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ANNEX 2.2 LEGISLATION: TREASURY APPROVAL

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.

Consulting the Treasury

A.2.2.1 When preparing legislation, departments must consult the Treasury:

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

A.2.2.2 Departments should 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

A.2.2.3 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 A.2.2A. Treasury consent is required to protect the authority of the Chancellor of the Exchequer in matters of finance or establishment.

A.2.2.4 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
- the need for most resource accounts to gain Treasury approval before resources consumed or expenditure incurred can be charged on the Consolidated Fund;

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

box A.2.2A examples of legislation which require explicit Treasury approval

expenditure met from the Consolidated Fund (CF):

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

Money resolutions

A.2.2.5 A money resolution is required¹ 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.

A.2.2.6 The responsible department should 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.

Ways and Means resolutions

A.2.2.7 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 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.

¹ By virtue of Standing Order 49 of the House of Commons

A.2.2.8 Departments should clear ways and means resolutions with the Treasury. Further advice should be sought from Parliamentary Clerks.

Explanatory Notes

A.2.2.9 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 A.2.2B. Guidance on preparation is at www.cabinet-office.gov.uk/parliamentary-counsel.

box A.2.2B legislation authorising expenditure: explanatory notes

1. financial effects of the legislation:

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

2. 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 (NDPBs) and local authorities.

A.2.2.10 Explanatory notes must be ready in time for the introduction of each bill. Any containing details of financial or manpower effects must be cleared with the Treasury, before the responsible department sends it to Parliamentary Counsel.

Consultation with others

A.2.2.11 Departments should also clear any legislation which has implications for audit by the C&AG with the National Audit Office (NAO). It is usual to provide that the C&AG has rights of inspection and access so that he or she can carry out value for money examinations.

A.2.2.12 Departments should also consult the Paymaster General (via HMRC) about any new legislation that may have tax implications (eg the legislation creates taxable bodies, transfers assets to new bodies or make changes to other legislation which affects tax treatment).