. Government companies which are classified by the Office of National Statistics (ONS) for the purposes of National Accounts as 'central government' are usually then administratively classified by Cabinet Office as NDPBs.

A7.3.8. CGC's receive income wholly or in the majority from central government via grants or contracts, or receive the majority of their income by virtue of levies or taxation or funded by the recovery of their costs through the charging of fees.

A7.3.9. Central Government Companies should:

- be subject to Managing Public Money
- have an accounting officer appointed by the Principal Accounting Officer of the sponsor department
- have clear delegated spending authorities from the department agreed by Treasury and subject to Cabinet Office spending control
- follow government standards in governance, recruitment, procurement and transparency for NDPBs
- appropriate board make-up and the balance of executive and non-executive functions
- have consolidated financial reporting.

---

[105] Taken from Classification of Public Bodies Guidance for Departments: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/519571/Classification-of-Public_Bodies-Guidance-for-Departments.pdf

[106] Public Sector Classification Guide https://www.ons.gov.uk/methodology/classificationsandstandards/economicstatisticsclassifications/introductiontoeconomicstatisticsclassifications

POL00363159

A7.3.10. It is important to ensure that provisions in the Framework Document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these need to be included in the Articles (which are legally binding on the Company). The template framework document for central government companies considers these issues[107].

A7.3.11. Local Government Companies are outside the scope of Managing Public Money.

Public corporations

A7.3.12. Companies established by government that meet the "market body test" are classified by the ONS as Public Corporations. The "market body test" requires that the company derives more than 50 per cent of its production cost from the sale of goods or services at economically significant prices (that is, prices that have a substantial influence on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce. Note that classification tests above refer primarily to Non-Financial Corporations. The classification rules for Financial Corporations are complex.

A7.3.13. Public Corporations' powers are usually defined in statute, but otherwise all the disciplines of corporate legislation apply. Sponsor departments should define any contractual relationship with a corporate in a framework document[108]adapted to suit the corporate context while delivering public sector disciplines. Public corporations do not have accounting officers and are not subject to Managing Public Money as a matter of course.

A7.3.14. They should instead be subject to levels of control and governance that are deemed appropriate by the sponsor department and agreed in the context of the framework document and approved by Treasury. It may be the nature of the body is such that it would be appropriate to consider if that a requirement for compliance with the principles of Managing Public Money should be imposed. This should be achieved through the exercise of shareholder rights and is not the default position. If this outcome is sought it may be appropriate to appoint the Chief Executive as an accountable person mirroring the role of the accounting officer for central government bodies to ensure the Shareholder expectations in this regard are met.

A7.3.15. Public Corporations are subject to Consolidated Budgeting Guidance[109] and in in particular are expected to provide a return to government in respect of capital employed. In the case of PCs performing essentially government-type functions, 3.5% real will normally be appropriate. A PC competing in the market should typically be expected to return a higher rate to reflect the prevailing market rate.

---

107 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060591/Template_Framework_Document_-_Central_government_companies.pdf

108 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060597/Template_Framework_Document_-_Public_Corporations.pdf

109 https://www.gov.uk/government/collections/consolidated-budgeting-guidance

POL00363159

Trading Funds

A7.3.16. Trading Funds are established under the Trading Funds Act 1973. Most trading funds are public corporations, but some may be central government companies. It is rare for new trading funds to be created and requires Treasury consent. Unlike Public Corporations in general, trading funds have accounting officers appointed by the Treasury and are subject to Managing Public Money by default. In addition, Departments should have careful regard to Consolidated Budgeting Guidance particularly regarding expected rates of return from trading funds.

A7.3.17. Further guidance may be found in the Treasury's Guide to the Establishment and Operation of Trading Funds: http://webarchive.nationalarchives.gov.uk/20130129110402/http:/www.hm-treasury.gov.uk/psr_reporting_centralgovernment.htm

Legal status of companies

A7.3.18. In addition to the classification decisions above, companies can be constituted either as companies limited by shares or as companies limited by guarantee. When planning on setting up a government company, officials should discuss with their legal advisors and with Treasury the appropriate legal status for incorporation.

A7.3.19. A profit-making company will generally be better incorporated by shares and non-profit by guarantee. A company limited by shares may also be preferable in joint ventures where there is significant disparity between the capital contributed or the support provided through income or otherwise. Different levels of share capital can reflect such variation and further provide flexibility in the levels of control exercised by shareholders.

A7.3.20. Alternate legal structures are also available such as charities, community interest companies and mutual. The Commercial Models Team in Cabinet Office can provide support and advice. It is important that the model used follows the policy objective rather than seeking to force policy objectives to fit a model.

Framework documents

A7.3.21. It is important to ensure that provisions in the framework document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these may need to be included in the Articles (which are legally binding on the Company).

A7.3.22. For further guidance in relation to framework documents for government companies see Annex 7.2 and published specimen templates.

Creation of new companies

A7.3.23. Companies are relatively easy to create by government departments through simple incorporation under existing legislation. However, departments should be wary of falling foul of the new services rules (see MPM 2.6). This is

POL00363159

particularly likely to be the case if the company is due to perform functions that are not already part of the department's ambit of activity.

A7.3.24. Even where the new company performs pre-existing functions, it may that the new delivery mechanism for that service is such that the new services rules may be engaged. This should be considered on a case by case basis.

A7.3.25. Creating a new company will generally be novel and as such will require Treasury consent.

A7.3.26. It will also be appropriate to share framework agreements with Treasury to set out proposed governance arrangements. If the new company is likely to be classified as a central government body consent will also need to be obtained from Cabinet Office for the creation of a new public body[110].

A7.3.27. As with the creation of all ALBs, departments should consider the guidance as set out in Annex 7.1 and in particular the requirements and guidance as set out in 7.1.7.

Subsidiary companies

A7.3.28. Where ALBs establish subsidiary companies, the accounting officer of the parent ALB shall have meaningful oversight of the subsidiary. It is not acceptable to establish subsidiaries to ALBs in order to avoid or weaken parliamentary scrutiny.

A7.3.29. For subsidiary companies classified as central government companies (CGCs), the responsibilities of the accounting officer of the parent ALB will also apply to any subsidiaries set-up by the ALB. Subsidiaries cannot have a different accounting officer to the accounting officer of the parent ALB.

A7.3.30. For subsidiaries classified as CGCs, the default position is that all the ALB's controls and delegations' cascade down to the subsidiary. These arrangements should be set out in the framework document between the ALB and the sponsor department, and in a separate document between the parent ALB and the subsidiary.

A7.3.31. ALBs can agree delegations to their subsidiary which are within their own delegations, issued to them by their parent department. Where ALBs wish to provide delegations or freedoms to their subsidiary which are outside of their own delegations, Treasury consent is required. The ultimate test in these cases will be whether the PAO would be comfortable defending the approach taken in Parliament.

A7.3.32. Where the subsidiary companies are classified as a PC rather than CGC, the position is that the ALBs own delegations and controls do not apply by default, and the controls set out in A7.3.12 onwards apply.

A7.3.33. There are some commitments which can never be able to be delegated to subsidiaries, regardless of their classification. These are commitments which incur liabilities which would impact the parent ALB, and therefore engage the accounting officer's responsibilities, if they crystallised.

[110] https://www.gov.uk/government/publications/the-approvals-process-for-the-creation-of-new-arms-length-bodies

POL00363159

Box A7.3A: Treasury consent for new subsidiaries[111]

- If the subsidiary is being established to deliver the ALBs existing activities within its existing statutory powers and ambit, Treasury consent will not be required – save where the expenditure undertaken breaches the department's delegations or other provisions of Managing Public Money.

- Where subsidiaries are established to deliver additional activities, potentially outside of the ALBs existing statutory powers or ambit, Treasury consent will always be required. Such expenditure is likely to be novel, contentious or repercussive and might engage the New Services Rule (see 2.6) or require new statutory powers (see 2.5).

Audit

A7.3.34. Companies in general are required by statute to have their accounts audited[112]. It is expected that companies classified as NDPBs will be audited by the Comptroller and Auditor General[113]. If the company is not for profit and the C&AG is appointed as Auditor by an order under the Government Resources and Accounts Act then the company is exempted from the requirement for a Companies Act audit[114]. If the C&AG is appointed as auditor of the company by agreement between the company and Minister of the Crown or by virtue of statute[115] then any Audit must also fulfil the requirements of a Companies Act audit.

A7.3.35. Audit arrangements for Public Corporations, companies not classified as NDPBs or companies where the auditor is not appointed automatically by statute should be agreed with the Treasury. It will generally be good practice for the sponsor department to seek the views of the NAO as to whether they think it appropriate to take on the role of auditor. It should be noted that where a body is consolidated into a department's group accounts all elements of the group will be subject to the C&AG's opinion on regularity.

---

111 As well as these Treasury consent requirements, new subsidiary companies may also need approval from the Cabinet Office as new public bodies. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686716/The_Approvals_Process_for_the_Creation_of_New_Arm_s-Length_Bodies.pdf

112 https://www.legislation.gov.uk/ukpga/2006/46/section/475

113 https://webarchive.nationalarchives.gov.uk/20130102193106/http://www.hm-treasury.gov.uk/d/dao0108.pdf

114 https://www.legislation.gov.uk/ukpga/2006/46/section/482

115 https://www.legislation.gov.uk/ukpga/1983/44/section/6

POL00363159

Annex 7.4

Using private finance

Some public services are delivered in partnership with private sector providers, using some carefully controlled private finance. Because the private sector contractor puts its own funds at risk, it can incentivise delivery of assets and services to time and cost, and can offer value for money where the benefits of risk transfer and private sector delivery offset the additional cost of private finance. Such deals are not appropriate for every project.

A7.4.1. Although the use of private finance in the delivery of public sector assets and services is one method of procurement, it is not suited to all types. Where it is used effectively it can offer a number of strengths in delivering public assets (see box A7.4A). These stem from:

- sharing risk in delivering public projects within a structure in which the private sector contractor puts its own capital at risk
- payment to the private sector being structured in such a way as to ensure the private sector is incentivised to deliver the required services or obligations under the arrangement
- the private sector being incentivised to grow market share in the joint delivery of services, or to grow the value in the joint management of assets

A7.4.2. Contracts using private finance may include the ongoing maintenance and operation of the asset and the delivery of associated services to outcome specifications set by the public sector. Generally they are long term arrangement between the parties.

Box A7.3A: strengths of using private finance to deliver public sector assets and services

- Getting projects built to time and to budget
- Improving whole-of-life risk allocation and management, creating disciplines and incentives on the private sector to manage risk effectively
- Securing a greater focus on due diligence
- Securing better integration of design, construction and operational skills
- Securing a greater focus on growing market share or value of a joint asset or business

A7.4.3. Private finance does not suit every project. It should only be used after the rigorous scrutiny of all alternative procurement options, where:

- the use of private finance offers better value for money for the public sector compared with other forms of procurement. Annex 4.6 gives

POL00363159

additional guidance on the value for money analysis that is required alongside the assurance and approval process
- 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
- the public sector partner is able to predict the nature and level of its long term service requirements with a reasonable degree of certainty.

A7.4.4. Conversely, private finance is not usually suitable for:
- individual projects too small to justify the transaction costs
- large innovative IT projects, or other services where it is not practical to specify the requirements sufficiently firmly in advance or over the long time-frame of the prospective contract life,

A7.4.5. The main procurement principles continue to apply when using private finance. 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.

A7.4.6. Public sector organisations should not, however, use standard contracts automatically. They should be intelligent customers, providing incentives to stimulate enough competition to achieve good value in procurement costs. They should also be aware that their own reputations may be at risk when privately financed contracts are carried out. Where contracts include the ongoing maintenance and operation of assets, public sector organisations need to commit sufficient resource to effective long term contract management, including monitoring performance and managing any service variation requirements or other contract delivery issues over the project life.

A7.4.7. Once a major asset has been constructed, it may be possible for the private sector partner to refinance the project debt on more favourable terms than achieved at financial close. The contract should specify how the financial benefit of any refinancing should be shared with the public sector purchaser. The Treasury has produced a standard refinancing protocol to achieve this.

POL00363159

POL00363159

Glossary

Name	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 the head of a department or other organisation or the Chief Executive of a non-departmental public body (NDPB) or other ALB. 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 exercising control over secondary legislation (i.e. a Statutory Instrument in the form of an order or regulation). Parliament's positive approval is required before the instrument can take effect.
Annually Managed Expenditure, AME	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.
Arm's length bodies, ALBs	Central government bodies that carry out discrete functions on behalf of departments, but which are controlled or owned by them. They include executive agencies, NDPBs and government-owned companies.
Capital spending	Spending on the purchase of assets (including buildings, equipment and land), above a certain threshold (set by the body concerned), which are expected to be used for a period of at least one year. Items valued below it are not counted as capital assets, even where they have a productive life of more than one year.

POL00363159

Central government bodies	Departments and departmental executive agencies, NDPBs, and NHS health authorities and boards. The Office for National Statistics determines which bodies are classified to central government.
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 setting out the framework within which all civil servants work, and the core values and standards they are expected to hold.
Clawback	The concept that where an asset financed by public money is sold, all or part of the proceeds of the sales should be returned to the Exchequer.
Commercial banks	Bodies other than the Government Banking Service 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, and feasibility of expenditure. 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 chief executive 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 the National Loans Fund to government departments and others: As Auditor General, the C&AG certifies the

POL00363159

	accounts of all government departments and some other public bodies, and carries out value-for-money examinations. See annex 1.2.
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 2.3.
Consolidated Fund, CF	The Consolidated Fund, operated by HM Treasury, is central government's current account into which most revenue from taxation, fines and penalties and certain departmental income is paid. Payments made out of this account are in respect of general government expenditure, which includes funding for departments' budgetary Supply Estimates approved by Parliament and settlement of specific liabilities that legislation charges directly on the Consolidated Fund.
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 extra receipts (CFER)	Income, or related cash, that passes through a department's accounts but may not be retained by the department and is surrendered to the Consolidated Fund.
Contingencies Fund	A government fund, controlled by the Treasury, which, subject to certain criteria, can provide repayable advances to finance urgent expenditure in anticipation of parliamentary approval of legislation or Estimates, or used to finance expenditure in advance of receipts. See annex 2.4.
Contingent liabilities	Potential liabilities that are uncertain but recognise that future expenditure may arise if certain conditions are met or certain events happen.

POL00363159

Corporate governance	The system and principles by which organisations are directed and controlled.
Cost of capital	The cost to the government of financing investment, i.e. the rate at which it borrows. This 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.
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, e.g. 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.

POL00363159

Estimates Manual	A practical reference guide issued by the Treasury which provides detailed information on the Supply Estimates policy and process.
Estimates Memorandum	An explanation of how provision sought in the Estimate is intended to be used and the relationship with other spending controls. Primarily provided for the departmental select committee but made freely available online.
Excess Vote	The means by which excess expenditure, or otherwise unauthorised expenditure, of cash, capital or resources, is regularised through an additional vote by Parliament. See section 5.4.
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 serious of accounts held at the Bank of England through which the overnight sweep and funding flows.
Feasibility	The principle that proposals with public expenditure implications should be implemented accurately, sustainable and to the intended timetable.
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 accountabilities and relationships of ALBs with their sponsor departments – see annex 7.2
Freedom of Information	Legislation 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

POL00363159

	any accounting period (usually one year). This includes all direct and indirect costs of producing the output (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.
Generally accepted accounting practice in the UK, UK GAAP	The accounting and disclosure requirements of the Companies Act and pronouncements by the Financial Reporting Council (principally accounting standards and Urgent Issues Task Force abstracts), supplemented by accumulated professional judgements.
Governance statement	An annual statement that accounting officers are required to make as part of the accounts on a range of risk and control issues.
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 by departments to outside bodies (usually NDPBs) to finance their operating expenditure.
Hedging	Transaction(s) designed to reduce or eliminate financial risk, e.g., because of interest rate or exchange rate fluctuations.
International Financial Reporting Standards (IFRS)	International accounting standards reflected in UK GAAP. Adapted by government for the public sector.
Irregular expenditure outside the ambit of a vote	Expenditure outside the ambit of a vote, i.e. resources spent on matters which were not included in the relevant ambit in the departmental

POL00363159

	Estimate and therefore Parliament has not authorised. See section 5.4
Joined-up government	Arrangements under which policymaking and service delivery are unhindered by departmental boundaries.
Judicial review	A procedure by which the courts can review the legality of 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.
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	A corporate parliamentary body set up to provide resources, support and constructive challenge to the C&AG. See annex 1.2.
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 transactions.
Non-departmental public body (NDPB)	A body with a role in the processes of government, but not a government

POL00363159

	department or part of one. NDPBs accordingly operate at arm's length from Ministers.
Notional costs 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.
Officer of the Paymaster General, OPG	Now incorporated within the Government Banking Service, it has statutory responsibilities to hold accounts and make payment for government departments and other public bodies.
Orange book	The informal title for Management of Risks: Principles and Concepts, guidance published by the Treasury for 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, i.e. 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.
Propriety	The principle that patterns of resource consumption should meet high standards of public conduct, and robust governance and respect

POL00363159

	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 Accounts Commission	A Select Committee of the House of Commons set up under the National Audit Act 1983 to regulate the National Audit Office.
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 7.7.
Public Dividend Capital, PDC	Finance provided by government to public sector bodies as an equity stake; an alternative to loan finance.
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 be compliant with the relevant legislation and wider legal principles such as subsidy control and procurement law, delegated authorities and following the guidance in this document. See box 2.4
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.

POL00363159

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.
Section	An 'Estimate line' within the Part II: Subhead detail table in an Estimate.
Select Committee	Both Houses of Parliament have select committees that scrutinise the work and expenditure of government. In the House of Commons, responsibilities of departmental select committees include oversight of the policies, administration and spending of particular government departments.
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
Spending review	A cross-government review of departmental aims and objectives and analysis of spending programmes. Results in the allocation of multi-year

POL00363159

	budgetary limits.
Statement of Excesses	A formal statement detailing departments' overspends and irregular spending as identified by the Comptroller and Auditor General as a result of undertaking annual audits.
Supply	Resources voted by Parliament in response to Estimates, for expenditure by government departments.
Supply and Appropriation Acts	Acts of Parliament, which give formal approval to departmental Supply Estimates. The Main Estimates are approved by a Supply and Appropriation (Main Estimates) Act and the Supplementary Estimates by a Supply and Appropriation (Anticipation and Adjustments) Act
Supplementary Estimate	The means by which departments seek to amend parliamentary authority provided through Main Estimates by altering the limits on resources, capital and/or cash or varying the way in which provision is allocated. Normally presented in February each year.
Target rate of return	The rate of return required of a project or enterprise over a given period, usually at least a year.
Trading fund	Public sector organisation that has a financing framework allowing it to meet outgoings from commercial revenues. In national accounts they are normally classified as public corporations.
UK Government Investments	A company owned by HMT, established in 2016 through the merger of the Shareholder Executive and UK Financial Investments. Its overarching governance objective is to promote the organisational performance of the UK government's ALBs from the perspective of government as owner.

POL00363159

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 Exchequer as a whole.
Virement	The use of savings on one or more sections (Estimate lines) or subheads to meet excesses on another section or subhead within the same voted limit in an Estimate.
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.
Windfall	Monies received by a department which were not anticipated in the spending review.

POL00363159

HM Treasury contacts
This document can be downloaded from www.gov.uk
If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:
Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
Tel: GRO
Email: public.enquiries@ GRO

POL00363159