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Subject: Novel, Contentious or Repercussive Spending

Dear Accounting Officer

Contact

Please address enquiries to TOAEnquiries@hmtreasury.gov.uk

Action

Note the new guidance on the interpretation of 'Novel, Contentious or Repercussive' spending attached and incorporated in a revised version of *Managing Public Money*.

Context

Accounting officers are required to ensure that all expenditure has Treasury authority as part of their duty to ensure the regularity of all spending by their organisation. This authority is provided, in most cases, by the organisation's delegation letter, which sets delegated authority limits for different types of spend. Below these limits authority is delegated to the department, above these thresholds, Treasury consent must be obtained directly for each spending proposal.

There are, however, categories of spending where delegation is not permitted. In particular, the Treasury cannot delegate responsibility for novel, contentious or repercussive spending proposals. Responsibility for identifying novel, contentious or repercussive expenditure, and ensuring Treasury consent is obtained, sits with the Accounting Officer. These, in turn are subject to scrutiny as part of the annual audit process, with the NAO directing departments to obtain retrospective approval from the Treasury in situations where an incorrect judgement was made.

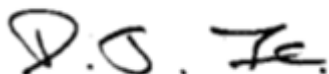
As part of reforms to the spending control and accountability framework, the Government is seeking to reduce duplication of controls and strengthen accountability. One of the key

principles of these reforms is that decisions should be delegated to those closest to delivery, at the lowest appropriate level. In line with this principle, the Government is resetting controls and approval limits, so that departments can be held responsible for day-to-day spending.

In support of the reform agenda, the attached guidance will help accounting officers assess whether a specific proposal falls into the categories of novel, contentious or repercussive.

This guidance includes both general principles as well as a list of specific examples of expenditure which should always be considered novel, contentious or repercussive. By their nature, any list of novel, contentious or repercussive expenditure will be non-exhaustive, and accounting officers and their departments should continue to seek the advice of the Treasury (or for arms-length bodies, their sponsor department) when the treatment is unclear. The guidance also makes clear that Treasury decisions on the nature of a specific item of spend are binding, in particular for repercussive spending.

The guidance has been incorporated into updated versions of Chapter 2 and Annex 2.2 of Managing Public Money, annexed to this letter – these have been incorporated into an updated version of *Managing Public Money* also published today on GOV.UK, please note corresponding changes to paragraph and box numbering. The guidance will be reviewed and updated as appropriate, including to incorporate any further specific examples in the interests of clarity.

A handwritten signature in black ink, appearing to read 'D. S. Fe.' with a stylized flourish at the end.

David Fairbrother

Treasury Officer of Accounts

Revised Chapter 2 of Managing Public Money

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.

2.1.3 Statutory bodies such as Non Ministerial Departments and Non-Departmental Public Bodies powers will generally be prescribed by their legislation but similarly their expenditure will be exercised in accordance with Parliamentary authority.

2.1.4 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.

Box 2.1 Requirements for the use of public funds

- budget cover in the collectively agreed multi-year budgets (see section 5.2)
- with a few exceptions¹, Parliamentary authorisation 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)
- sufficient legal powers (see section 2.5)
- assurance that the proposed expenditure meets the Accounting Officer standards; that is, in all other respects is regular and proper, represents good value for money and is feasible (see section 2.4).

¹ See section 5.3.

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 arm's length bodies (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 Formally, Treasury authority ("Treasury consent") is required before all expenditure or making commitments which could lead to expenditure or could have other fiscal implications (this includes legislation with spending implications - see annex 2.1).

2.3.2 Authorisation may also be required even where the commitment to expenditure is less clear. Accounting officers should consider if the proposed transaction or announcement may fetter the discretion of Treasury ministers in respect of whether to grant expenditure in the future or to propose conditions on that expenditure. If so, then unless already covered by its delegated authorities (see below), the department shall obtain shall not proceed unless it has first sought and obtained Treasury consent.

2.3.3 Allocation of budget cover via a Spending Review or Treasury ministerial approval of policy via cabinet committee or write round does not constitute spending approval.

Box 2.2 What is undertaking expenditure or making a commitment which could lead to expenditure, or have other fiscal implications?

Direct payments of cash or entering in legally binding contracts to make future payments.

- Announcements of new policy particularly where such policy was not agreed as part of a spending review settlement or where the department is carrying funding pressures that risk requiring additional funding from the reserve or relaxation of Treasury or Parliamentary ringfences.
- Announcements of preferred bidders in advance of business case approval, as this may undermine the ability of Treasury to reject business cases.
- Going to market with proposed contract envelopes, as this may undermine discussions about the budget to be provided.
- Procurements that may not commit to minimum levels of spend but may bind the Government with regard to conditions or contractual terms.

- Entering negotiations for settlement or investment without an authorised negotiation mandate, as this may undermine the discretion of Treasury Ministers to approve expenditure without causing reputational damage to the government.
- Commitments which may not require direct expenditure by your department, but which could lead to fiscal impacts elsewhere in government – either through a material reduction in revenues or an increase in costs.
- Decisions which create liabilities in future.

2.3.4 Usually, the Treasury agrees some general approvals delegating consent for each department subject to clear limits and/or exclusions. These are routinely set out in a ‘delegation letter’ which delegates authority to spend, below specific thresholds, to each body. Expenditure outside these delegations must obtain explicit approval from the Treasury.² When determining whether an item of expenditure is above or below a delegated limit, the whole-life cost of that project or programme must be used. Where there is a degree of optionality within this total (for example a call-off contract), the upper limit for expenditure should be used. Where cost increases or other changes lead to a project or programme exceeding a delegation threshold after initial approval, the department should approach the Treasury to obtain consent for the whole cost on both a retrospective and prospective basis.

2.3.5 Some common approaches to setting delegations are shown in box 2.3 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.

2.3.6 In turn departments should agree with each of their ALBs a similar set of delegations appropriate to their business³ (see also chapter 7).

Box 2.3 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

² Detailed guidance on the Treasury Approval Process for expenditure above or outside the terms of a bodies delegations is set out separately - <https://www.gov.uk/government/publications/treasury-approvals-process-for-programmes-and-projects>

³ Unless agreed in advance with the Treasury, and explicitly set out separately in the sponsor department’s delegation letter, ALB delegations should not be greater than the delegated limits agreed between the Treasury and the sponsor department.

- a sampling mechanism to allow specimen cases to be examined

2.3.7 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. Annex 2.2 gives examples of when Treasury consent to such transactions must always be obtained before proceeding, even if the amounts in question lie within the delegated limits.

2.3.8 It is improper for a public sector organisation to make commitments outside the agreed delegations and if spending occurs will likely result in a finding that that this is irregular. The expenditure will be regularised if the Treasury subsequently agrees to give retrospective consent, but this is only possible if the expenditure in question would have been agreed if permission had been sought at the right time.

2.3.9 Sometimes legislation calls for explicit Treasury consent, for example for large or critical projects; or for the use of particularly broad financial assistance powers. In such cases it is unlawful to proceed without Treasury consent - and Treasury consent cannot be given retrospectively.

2.3.10 The Treasury approval process may also include requirements to obtain approvals from other government departments or bodies in relation to specific types of expenditure, for example Cabinet Office commercial controls. Failure to obtain such approvals constitutes a failure to obtain Treasury consent.

2.3.11 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.⁴

2.4 Accounting Officer standards

2.4.1 All use of public funds occurs under the stewardship of a body's Accounting Officer (see Chapter 3 for more details), who is responsible to Parliament for ensuring that all consumption of public resources is compliant with the Accounting Officer standards. These standards are Regularity, Propriety, Value for Money and Feasibility, set out in Box 2.4.

2.4.2 Importantly, the requirements of Regularity include ensuring that all expenditure is compliant with the 'framework of authorities' against which the transactions of the department will be audited. This framework of authorities includes any relevant legislation, legal principles such as subsidy control, procurement law or other legal requirements, as well as the requirement for Treasury consent and the rules set out in this document. Expenditure which does not meet the other requirements in

⁴ See *The Cabinet Manual* for more detail – including paragraphs 4.32 – 4.33, and Chapter 10, for more detail - <https://www.gov.uk/government/publications/cabinet-manual>

this chapter; for budget cover, estimates authority, legal authority or Treasury consent; will be irregular.

2.4.3 Propriety remains a wider concept, focussed on ensuring probity and ethics in the use of public resources, and 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 principles⁵ - 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 The Accounting Officer Standards

- **Regularity:** the proposed transaction is compliant with the 'framework of authorities' of the department or body concerned. That the transaction under consideration has sufficient legal basis, Parliamentary authority (see Annex 2.4), and Treasury authorisation; is compatible with the agreed spending budgets, the wider legal framework (for example subsidy control, procurement and other law), and the requirements regarding spending set out in this document.
- **Propriety:** the proposal meets high standards of public conduct and relevant Parliamentary control procedures and expectations, including compliance with any conventions or commitments made to Parliament and cross-cutting Government policies or standards, as well as the standards of conduct and good governance as set out in this document.
- **Value for money:** in comparison to alternative proposals or doing nothing, the proposal delivers the stated policy objectives in a way that represents good value for the Exchequer as a whole, taking into consideration the chances of different degrees of success or failure.
- **Feasibility:** the proposal can be implemented accurately, sustainably, and to the intended timetable with the resources available and without incurring wasteful or nugatory spend.

2.4.4 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.⁶

2.4.5 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).

⁵ <http://www.public-standards.gov.uk/>

⁶ Further details on the Accounting Officer's duties regarding the four standards are set out in "Accounting Officer Assessments; Guidance", available at <https://www.gov.uk/government/publications/accounting-officer-assessments> .

2.4.6 Should departments need to resolve an issue about the Accounting Officer standards, 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.

2.4.7 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 National Audit Office (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 As set out in Box 2.1, it is a constitutional principle that all public expenditure must have an appropriate legal basis. 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), in response to Parliamentary concerns about the government undertaking the provision of public services without explicit Parliamentary backing, 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 or prerogative powers (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.

Box 2.5 Expenditure which may routinely rely on a Supply and Appropriation Act

- routine administration costs, for example employment costs, rent, cleaning
- lease agreements, for example for photocopiers, lifts
- contractual obligations to purchase goods or services, for example 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 with Treasury consent

- **Either** services or initiatives lasting no more than two years, for example a pilot study or one off intervention
- **Or** expenditure of no more than £2.75 million 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. Explicit Treasury consent is required before they may be relied on. Parliament should be alerted to the use of Sole Authority in this manner via a note in the Estimate.

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 to obtain royal assent before any expenditure on delivery of the policy. The 'new services rule' is a specific expression of the terms of the 1932 Concordat.

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.

2.6.3 New public bodies represent one specific case of a ‘new service’. When establishing a new public body, departments must ensure that appropriate powers in legislation exist beforehand. More details on this can be found in Chapter 7.

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, that is with wider benefits to outweigh the convention of awaiting Parliamentary authority (political imperative is not enough)
- 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

2.7 Budget cover

2.7.1 As set out in Box 2.1 all expenditure must be affordable within agreed multi-year budgets; and within the budgets in that year’s Estimate, as voted by Parliament. Departments must make every effort to ensure that expenditure does not exceed the limits and restrictions as set by Parliament. Any expenditure outside of these limits will result in an “Excess Vote”. Such expenditure potentially undermines Parliamentary control over public spending and must be subsequently accounted for to Parliament. Expenditure which exceeds estimates control totals would be irregular, and Accounting Officers are responsible for managing the risk of irregular expenditure.

2.7.2 Significant commitments to expenditure beyond the end of a spending review period require Treasury approval, as this will constrain ministers’ ability to set allocations at future spending reviews.

Revised Annex 2.2: Treasury consent and 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 authorisation 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

- undertaking expenditure or making a commitment which could lead to expenditure or have other fiscal implications.
- 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
- creating new or increasing the level of fees and charges

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

What is undertaking expenditure or making a commitment which could lead to expenditure, or have other fiscal implications?

A2.2.5 Direct payments of cash or entering in legally binding contracts to make future payments require authorisation.

A2.2.6 Authorisation may also be required even where the commitment to expenditure is less clear. Accounting officers should consider if the proposed transaction or announcement may fetter the discretion of Treasury ministers in respect of whether to grant expenditure or to propose conditions on that expenditure. If so, then unless already covered by its delegated authorities (see below), the department shall not proceed unless it has first sought and obtained Treasury consent. Specific areas where this may be required include the following.

- Announcements of new policy particularly where such policy was not agreed as part of a spending review settlement or where the department is carrying funding pressures that risk requiring additional funding from the reserve or relaxation of Treasury or Parliamentary ringfences.
- Announcements of preferred bidders in advance of business case approval, as this may undermine the ability of Treasury to reject business cases.
- Going to market with proposed contract envelopes, as this may undermine discussions about the budget to be provided.
- Entering negotiations for settlement or investment without an approved mandate, as this may undermine the discretion of Treasury Ministers to approve expenditure without causing reputational damage to the government.

A2.2.7 Allocation of budget cover via a Spending Review or Treasury ministerial approval of policy via cabinet committee or write round does not constitute spending approval.

Delegation

A2.2.8 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 box A2.2C for exceptions). Delegated authorities may also allow departments to enter into commitments to spend (for example contingent liabilities) and to deal with special transactions (such as some write-offs) without prior approval.

A2.2.9 Such delegated authorities strike a balance between the Treasury's obligation to exercise control in order to fulfil its responsibilities to Parliament and the department's freedom to manage within its agreed budget limits and Parliamentary provision.

A2.2.10 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.

A2.2.11 The Treasury may also work through the Cabinet Office to set certain expenditure controls applicable across central government.⁷

Setting delegated authorities

⁷ <https://www.gov.uk/government/collections/cabinet-office-controls>

A2.2.12 While the standard terms for inclusion in delegated authorities are set out in box A2.2B, the Treasury has produced a single template delegation letter which must be used to set delegated limits for central government departments and ALBs.⁸ 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.

A2.2.13 In establishing delegated authorities, the Treasury will:

- agree with the department how it will take spending decisions (for example 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 (for example 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.

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, for example all items of a certain kind to require approval
- any relevant authorities, for example 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.

A2.2.14 In turn departments shall agree delegated authorities with their arm's length bodies, making use of the template delegated authority letter. 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 Treasury approval for the delegated authorities they agree with their ALBs.

A2.2.15 For the avoidance of doubt when considering if spending is in excess of delegated limits the following factors should be considered.

⁸ <https://www.gov.uk/government/publications/managing-public-money>

- When assessing if the spending is in excess of delegated limits, the relevant spend figure should be whole life expenditure related to the relevant limit.
- Whole life costs are calculated inclusive of tax liabilities, including any VAT liabilities.
- Where any elements of a programme or project's expenditure are above the applicable resource or capital delegation then the project or programme should be considered for approval in its entirety.
- Where an item of expenditure may be subject to multiple delegations – the lower limit shall always apply.

A2.2.16 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 (for example 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

Novel, Contentious or Repercussive spending

A2.2.17 Novel Contentious or Repercussive (NCR) spending is an area where the Treasury can never delegate authority to departments or ALBs, even if it is otherwise within delegated limits. Therefore, it is incumbent upon Accounting Officers to refer all NCR spending to the Treasury for approval. Failure to do so may result in the expenditure being deemed irregular, potentially leading to a qualification of accounts and an Excess Vote. Treasury and departmental finance teams may offer advice on whether particular spending is NCR, and if in doubt, it is appropriate to consult the relevant Treasury spending team.

A2.2.18 The Accounting Officer of the spending organisation is responsible for ensuring that all expenditure is backed by the necessary authority and must be prepared to defend that judgment to auditors (typically the National Audit Office) and the Public Accounts Committee. Auditors are likely to place significant weight on the Treasury's advice but are not obliged to follow it, nor accept the Accounting Officer's judgment.

A2.2.19 Spending decisions which are the subject of substantial disagreement or debate within government, including between the Treasury and a department, are likely to

be contentious. Therefore, where there is likely to be a dispute over whether spending falls under the NCR category, it is generally advisable to seek explicit Treasury consent to put the issue beyond doubt. This includes where there is dispute between a parent department and arm's length body.

What factors should the Accounting Officer consider when judging whether expenditure is NCR

Novel

A2.2.20 Novelty is subjective to the organisation undertaking the spending. In many cases novel activity requires new legislative authority as per Annex 2.4 and/or updating of the relevant ambit of the Department concerned when undertaking expenditure that cannot be considered as falling existing ambits. This will require Treasury consent. For example, the purchase of military equipment is routine for the Ministry of Defence but for the Department for Transport to undertake such spending it may require the ambit of the Department to be updated.

A2.2.21 However, novel activity will also require spending consent even where existing powers or ambit cover exists. This might include certain categories of spending as set out in Box A2.2D or might include spending to deliver new policy or activity that has no precedent in being delivered by the organisation. This may also include the use of statutory powers in a manner that Parliament would not have expected. Contractual arrangements that are common in one part of government but unusual in another may also be novel. This assessment of novelty will often be subjective, and the accounting officer will need to consider if they are of the view that Parliament would expect them to have sought Treasury approval.

A2.2.22 Public sector organisations can and should innovate in carrying out their responsibilities, using new technology and adopting good business practice. Alternative methods of delivering public services may not necessarily require Treasury consent based on novelty when below delegated limits. It will be appropriate to consult with Treasury on specific initiatives to discuss if consent is required.

A2.2.23 However, it is generally appropriate to seek consent where expenditure occurs in a new policy area where the department has not previously spent. Significant changes to scale, scope or targeting of existing activity will also likely be novel. It will also typically be considered novel when the expenditure relates to the creation or funding of a new public body, or the provision of new functions to an existing body.

A2.2.24 Novel or complex financial arrangements of any kind are novel and contentious activity. Use of private finance will be novel save in cases where such models for delivery have been granted Treasury consent at programme level.

A2.2.25 Pilots of new policy approaches that may lead to significant additional expenditure will generally require consent, as they are both novel and repercussive. Such pilots may lack statutory authority and therefore require Treasury approval in any event to ensure the propriety of spending, resting on the sole authority of the Supply and Appropriation Act.

Repercussive

A2.2.26 Repercussive spending refers to expenditure or announcements with implications that may set a precedent or create expectations of future spending—either

within the department or ALB, or across government. It may also refer to changes in spending that create pressures elsewhere in the public sector. When considering if those pressures may manifest, accounting officers should be cognisant of the possibility that – even if there are no legally binding expectations or direct repercussive costs –repercussive costs may occur simply due to the creation of expectations and pressure to undertake similar approaches elsewhere in government.

A2.2.27 Repercussive spending may also occur where the expenditure may not directly increase costs but may increase the risks of such costs being incurred either directly or indirectly. Spending may not just include direct cash expenditure but may include where the actions of the department or ALB create budgetary or fiscal impacts for example by increasing the risk may also be novel may also be novel of bodies or transactions moving on or off-balance sheet and thus creating fiscal pressures.

A2.2.28 The central nature of the Treasury means that it may be better placed to identify potential repercussions, as such it may be particularly advisable to obtain Treasury views on any potential repercussions if a department is in any doubt. If the Treasury is of the view the expenditure may be repercussive consent should be sought.

Contentious

A2.2.29 If expenditure fulfils either or both of the novel or repercussive criteria, then it is likely also contentious. However, there can be circumstances where an item is neither novel nor repercussive, but still contentious.

A2.2.30 The issue of contentiousness will be matter of judgment for the Accounting Officer. As with assessments of novelty, it will be subjective to the body for which they are responsible.

A2.2.31 It is not acceptable to argue that precedent of contentious behaviour in another part of the public or private sector renders spending uncontentious. If there is doubt in the AO's mind it is helpful to consult the Treasury.

A2.2.32 When considering contentious activity, accounting officers should consider the expectations of Parliament and the public at large. Where Parliament has specifically authorised expenditure, it is unlikely to be contentious even if there may be some political debate regarding the expenditure. But where power Parliament has granted to the executive is being exercised in a manner Parliament was unlikely to expect, it is more likely to be considered contentious.

A2.2.33 Given this reference to Parliament expectations there is a link between contentiousness and the Accounting Officer duty of propriety. For the avoidance of doubt, Treasury consent does not alleviate the Accounting Officer of their duty to be satisfied to the propriety of expenditure. It is no defence to the Accounting Officer to seek to justify contentious spend as proper spend by simply referencing the consent of the Treasury.

A2.2.34 Parliament does not expect the funding it has authorised to be provided to malicious or criminal actors and expects departments to ensure appropriate mitigations are in place to prevent this. As such spending that has a high risk of fraud will be contentious and require HMT consent.

A2.2.35 Spending that may be perceived as rewarding failure is likely to be contentious. Spending that has significant legal risk attached to it is contentious. Spending that is likely to or risks distorting competitive markets is contentious

Box A2.2D Examples of Novel Contentious or Repercussive Spend

The judgment of the Accounting Officer and advice of HMT officials will be key in deciding if spend is novel contentious or repercussive, but for the avoidance of doubt the following spend will always be deemed novel contentious or repercussive. This list is not exhaustive and may be updated to reflect the views of both Parliament and HM Treasury ministers.

- unusual financial transactions, for example imposing lasting commitments or using tax avoidance
- spending involving tax planning
- unusual schemes or policies using novel techniques
- novel financing techniques such as payday lending in the public sector require consent.
- spending that could lead to a pressure that breaches Departmental Expenditure Limits, Treasury ringfences or other control totals.
- changes to employment terms and conditions that will give rise to precedent for similar jobs elsewhere in central government.
- use of non-standard contractual terms that may provide precedent for use elsewhere in the public sector particularly where those clauses may involve significant transfer of risk to the public sector
- decisions to settle claims for compensation that may give rise to further claims or expectations of further compensation.
- extra statutory payments similar to but outside statutory schemes or ephemeral ex gratia payment schemes, for example payments to compensate for official errors where not covered by specific delegations or HMT guidance. (see Annex 4.13)
- non-standard payments in kind
- creation of new Arm Length Bodies or corporate entities where such creation has not been approved as part of a wider business case approval
- spending that may give rise to classification issues such as moving bodies or assets on to or off the public sector balance sheet.
- spending that departs from published or internal policy directives is likely to be contentious save where that policy is clear there is discretion delegated to depart from it.
- use of nonstandard employment terms for central government such as use of private medical insurance or provision of unusual benefits in kind

Legal requirements for Treasury Consent

A2.2.36 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 provide approval in advance for expenditure which meets detailed and objective criteria set by Treasury, allowing Treasury approval to be deemed without specific examination of each case. This may be appropriate to avoid a great deal of detailed case-by-case assessment. The Treasury may ask for intermittent sampling to check that this arrangement is operating satisfactorily.

Failure to obtain Treasury authority

A2.2.37 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.

A2.2.38 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.

A2.2.39 Requests for retrospective approval shall follow the same format as requests submitted on time.

A2.2.40 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. Depending on materiality the Comptroller and Auditor General 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 may consider presenting an excess vote to Parliament to regularise the situation.

A2.2.41 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 of resources cannot, therefore, be regularised.

A2.2.42 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.

A2.2.43 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, for example 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.

A2.2.44 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