

# A

## ANNEX 2.5 NEW SERVICES

**Chapter 2 outlines how public spending is authorised by Parliament, controlled by the Treasury, and accounted for in public. This annex expands on how departments can, in certain circumstances, undertake expenditure or commit resources in advance of the enactment of specific legislation.**

**A.2.5.1** New services are activities or services which Parliament has not yet authorised, either:

- specifically by way of enabling legislation;
- through the Supply procedure, in cases where it is legitimate to rest resource consumption or expenditure on the sole authority of the Appropriation Act (see chapter 2.3); or
- existing services which are to be carried out in a different way from that which Parliament has approved, or where additional legislation is to be enacted. For example, the union of the tax departments into HMRC was a new service until completion of the passage of the Commissioners for Revenue and Customs Act 2005.

In case of doubt, departments should always consult the Treasury for a definitive view.

**A.2.5.2** Departments must only consume resources or incur expenditure on work that is part of the new service once the specific legislation has been enacted and provision has been made in Estimates for the new service.

### **When new services require specific statutory authority**

**A.2.5.3** Normally departments do not seek provision for new services in Estimates until the relevant enabling legislation has received royal assent. Departments should therefore take account of the Parliamentary timetable in planning legislation; and particularly in planning the start date of any new body created by it. They should also plan to meet the criteria for public appointments in the Commissioner for Public Appointments' Code of Practice ([www.ocpa.gov.uk/the\\_code\\_of\\_practice.aspx](http://www.ocpa.gov.uk/the_code_of_practice.aspx)) before making public commitments about the timetable for implementation.

### **Expenditure that can be incurred before Royal Assent?**

**A.2.5.4** Some preliminary steps are usually required before implementation of a new service can begin. Use of resources or expenditure on preliminary work for a new service need not depend on the enactment of legislation and may be met out of existing funds. Such use must, however, have cover in the ambit of the Estimate ( see paragraph 3.9 of the Estimates Manual [www.hm-treasury.gov.uk/media/A/1/estimatesmanual\\_011007.pdf](http://www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf)). Some examples are given in box A.2.5A. The list is not exhaustive.

**box A.2.5A expenditure that can be incurred before royal assent**

- pilot studies informing the choice of the policy option (because this process is part of designing, modifying or even deciding to abandon the policy);
- scoping studies designed to identify in detail the implications of a proposal in terms of staff numbers, accommodation costs and other expenditure to inform the legislative process;
- in-house project teams and/or project management boards;
- use of private sector consultants to help identify the chosen policy option, assist with scoping studies or other work informing the legislative process;
- work on the legislative process associated with the new service.

**A2.5.5** However, if preliminary work might last more than two years, separate statutory authority may be required. Departments should seek Treasury guidance in cases of doubt.

**Expenditure that cannot be incurred before royal assent**

**A2.5.6** Expenditure which is likely to be nugatory or not cost-effective if the legislation for the new service fails should not be incurred prior to royal assent. Examples are in box A.2.5B. The touchstone is value for money. The process for authorising expenditure on exceptional spending outside these rules is set out below.

**box A.2.5B expenditure not normally incurred before royal assent**

- recruitment of chief executives and board members of a new body;
- recruitment of staff for a new body;
- significant work associated with preparing for or implementing the new task eg renting offices or designing or purchasing significant IT equipment.

**How to fund preparatory work before royal assent****Paving bill**

**A2.5.7** If, exceptionally, the preparatory work on a particular policy development is so urgent that it cannot wait until royal assent, the department responsible should consider taking a short paving bill.

**A2.5.8** Depending on the context, a paving bill can provide powers to allow expenditure which would be nugatory if the subsequent detailed legislation for the new service did not proceed, eg employing consultants to design a significant IT or regulatory system. Such bills are usually short, though they may be contentious (and time consuming) as they can give rise to discussion of the underlying principles. Departments' parliamentary clerks can help with guidance on the preparation of bills and the legislative process.

**Access to the Contingencies Fund**

**A2.5.9** In exceptional cases, where expenditure is deemed to be urgent, it may be possible to borrow from the Contingencies Fund to finance expenditure on a new service before legislation

comes into force (see section 2.4). The legislation must have passed second reading in the House of Commons. Treasury agreement is essential and cannot be taken for granted.

**A2.5.10** To obtain a Contingencies Fund advance, the proposal must pass the following tests:

- genuine urgency in the public interest: where it is inappropriate to postpone the expenditure until the necessary funds have been voted. Mere convenience is not enough; and
- near certainty that the bill will become law: successful passage of the second reading in the House of Commons is essential but may not be sufficient, eg if there is doubt about the assent of the Lords or risk of an early general election.

The department responsible must explain clearly to Parliament what is taking place, why, and by when matters should be placed on a normal footing.

**A2.5.11** If a Contingencies Fund advance is sought to finance a new public sector body being set up under new legislation, senior appointments should normally wait until the legislation has received royal assent. However, in exceptional circumstances, and only with the approval of the Treasury, such appointments may be made after completion of second reading in the House of Commons. They will require a Contingencies Fund advance; and the people appointed must be clear that if for any reason the legislation fails, the appointments would have to be cancelled.

**A2.5.12** Procedures for applying for a Contingencies Fund advance are in Section 5.B of the the Estimates Manual ([www.hm-treasury.gov.uk/media/A/1/estimatesmanual\\_011007.pdf](http://www.hm-treasury.gov.uk/media/A/1/estimatesmanual_011007.pdf)).

## **New services introduced through secondary legislation**

**A2.5.13** Where a service comes into final force through secondary legislation, the department may not normally incur expenditure on that function until the secondary legislation is passed. It may, however, include an appropriate form of words in the ambit of its Estimate and so seek Estimate cover so that expenditure may be incurred immediately the legislation is passed (see the Estimates Manual for further details).

**A2.5.14** The remainder of this annex sets out some possible easements.

## **New services and the sole authority of the Appropriation Act**

**A2.5.15** As outlined in sections 2.3 and 2.4, in certain limited circumstances departments may obtain authorisation for their planned expenditure by relying entirely on the authority of the Appropriation Act, rather than through specific empowering legislation. 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;
- no specific legislation on the matter in question is before Parliament.

Treasury approval is always required.

## Using public resources ahead of royal assent

**A2.5.16** In exceptional circumstances, and with Treasury consent, the Appropriation Act may be relied upon as the sole authority for expenditure or other use of resources before the specific legislation has completed its passage in Parliament. The conditions are:

- the proposed expenditure must be genuinely urgent and in the public interest;
- 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.

**A2.5.17** Subject to Treasury agreement, this procedure may be used, for instance, if:

- a bill has achieved second reading in the House of Commons and it would be efficient to prepare steps to implement the main provisions;
- a bill has been enacted but activating secondary legislation is not yet complete.

**A2.5.18** If this procedure is to be used, it is vital that the remaining steps to full specific legislation are imminent, are not expected to be controversial, and that Parliament has already been given at least an outline of the outstanding legislation in a way which allowed meaningful opportunities for possible objections to be discussed. A Contingencies Fund advance is normally required.

**A2.5.19** If this device is used, it is essential to inform Parliament of what is intended, setting out the reason(s) for the urgency, how quickly the position will be placed on a regular footing, and which Estimate(s) will be used. The Estimate(s) themselves should be noted to explain why, exceptionally, the authority of the Appropriation Act alone is proposed pending full passage of the legislation.