HM Treasury

HM Treasury
1 Horse Guards Road
London
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Ms Meg Hillier
Chair, Committee of Public Accounts
House of Commons
SW1A 0AA

www.gov.uk/hm-treasury

By email

12 October 2017

Dear Ms Hillier,

As you will be aware, the Chief Secretary to the Treasury made a Written Ministerial Statement today on *Spending Authority.*

Philip Rycroft (DExEU) and I have now written to Departments with further details. I attach a copy of our letter.

I am writing in similar terms to the Chair of the Public Administration and Constitutional Affairs Committee, and to the Comptroller and Auditor General of the National Audit Office.

Yours,

Tom Scholar

Tom Scholar

Department for Exiting the European Union

HM Treasury

Sir Jonathan Stephens
Permanent Secretary,
Northern Ireland Office

By email only

12 October 2017

Dear Jonathan,

We would like to thank colleagues for the work departments have done in recent months to help ensure a successful EU Exit.

As the Chief Secretary set out today in a Written Ministerial Statement, it is important that departments can start spending to prepare for Brexit when they need to do so. Managing Public Money requires that expenditure on new services must rest on specific legislation. However, delaying spend until legislation has reached Royal Assent could jeopardise readiness for Brexit. To address this, for the small proportion of spending affected, ministers can issue a technical direction, allowing critical spending to be incurred ahead of Royal Assent, whilst ensuring transparency to Parliament. In these cases, the use of a Direction will be a matter of timing. Departments will still need to ensure spending is in all other respects regular, proper, feasible and good value for money, in the usual way.

To be clear, **the majority of spending to prepare for EU exit has, or will have, the necessary legislative cover when spending is required to happen. This issue only affects a small fraction of EU exit spending – spending on the implementation of a new service ahead of Royal Assent.** Spending on preparatory work which is not concerned with implementing a new service does not require specific legislative cover. Please consult Annex 2.4 of Managing Public Money for more detail on the distinction between preparatory and implementation work.

To clarify why there is an issue in these small number of cases: subject to specific exceptions set out in Managing Public Money, the PAC Concordat requires that for expenditure to be proper it should rest on specific legislation. This means that when a department wants to spend money on the implementation of a new service, it needs to have specific legislative cover through the relevant Bill having reached Royal Assent. Reliance on common law and inclusion of spending in the department's Estimate are not sufficient.

Parliament has clearly approved the UK's exit from the European Union by approving the European Union (Notification of Withdrawal) Act. In some cases, delaying urgent spending until Royal Assent of the relevant legislation would jeopardise Day 1 readiness. Therefore, in cases where spending on a new service is needed before Royal Assent - and the spending otherwise meets the usual standards of value for money, feasibility, propriety and regularity - there are two options available to ensure spending can take place.

Firstly, an advance from the Contingences Fund may be granted when the following three requirements are all satisfied:

1. The Bill in question must have reached second reading in the Commons;
2. There must be genuine urgency in the public interest; and
3. The Bill must be virtually certain to achieve Royal Assent with minimal change, preferably within a year.

Failing any of these requirements prevents a Contingencies Fund advance and relaxing these requirements would not meet Parliament's expectations.

If, for the Bill which provides legislative cover for the spending you need to incur, you believe these criteria are met, please contact your HMT Spending Team about the option of a Contingencies Fund Advance.

If a Contingencies Fund advance is not possible, **you can seek a formal written direction to spend from your Secretary of State. Ministerial Directions are the means within our spending framework to allow spending on a new service ahead of Royal Assent.** A single direction per department can cover multiple areas of spending, so long as the arguments for spending are clear for each case and the amounts involved are set out separately.

Ministerial Directions are the proper way to allow critical spending to be incurred, whilst being transparent with Parliament about why spending is being incurred ahead of Royal Assent. In these circumstances, the other requirements of MPM – for spending to be regular, proper, feasible and good value for money – may all still be met, and a direction will only be required because of the timing of the spend.

If you consider a direction may be necessary, or are in need of further guidance, please talk to your HMT spending team and DExEU who can advise you on the process.

Copies of this letter go to all Permanent Secretaries, and also to the Chair of the PAC, the Chair of PACAC and the Comptroller and Auditor General of the National Audit Office.

Philip Rycroft

Tom Scholar

Tom Scholar