

THE CORE CURRICULUM  
FOR GOVERNMENT LAWYERS  
**MODULE 2**

Power and Money

## 2.2 Money 1 - Overview

# Where does the money Government spends come from?

Various sources:

- Tax receipts
- Fees for services (e.g. passport application)
- Profits from investment
- Monies from sale of property and land
- Fiscal prerogatives of the Crown

Principal sources are: VAT, excise duties and similar, petroleum revenue tax, the TV licence, inheritance tax, stamp duty as well as income tax, capital gains tax, corporation tax.

# Where does the revenue go?

- All revenue of Government departments must be paid into the Consolidated Fund, (unless there is a statutory requirement or power to pay it elsewhere)
- The Consolidated fund is held at the Bank of England. It is the Government's current account, in a manner of speaking. Only the Treasury can access the account.
- Monies cannot be paid out of the Consolidated Fund without statutory authority.

# Expenditure must be regular and proper

Key requirements of regularity and propriety are that:

- The Minister must have the legal power to perform the act for which the expenditure is required (e.g. to pay a grant to a charity, or to set up a company) – sources of power are dealt with elsewhere in this module, but arise from statute, common law or prerogative powers.

AND

- There must be Parliamentary authority for the expenditure of the sums in question.

# Parliamentary authority to spend money

Ministers' common law powers cannot be relied upon to raise or spend money.

It is a fundamental constitutional principle that Parliamentary authority is required to spend money.

How is this achieved?

# **Authorisation for supply of funds to Departments**

## **Supply procedure: #1 – main estimates**

Most funding (about 70%) is authorised by the annual supply procedure (sometimes called “the vote”)

Parliament gives statutory authority for the consumption of resources & capital and for cash to be drawn from the Consolidated Fund in Acts of Parliament known as Supply and Appropriation Acts

The Main Estimates start the supply procedure and are presented to Parliament by the Treasury around the start of the financial year to which they relate. They describe in great detail (600-700 pages) precisely how much the government wishes to spend on what. There will then be scrutiny of individual departmental estimates, in particular by departmental select committees, followed by parliamentary debate.

## **Supply procedure: #1 – main estimates *cont'd***

The sums set out in the Estimates are then approved by resolution of the House of Commons.

Following this approval, a Supply and Appropriation (Main Estimates) Bill is introduced into the House of Commons and is normally enacted before Parliament rises for the summer recess in July.



# Supply procedure: #1 – main estimates *cont'd*

The Supply and Appropriation (Main Estimates) Bill is the first of what are normally two pieces of supply legislation in each financial year. It does 2 key things:

- The Act authorises departments to use net resources, net capital and spend cash up to the amounts requested in the Main Supply Estimate.
- The Act also limits the way in which the resources and capital can be used by prescribing how the overall sum is to be appropriated to particular budgets in order to finance specified services – the “ambit”. When expenditure or income is not covered by a relevant ambit, it cannot be lawfully incurred or retained.

So, Parliament authorises the departments to have the money, but also dictates how it can be used.

## **Supply procedure: #2 – anticipation and adjustments**

Later on in the financial year (typically February/March), a second appropriation Act is passed called the Supply and Appropriation (Anticipation and Adjustments) Act.

What do Anticipation and Adjustment mean?

## Supply procedure: #2 – anticipation and adjustments

*Anticipation* : the main appropriation Act isn't passed until several months into the financial year (July), so the earlier Act ensures that each department has legal cover to spend money from the beginning of the financial year (April) until it gets its full allocation voted and appropriated to in July by means of a “vote on account” -provision is made for each department to be voted about 45% of their budgetary and cash limits for the new financial year.

*Adjustments* -The Government may ask Parliament for a change to net resources, net capital or cash voted in the Supply and Appropriation (Main Estimates) Act. This requires an amending Act, preceded by further estimates (“supplementary estimates”) and a further supply resolution. These supplementary estimates are laid once a year, around January/February. Formal statutory authority for the extra resources and funds is given in the Supply and Appropriation (Anticipation and Adjustments) Act.

# What does the supply procedure authorise?

The supply procedure provides Parliamentary authority for expenditure.

Important – Ministers still need separate legal authority for the act giving rise to the expenditure (e.g. power to pay a grant to a charity, or conclude a contract with a third party).

This leads to a point of particular importance – the Treasury/ Public Accounts Committee Concordat (“the PAC concordat”)

# The PAC concordat - background

The Supply and Appropriation Acts should not be relied upon as power to undertake the act leading to the need to spend.

Ministers have several sources of power, notably common law powers (discussed elsewhere in this module) and powers arising under statute.

Clearly, although it is entirely lawful for Ministers to rely on common law powers to achieve their aims, where available, the use of such powers is not subject to Parliamentary scrutiny, so scrutiny is lessened.

After a series of incidences of Departments relying solely on common law powers to undertake activities which required significant and ongoing funding, the PAC and the Treasury came to the concordat in 1932.

# Effect of the concordat

They agreed that, where Government wishes to undertake an activity involving significant expenditure, it will not do so without specific statutory powers.

In other words, this concordat requires that Ministers cannot simply rely on their common law (or other non statutory) powers (where available) plus the authority to spend given in the Supply and Appropriation Acts to undertake significant projects in such cases – there must be specific statutory underpinning for such expenditure (usually a statutory power) in primary legislation other than the Supply and Appropriation act.

The general rule, therefore, is that all spending should rest on specific legislation. There are some limited exceptions to this rule, which we now consider.

# When can you “rest on a Supply and Appropriations Act”?

- Expenditure on routine administration costs: employment costs, rent, cleaning, lease agreements, e.g. for photocopiers;
- Expenditure using prerogative powers, notably defence of the realm and international treaty obligations;
- Temporary services or continuing services of low cost, provided that there is no specific legislation covering these matters before parliament and existing statutory restrictions are respected, specifically
  - initiatives lasting no more than two years, eg a pilot study or one off intervention; or
  - expenditure of no more than £1.75m a year (amount adjusted from time to time).

# **But powers to undertake the activity in question are still required**

- IMPORTANT – in the case of the matters listed in the previous slide, Ministers still need power to undertake those acts.
- The key distinction is that the power arises from common law powers, or prerogative powers, where no statutory power supports the action.
- Where the concordat applies, legislation is required as a matter of propriety rather than law.



# New services, and spending in anticipation of a Bill

- New services are services for which Parliament would normally expect to provide authorising legislation but has not yet done so. They can include altering the way in which an existing service is delivered as well as services not previously delivered.
- A particular issue sometimes arises because Ministers wish to start early on a new policy for which the PAC concordat would require specific legislation to be in place, but where that enabling legislation has not yet secured royal assent.
- So the enabling legislation is before Parliament, and contains provisions for powers to set the new service up, and provisions authorising spending. But it is not yet in force so cannot be relied upon.

# Spending money in anticipation of legislation, and the contingencies fund

- Parliament accepts that departments can carry out certain preparatory work prior to royal assent. Examples (see box in Annex 2.4 Managing Public Money) include pilot studies to inform policy choices, scoping studies to identify the implications of the proposal and other research to inform the legislative process. If the Department's Estimates ambit covers such activity, it may be able to use its existing resources to pay for this.
- However, work which more closely anticipates the legislation (i.e. which effectively assumes that the legislation will be passed by Parliament before that has in fact occurred) requires Parliamentary scrutiny and authorisation in the usual way.
- Clearly, in some cases this is a difficulty where the Department needs to spend early on matters to be empowered by a Bill before Parliament. E.g. there may be a need to recruit senior staff, or procure a major IT contract.

# Spending in anticipation *cont'd*

- Exceptionally, such spending can be authorised by the Treasury as a draw down on the contingencies fund.
- Effectively, the department gets money “on account” of the next Estimates process and without the usual advance Parliamentary scrutiny that the Estimates process requires.
- The contingencies fund is used to pay for urgent services in anticipation of parliamentary provisions for those services coming available.
- The Treasury gives such authorisation only exceptionally and if the criteria in Annex 2.4 of Managing Public Money are met.
- Applications are scrutinised carefully, and neither political imperative nor ministerial preference are relevant – no select committee monitors the Government’s use of this fund so Treasury scrutiny is crucial

# Spending in anticipation – contingencies fund – criteria in Annex 2.4 MPM

- Expenditure is genuinely urgent and in public interest (e.g. delay in spending would be wasteful, or result in loss of efficiency savings or other public detriment)
- Legislation must have passed 2nd reading in House of Commons
- There must be little doubt it will pass substantially unchanged in near future (within 1 year as rule of thumb)
- Spending must represent value for money (so ruling out spending which would be wasted if the Bill is not enacted)
- Minister must explain urgency to Parliament, when matters will be normalised, and the legal basis for the spending (supply and appropriation or more commonly contingencies fund). This is crucial, since Parliament will not have its usual, constitutionally important, control of this spending.

# Other sources of authority for Government spending

- The main sources of authority to spend are clearly the Supply and Appropriation Acts procedure, and, where the PAC concordat demands that specific legislation is required to authorise the spending, that legislation.
- For completeness, there are two other sources of authority to be aware of.
- First, the consolidated fund standing services. Legislation sometimes authorises payments to be made from the CF without the need for annual provision under the supply and appropriation procedure.
- There are 6 main types: payments to the National Loans Fund to service the national debt; payments to the Contingencies Fund to finance certain unexpected expenditure; EU budget payments (for the time being); the civil list; salaries and pensions of judges, the Speaker etc; the expenses of returning officers at general and EU elections.

## Other sources *cont'd*

- The other form of authority to be aware of is off vote funds – so called because they are not included within the “vote” (the annual supply and appropriations procedure).
- Legislation sometimes establishes particular funds from which, or into which, payments are directed or authorised. An example is the National Insurance Fund.
- Also, some spending is charged on trading funds – these finance many of the commercial operations of Government. The key test for these are that the majority of the body’s income must come from receipts in respect of goods and services provided by them.
- Examples include the Royal Mint, Companies House, the Land Registry and the Met Office