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USE OF PUBLIC RESOURCES

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

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

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

2.1 Power to commit public funds

2.1.1 Ministers have very broad powers to control and direct their departments. In general, they may do anything that legislation does not prohibit or limit, including using common law powers¹ to continue business as usual. But they must normally seek Parliamentary authority for specific legislation to empower any significant new commitment which seems likely to persist. In the Concordat of 1932² (see annex 2.1) the Treasury undertook to aim that departments would respect this requirement.

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

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

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

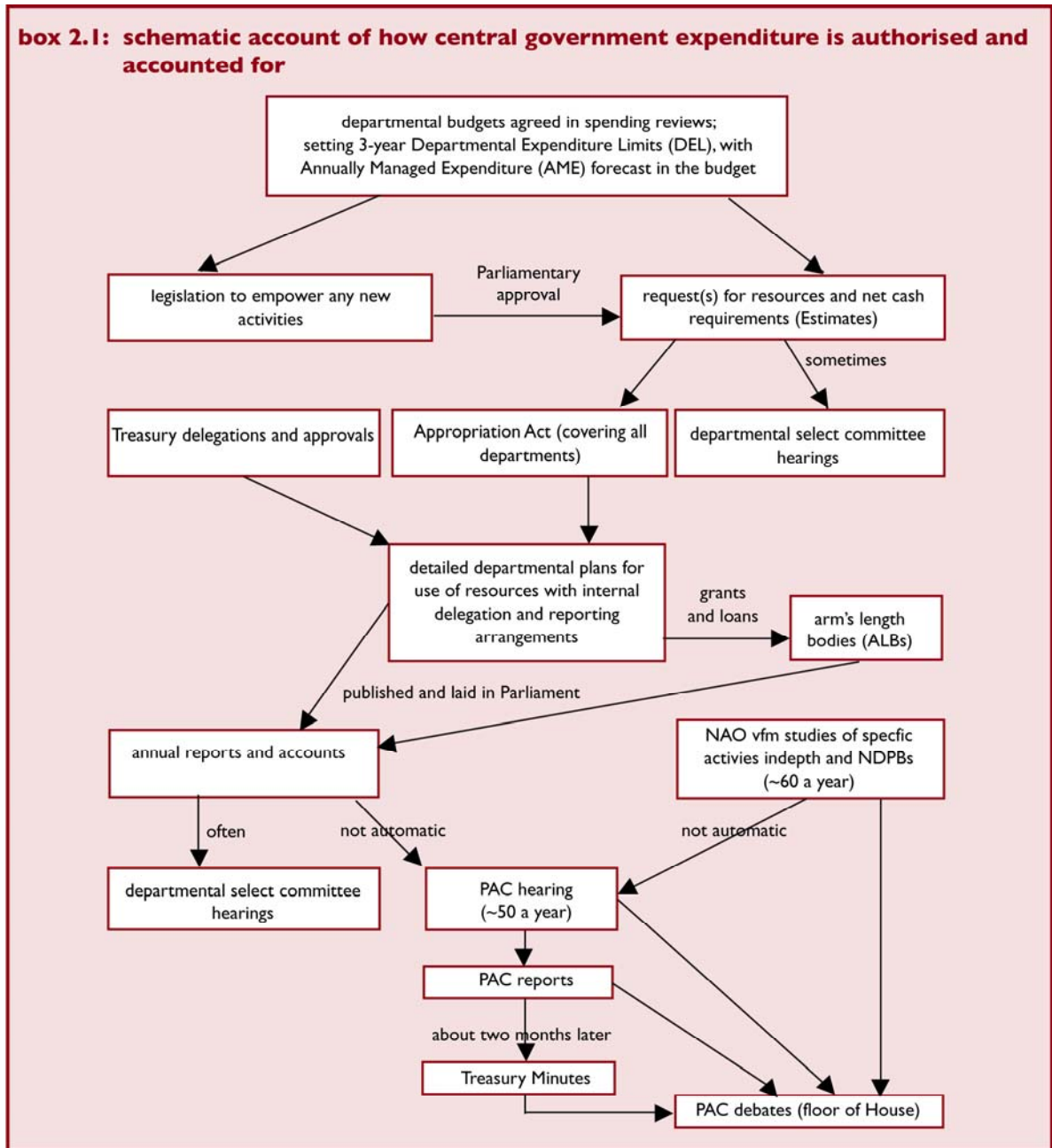
- the Estimate(s) presented to Parliament for the department's annual expenditure are consistent with the statutory powers and with the government's expenditure plans; and
- use of resources in the department is consistent with the Estimate(s);

and must answer to Parliament for stewardship of these responsibilities.

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

¹ The Ram doctrine of November 1945, after Sir Granville Ram, then First Parliamentary Counsel.

² Also known as the Baldwin convention.



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

box 2.2: examples of approaches to delegated authorities

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

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

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

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

box 2.3: some transactions requiring specific Treasury consent

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

2.2 Regularity and propriety

2.2.1 Accounting Officers must make sure that their organisations' activities achieve high and reliable standards of regularity and propriety (see the Treasury's *Guide to scrutiny of public expenditure*³). These important terms, which are often used together because they are so closely linked, are defined in box 2.4.

box 2.4: regularity and propriety

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

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

³ The *Guide to scrutiny of public expenditure* - see www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_public_expenditure.cfm and the *Regularity, Propriety and Value for Money handbook* - see www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_valueformoney.cfm

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

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

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

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

2.3 Using the authority of the Appropriation Act

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

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

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

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

and

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

box 2.5: resource use which an Appropriation Act may authorise

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

2.4 New services

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

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

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

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

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| Annex 2.1 | The PAC concordat of 1932 |
| Annex 2.2 | Treasury approval of legislation |
| Annex 2.3 | Treasury approval of Expenditure |
| Annex 2.4 | <i>The Seven Principles of Public Life (the Nolan Principles)</i> |
| Annex 2.5 | The new services rules |

