

ANNEX 2.1

THE PAC CONCORDAT OF 1932

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

A.2.1.1 The PAC has had long standing concerns about how the government gains authority from Parliament for each area of spending.

A.2.1.2 In the mid 19th century it became customary for governments to gain Parliamentary authority for some areas of expenditure simply by use of the Contingencies Fund, without troubling to obtain specific powers for them. Shortly after its formation in 1862, the PAC protested about this practice, partly because it involved less stringent audit. It urged that the Contingencies Fund should be used only for in-year funding of pressing needs, and that all continuing and other substantive spending should be submitted to the Estimates process with due itemisation.

A.2.1.3 By 1885 the PAC had become concerned that the authority of the Estimate and its successor Appropriation Act was not really sufficient either:

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

A.2.1.4 While the Treasury agreed in principle, the practice did not die out because in 1908 the PAC again complained:

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

A.2.1.5 The PAC reverted to the issue in 1930 and again in 1932, citing a number of cases involving various departments. It was concerned to specify how far an annual Appropriation Act could be regarded as sufficient authority for the exercise of functions by a government department in cases where no other specific statutory authority exists. It took the view that:

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

A.2.1.6 In reply, the Treasury Minute said:

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

.....whilethe Executive Government must continue to be allowed a certain measure of discretion in asking Parliament to exercise a power which undoubtedly belongs to it, they agree that practice should normally accord with the view expressed by the Committee that,

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

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

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